

**Parks, Arts & Recreation Commission
Special Meeting Agenda**
*(Held concurrently with a
Special Meeting of the Turlock City Council)*



**September 27, 2016
5:00 p.m.
City of Turlock, Yosemite Room
156 S. Broadway, Turlock, California**

**Commission Chair
Brent Bohlender**

Commissioners
Michelle Morse Lakneshia Diaz
Larry Yeakel Nicole Larson
Michael Foster Robert Holly

**Department Director
Allison Van Guilder**

SPEAKER CARDS: To accommodate those wishing to address the Commission and allow for staff follow-up, speaker cards are available for any agenda item or any other topic delivered under Public Comment. Please fill out and provide the Comment Card to the Secretary or Staff.

NOTICE REGARDING NON-ENGLISH SPEAKERS: The Parks, Arts & Recreation Commission meetings are conducted in English and translation to other languages is not provided. Please make arrangements for an interpreter if necessary.

EQUAL ACCESS POLICY: If you have a disability which affects your access to public facilities or services, please contact the City Clerk's Office at (209) 668-5540. The City is committed to taking all reasonable measures to provide access to its facilities and services. Please allow sufficient time for the City to process and respond to your request.

NOTICE: Pursuant to California Government Code Section 54954.3, any member of the public may directly address the Parks, Arts & Recreation Commission on any item appearing on the agenda, including Consent Calendar and Public Hearing items, before or during the Parks, Arts & Recreation Commission consideration of the item.

AGENDA PACKETS: Prior to the Parks, Arts & Recreation Commission meeting, a complete Agenda Packet is available for review on the City's website at www.cityofturlock.org and in the Parks, Recreation and Public Facilities Office at 144 S. Broadway, Turlock, during normal business hours. Materials related to an item on this Agenda submitted to the Commission after distribution of the Agenda Packet are also available for public inspection in the Parks, Recreation & Public Facilities Office. Such documents may be available on the City's website subject to staff's ability to post the documents before the meeting.

1. **A. CALL TO ORDER**
 1. City Council
 2. Parks, Arts and Recreation Commission

B. SALUTE TO THE FLAG

2. **WELCOME AND INTRODUCTIONS**

3. **PUBLIC PARTICIPATION – LIMITED TO ITEMS DESCRIBED IN THE NOTICE FOR THIS MEETING**

This is the time set aside for members of the public to directly address the Parks, Arts & Recreation & Commission on any item of interest to the public, before or during the Commission's consideration of the item, that is within the subject matter jurisdiction of the Parks, Arts & Recreation Commission. You will be allowed five (5) minutes for your comments. If you wish to speak regarding an item on the agenda, you may be asked to defer your remarks until the Commission addresses the matter.

4. **DECLARATION OF CONFLICTS OF INTEREST AND DISQUALIFICATIONS**

5. **SCHEDULED MATTERS:**

- A. Request to provide direction to staff on the proposed Public Art Policy and Guidelines.
(Schulze)

Recommended Action (by City Council and PARC Commission):

Motion: Providing direction to staff on the proposed Public Art Policy and Guidelines

- B. Request to approve an Agreement for Special Services with The Sports Management Group for the purpose of completing the Sports & Recreation Facilities Prioritization and Feasibility Study, in an amount not to exceed \$51,527; re-appropriate unspent funds of \$41,967 from Fiscal Year 2015-16 and appropriate an additional \$9,560 to account number 305-40-442.43731 "Recreation Facilities Prioritization & Feasibility Study" from Fund 305 "Capital Facility Fees-Admin Projects" reserve balance to provide funds to complete the Sports & Recreation Facilities Prioritization and Feasibility Study.
(Schulze)

Recommended Action (by City Council):

Motion: Approving an Agreement for Special Services with The Sports Management Group for the purpose of completing the Sports & Recreation Facilities Prioritization and Feasibility Study, in an amount not to exceed \$51,527

Resolution: Re-appropriating unspent funds of \$41,967 from Fiscal Year 2015-16 and appropriating an additional \$9,560 to account number 305-40-442.43731 "Recreation Facilities Prioritization & Feasibility Study" from Fund 305 "Capital Facility Fees-Admin Projects" reserve balance to provide funds to complete the Sports & Recreation Facilities Prioritization and Feasibility Study

6. **COMMISSIONER FORUM**

- A. Parks, Arts and Recreation Commission Comments
B. City Council Comments

7. **ADJOURNMENT**

- A. Parks, Arts and Recreation Commission
B. City Council

City Council Synopsis

September 27, 2016



From: Allison Van Guilder, Parks, Recreation and Public Facilities Director

Prepared by: Erik Schulze, Parks, Recreation and Public Facilities Manager

Agendized by: Gary R. Hampton, City Manager

1. ACTION RECOMMENDED:

Motion: Providing direction to staff on the proposed Public Art Policy and Guidelines

2. DISCUSSION OF ISSUE:

The intent of the City of Turlock Public Art Policy and Guidelines is to place a variety of public art pieces throughout the City, making it accessible to the entire community. The Public Art Program is designed to offer a wide range of artistic styles, themes and media, all of outstanding quality that showcase the City of Turlock and reflect the community's values and traditions.

Public art is dependent on public-private cooperation between the City, artists and sponsors. Public art may be privately or publicly owned and is designed to add value to the community. Artists, residents and organizations are encouraged to work together to create new art and when necessary, preserve existing art for the enjoyment of all. It is known and accepted that public art does much to beautify the urban environment and promote community pride.

All proposed art on City property will follow the process of review by City staff and the Parks, Arts and Recreation Commission to ensure conformance with all criteria, applicable land use regulations and/or entitlements before being recommend to the Turlock City Council for final consideration. All projects will be directly sponsored, managed and controlled by the City itself, with the rules or guidelines about acceptable works published in advance. The City of Turlock will be acting as a speaker and a patron of the arts and has sole discretion to select those messages it wants to promote. A draft document has been attached for review (Exhibit A).

OK for Agenda
[Signature]
Gary R. Hampton

3. BASIS FOR RECOMMENDATION:

- A. The Public Art Policy and Guidelines is one of the established goals from the September 2015 Joint City Council / Parks, Arts & Recreation Commission meeting.

Policy Goal and Implementation Plan Initiative:

Policy Goal #7: Quality Community Programs

4. FISCAL IMPACT / BUDGET AMENDMENT:

Future fiscal impact is unknown at this time.

5. CITY MANAGER'S COMMENTS:

N/A

6. ENVIRONMENTAL DETERMINATION:

N/A

7. ALTERNATIVES:

- A. Council may choose to make changes to the proposed Public Art Policy and Guidelines.



EXHIBIT A

City of Turlock

Public Art Policy and Guidelines

The intent of the City of Turlock Public Art Program is to place a variety of public art pieces throughout the city, making it accessible to the entire community. The Public Art Program is designed to offer a wide range of artistic styles, themes and media, all of outstanding quality that showcase the City of Turlock and reflect the community's values and traditions. Public art is dependent on public-private cooperation between the City, artists and sponsors. Public art may be privately or publicly owned and is designed to add value to the community. Artists, residents and organizations are encouraged to work together to create new art and when necessary, preserve existing art for the enjoyment of all. It is known and accepted that public art does much to beautify the urban environment and promote community pride.

Any group or individual (sponsor) that wishes to display public art must obtain permission from the City Council. Placing art on public property without permission is prohibited. The City of Turlock does not condone any type of illegal graffiti, murals or art, irrespective of artistic content. All proposed art on City property must follow the process of review by City staff and the Parks, Arts and Recreation Commission to ensure conformance with all criteria, applicable land use regulations and/or entitlements before being recommended to the Turlock City Council for final approval. All projects will be directly sponsored, managed and controlled by the City itself, with the rules or guidelines about acceptable works published in advance. The City of Turlock will be acting as a speaker and a patron of the arts and has sole discretion to select those messages it wants to promote.

Application Process

1. Complete the Public Artwork Permit Application.
2. Submit your application, letters of support, and proposed art design/description to the Parks, Arts and Recreation office (144 S. Broadway).
3. The Director of Parks, Recreation and Public Facilities will route the application and associated supplemental information to appropriate City Staff for initial review.
4. Once the initial review is approved by staff, the applicant shall contact all adjacent property owners within 1,000 feet in writing, outlining the proposed project and notifying them of the public hearing where they will be given the opportunity to provide feedback on the project. Notification must include a written description of the project and a picture of the artwork. City staff will provide the mailing labels for all affected property owners and applicant will be responsible for the cost of mailing the notices.
5. This hearing will take place at Parks, Arts and Recreation Commission meeting. If recommended for approval, the application will be forwarded to the Turlock City Council for consideration, all projects are subject to the decision of City Council. Approval of project and location must be obtained by the Turlock City Council before the work commences.
6. If the Parks, Arts and Recreation Commission denies the application, it will be directed back to the applicant for revisions. Once revised, the applicant may reapply under the process outlined above.
7. If the proposal is denied by the Parks, Arts and Recreation Commission twice, the applicant may appeal the decision by submitting a rebuttal to the City of Turlock City Council office at 156 S. Broadway, Suite 230 Turlock, CA 95380 for consideration.
8. Once a proposal is approved by Council, the applicant and artist will sign an agreement with the City of Turlock that outlines the terms and conditions of the work to be performed. Please see the attached sample agreement.
9. The artwork shall not be considered completed until "Final Approval" has been given by the Turlock City Council. Upon completion of the artwork, pictures or slides of the project shall be presented by the applicant and the artist to the Council for inspection, at a regularly scheduled meeting. If the artwork is consistent with the project approved by the Turlock City Council, the project will receive "Final Approval" which will be reflected in the meeting minutes. If further work is required, the artist shall complete the work as directed by the Council before "Final Approval" is given.

EXHIBIT A

ACKNOWLEDGEMENTS

The Sponsor and Artist must acknowledge the following terms as consideration for issuance of a Public Artwork Permit.

Sponsor

Artist

- | | | |
|-------|-------|--|
| _____ | _____ | 1. Art must be completed or supervised by an artist with prior experience. |
| _____ | _____ | 2. Review of proposed art design and location must be approved by both City Staff and the Parks, Arts and Recreation Commission before final consideration from the Turlock City Council. |
| _____ | _____ | 3. Prior to final approval by the Turlock City Council the Parks, Arts and Recreation Commission will host a public hearing where all addresses within 1000ft. will be notified and given the opportunity to provide feedback on the project. |
| _____ | _____ | 4. Artist will be expected to design work that will be complimentary with the surrounding area. |
| _____ | _____ | 5. The artwork will not portray themes that may be interpreted as derogatory as to race religion, sexual orientation, natural origin, or physical or mental disability. |
| _____ | _____ | 6. All projects will be directly sponsored, managed and controlled by the city itself, with the rules or guidelines about acceptable works published in advance |
| _____ | _____ | 7. The composition of the artwork shall be of a permanent durable and weather resistant material that requires a low level of maintenance. Maintenance requirements shall be provided. |
| _____ | _____ | 8. Workmanship: Any support/attachments must be approved by a professional structural engineer; work on site must be supervised and approved by artist. |
| _____ | _____ | 9. Artwork shall not serve as an advertisement of any product, service or company name in violation of City of Turlock Municipal Code. |
| _____ | _____ | 10. Public art permit or approval does not warrant or guarantee that, after installation, the art work will be preserved or remain intact for the expected life span. If the artist or sponsor wishes to preserve the artwork, it is his or her responsibility to reach an agreement regarding maintenance, and preservation. Approval by the Turlock City Council does not constitute an indication or promise of any conservation or restoration funds from the City of Turlock. |
| _____ | _____ | 11. If vandalism/graffiti to the artwork occurs, it is the responsibility of the artist or sponsor to remove graffiti within 5 days after written notification from the city, (consistent with TMC 4-14-405). If the graffiti is not removed and the mural is not repaired by the artist, City of Turlock can remove the graffiti vandalism using their standard removal techniques/materials. |
| _____ | _____ | 12. It is the responsibility of the artist to create and maintain their artwork. The City of Turlock requires that the artwork will be kept in good repair with periodic maintenance to be performed by the artist as needed. By submitting the application both the artist and sponsor agree that should the artwork be defaced and/or not repaired, maintained, preserved and/or conserved to the satisfaction of the City of Turlock, the City of Turlock has, in its sole discretion, the authority to repair, maintain, preserve, and/or conserve the artwork, or alternatively, the authority to remove, alter, or destroy the artwork at the cost of the artist and/or sponsor. |
| _____ | _____ | 13. If for any reason the artwork placed on public property is removed, altered, or destroyed by the sponsor and/or artist, the sponsor and/or artist are responsible for restoring the property to the original condition. |

EXHIBIT A

_____ 14. An independent appraisal or other evidence of value, such as an artist's price quote or bill of sale must be provided for liability purposes.

_____ 15. The City of Turlock will be acting as a speaker and a patron of the arts and has sole discretion to select those messages it wants to promote

With my signature below, I attest that each of the above initialed items is true, and I agree to each of these terms. I understand that I am contractually bound by these terms for the life of the artwork. Violations of any of the above initialed terms, or regulations will be enforced by the City of Turlock.

Sponsor Name (printed) _____

Sponsor Signature _____ Date _____

Artist Name (printed) _____

Artist Signature _____ Date _____

EXHIBIT A

City of Turlock

Public Art Relocation or Withdrawal Policy and Guidelines

Relocation of Artwork

Objective:

To provide procedures for the relocation of City-owned artwork.

Guidelines:

Relocation of artwork should be cautiously applied only after careful and impartial evaluation, including input from the Parks, Arts and Recreation Commission, art professionals, the public, the artist and final review and decision by the Turlock City Council.

Relocation of artwork may be considered for one or more of the following reasons:

1. The condition or security of the artwork cannot be reasonably guaranteed in its present location.
2. The artwork presents a risk to public safety.
3. A more suitable location for the artwork has been proposed.
4. Significant changes in the use, character or actual design of the site require a re-evaluation of the artwork's relationship to the site.

Procedure for Relocation:

Procedures for possible relocation of artwork shall be initiated by the majority vote of the Parks, Arts and Recreation Commission for recommendation to the Turlock City Council. Final direction will come from the Turlock City Council. The following describes specific procedures for relocation of artwork.

1. Review of any contractual restriction which may apply to the specific work.
2. Assessment of options for storage or disposition of artwork, which may include sale, trade, return to the artist or gift.
3. Analysis of reasons for relocation and recommendation to Turlock City Council for the final decision. The Parks, Arts and Recreation Commission may seek additional information regarding the artwork from the public, the artist, art galleries, curators, appraisers, or other professionals prior to making a recommendation.
4. Relocation will require an amendment to the original agreement.

Withdrawal of Artwork

Objective:

To provide procedures for the withdrawal of established artwork from public display.

Guidelines:

Withdrawal of public artwork should be cautiously applied only after careful and impartial evaluation, including input from the Parks, Arts and Recreation Commission, art professionals, the public, the artist and final review and decision by the Turlock City Council.

Withdrawal of artwork may be considered for one or more of the following reasons:

1. The condition or security of the artwork cannot be reasonably guaranteed in its present location.
2. The artwork is not eligible for relocation.

EXHIBIT A

3. The artwork presents a risk to public safety.
4. The artwork is damaged and repair is not feasible.
5. Significant changes in the use, character or actual design of the site require a re-evaluation of the artwork's relationship to the site.
6. The artwork requires excessive maintenance or has failures of design or workmanship.
7. The artwork no longer meets the intent of the Public Art Policy.

Procedure for Withdrawal:

Procedures for possible withdrawal of public artwork shall be initiated by the majority vote of the Parks, Arts and Recreation Commission for recommendation to the Turlock City Council. Final direction will come from the Turlock City Council. The following describes specific procedures for withdrawal of artwork.

1. Review of any contractual restriction which may apply to the specific work.
2. Assessment of options for storage or disposition of artwork, which may include sale, trade, return to the artist or gift.
3. Analysis of reasons for withdrawal and recommendation to Turlock City Council for the final direction. The Parks, Arts and Recreation Commission may seek additional information regarding the artwork from the public, the artist, art galleries, curators, appraisers, or other professionals prior to making a recommendation.

City Council Synopsis

September 27, 2016



5B



From: Allison Van Guilder, Parks, Recreation & Public Facilities Director
Prepared by: Erik Schulze, Parks, Recreation & Public Facilities Manager
Agendized by: Gary R. Hampton, City Manager

1. ACTION RECOMMENDED:

Motion: Approving an Agreement for Special Services with The Sports Management Group for the purpose of completing the Sports & Recreation Facilities Prioritization and Feasibility Study, in an amount not to exceed \$51,527

Resolution: Re-appropriating unspent funds of \$41,967 from Fiscal Year 2015-16 and appropriating an additional \$9,560 to account number 305-40-442.43731 "Recreation Facilities Prioritization & Feasibility Study" from Fund 305 "Capital Facility Fees-Admin Projects" reserve balance to provide funds to complete the Sports & Recreation Facilities Prioritization and Feasibility Study

2. DISCUSSION OF ISSUE:

On February 9, 2016, the Turlock City Council approved an Agreement for Special Services with The Sports Management Group for the purpose of developing a Sports & Recreation Facilities Prioritization and Feasibility Study, in an amount not to exceed \$75,000 from fund 305 "Capital Facilities Fee General Government". The purpose of the feasibility study is to evaluate the various public amenities currently identified in the General Plan (existing and future), to determine Turlock's future recreation facility needs.

The Sports Management Group started working with the community in March of 2016. Over a four (4) month period, The Sports Management Group held three (3) community meetings and concluded several activities including a facility inventory, city demographics, a sports/recreation services inventory and a community survey.

Staff and members of the Community Advisory Committee sent out approximately 23,000 surveys. Once data from the survey was compiled it was determined that only 350 surveys were returned, which is less than the 2% required to validate the

OK for Agenda

[Handwritten signature]

survey. In order to ensure Council receives the most comprehensive report, staff is recommending a new survey be conducted.

On July 31, 2016 the agreement with The Sports Management Group expired prior to the feasibility study being completed. The contract had \$41,967 remaining for services yet to be provided. In order to complete the feasibility study staff has been strategizing with The Sports Management Group on a plan to re-launch the survey with a new marketing strategy that will include enhanced communication pieces, design ads, features in local papers, additional community meetings, including our after school participants and Community Advisory Committee. Once the survey is completed, The Sports Management Group will provide a presentation of the survey results and conclusions to Council before completing the final report for Council consideration.

The City Attorney has reviewed this agreement.

3. BASIS FOR RECOMMENDATION:

- A. The purpose of this contract is to assist the City of Turlock in evaluating the various public amenities currently identified in the General Plan (existing and future), to determine Turlock's future recreation facility needs.

Policy Goal and Implementation Plan Initiative:

Policy Goal #4: Municipal Infrastructure

General Principles:

5. Safe, well designed and attractively maintained parks and facilities.

Action Item:

10. Complete the Recreation Feasibility Study.

4. FISCAL IMPACT / BUDGET AMENDMENT:

Fiscal Impact: \$51,527

Budget Amendment

Re-appropriating unspent funds of \$41,967 from FY 2015-16 and appropriating an additional \$9,560 to account number 305-40-442.43731 "Recreation Facilities Prioritization & Feasibility Study" from Fund 305 "Capital Facilities Fees-Admin Projects" reserve balance to provide funds to complete the Sports & Recreation Facilities Prioritization and Feasibility Study.

Finance has reviewed and approved this budget amendment.

5. CITY MANAGER'S COMMENTS:

Recommend approval.

6. ENVIRONMENTAL DETERMINATION:

N/A

7. ALTERNATIVES:

- A. The Council may choose not to appropriate the funds. This is not recommended as The Sports Management Group has already completed 40% of the project.



**AGREEMENT FOR SPECIAL SERVICES
between
CITY OF TURLOCK
and
THE SPORTS MANAGEMENT GROUP
for
DEVELOPMENT OF A SPORTS & RECREATION FACILITIES PRIORITIZATION AND
FEASIBILITY STUDY**

CITY CONTRACT NO. 16-119

THIS AGREEMENT is made this 27th day of September, 2016, by and between the **CITY OF TURLOCK**, a municipal corporation of the State of California hereinafter referred to as "CITY" and The Sports Management, a Consultant, hereinafter referred to as "CONSULTANT."

WITNESSETH:

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 A. 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 A as full remuneration for performing all Services and furnishing all staffing and materials called for in Exhibit A and for performance by CONSULTANT of all of its duties and obligations under this Agreement. In no event shall the sum of this Agreement exceed Fifty-One Thousand Five Hundred Twenty Seven Dollars and 0/100^{ths} (\$51,527). 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 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 September 27, 2016 and end February 28, 2017 subject to CITY's availability of funds.

6. 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 coverages for subcontractors shall be subject to all of the requirements stated herein.

7. INDEMNIFICATION: CONSULTANT shall indemnify, defend, and hold harmless CITY and its elective and appointive boards, officers, agents, employees, and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of CITY.

8. 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.

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

10. 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.

11. 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.

12. 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.

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

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. CERTIFIED PAYROLL REQUIREMENT: For CONSULTANTS performing field work on public works contracts on which prevailing wages are required, CONSULTANT shall comply with the provisions 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.

22. 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.

23. 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.

24. 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.

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

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

27. 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.

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

29. 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.

30. 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.

31. 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.

32. 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.*

33. 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: THE SPORTS MANAGEMENT GROUP
ATTN: LAUREN LIVINGSTON
2607 7TH STREET, SUITE B
BERKELEY, CALIFORNIA 94710
PHONE: (510) 849-3090
FAX: (510) 849-3094**

**for CITY: CITY OF TURLOCK
ATTN: Erik Schulze
PARKS, RECREATION AND PUBLIC FACILITIES
DEPARTMENT
144 SOUTH BROADWAY
TURLOCK, CALIFORNIA 95380-5454
PHONE: (209) 668-5594 Ext. 4604
FAX: (209) 668-5619**

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

Erik Schulze
Parks, Recreation and Public Facilities Department
144 S. Broadway
Turlock, California 95380-5456
Telephone: (209) 668-5619
E-mail: eschulze@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

The Sports Management Group

By: _____

Gary Soiseth, Mayor

or

Gary R. Hampton, City Manager

Date: _____

By: _____

Title: _____

Print name: _____

Date: _____

APPROVED AS TO SUFFICIENCY:

By: _____

Allison Van Guilder, Director of
Parks, Recreation & Public Facilities

APPROVED AS TO FORM:

By: _____

Phaedra A. Norton, City Attorney

ATTEST:

By: _____

Kellie E. Weaver, City Clerk

City of Turlock

**Sports & Recreation Facilities Prioritization and Feasibility Study
The Sports Management Group: City Contract No. 16-119**

Additional Scope of Services and Fee

The City of Turlock Sports & Recreation Facilities Prioritization and Feasibility Study will provide a comprehensive assessment of its sports and recreation facilities resources, identify and prioritize the community's needs, and provide a framework to guide the development of future projects. The projects will reflect community priorities, must be financially viable and sustainable, and expand the social and recreational opportunities available to residents.

The Sports Management Group is proposing the following revised schedule and expanded work plan, based on discussions with the City. This work plan builds upon the Scope of Services previously approved by the City. It is anticipated that the study would resume mid-October and would be completed by February 28th.

Additional Services

Task A: Online Survey

The Sports Management Group (TSMG) will develop a communication and promotions plan for the conduct of an online citizen survey. Tasks will include the following:

A.01 Develop Overall Plan

- Revisit survey questions and reestablish survey account, URL and other system requirements
- Develop communication and advertising plan
- Prepare schedule

A.02 Video Conference with the City

- Discuss the survey communications and advertising plan and schedule, and revise as needed
- Discuss likely response, identify target and strategies to achieve objectives
- Discuss and confirm City's role

A.03 Execute Communications Plan and Survey

- Create communication pieces, design ads, write feature for newspaper, website posts
- Launch and administer survey
- Prepare a Topline Report of Survey Results
- Analyze survey results, provide a comparison of survey results for Survey 1 and the second survey
- Prepare written report

City of Turlock

Sports & Recreation Facilities Prioritization and Feasibility Study

The Sports Management Group: City Contract No. 16-119

Additional Scope of Services and Fee

A.04 Presentation of Survey Results and Conclusions

- Prepare summary findings for the City Council
- Prepare a PowerPoint presentation and review with Staff
- Attend Council meeting and present findings

Fee for Additional Services: \$8,560

A.01-.03 Survey Tasks \$5,900

A.04 Council Meeting and Preparation \$2,660

Expenses for Travel Not to Exceed \$300

Additional costs for survey advertising or postal fees, if any, will be authorized and paid by be paid by the City of Turlock.

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

IN THE MATTER OF RE-APPROPRIATING }
UNSPENT FUNDS OF \$41,967 FROM }
FISCAL YEAR 2015-16 AND }
APPRORIATING AN ADDITONAL \$9,560 }
TO ACCOUNT NUMBER 305-40-442.43731 }
"RECREATION FACILITIES }
PRIORITIZATION & FEASIBILITY STUDY" }
FROM FUND 305 "CAPITAL FACILITY }
FEES-ADMIN PROJECTS" RESERVE }
BALANCE TO PROVIDE FUNDS TO }
COMPLETE THE SPORTS & RECREATION }
FACILITIES PRIORITIZATION AND }
FEASIBILITY STUDY }

RESOLUTION NO. 2016-

WHEREAS, on February 9, 2016, the Turlock City Council approved an Agreement for Special Services with The Sports Management Group for the purpose of developing a Sports & Recreation Facilities Prioritization and Feasibility Study, in an amount not to exceed \$75,000 from fund 305 "Capital Facilities Fee General Government"; and

WHEREAS, on July 31, 2016 the agreement with the Sports Management Group expired prior to the feasibility study being completed and the contract had \$41,967 remaining for services yet to be provided; and

WHEREAS, in order to complete the feasibly study staff has been strategizing with The Sports Management Group on a plan to re-launch the survey with a new marketing strategy that will include enhanced communication pieces, design ads, features in local papers, additional community meetings, including our after school participants and Community Advisory Committee.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Turlock does hereby re-appropriate unspent funds of \$41,967 from Fiscal Year 2015-16 and appropriate an additional \$9,560 to account number 305-40-442.43731 "Recreation Facilities Prioritization & Feasibility Study" from Fund 305 "Capital Facility Fees-Admin Projects" reserve balance to provide funds to complete the Sports & Recreation Facilities Prioritization and Feasibility Study.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Turlock this 27th day of September, 2016, by the following vote:

AYES:
NOES:
NOT PARTICIPATING:
ABSENT:

ATTEST:

Kellie E. Weaver, City Clerk,
City of Turlock, County of Stanislaus,
State of California