

OCTOBER 18, 2016

# MARKETING AND BRANDING RFP



City of Turlock  
RFP 16-377

## *The City of Turlock*

The City of Turlock is located in Stanislaus County, on the eastern side of California's San Joaquin Valley, 100 miles east of the San Francisco Bay Area. The City is on the State Highway 99 corridor, linking it to other Central Valley cities including Stockton and Sacramento to the north and Fresno and Bakersfield to the south. Turlock remains a stand-alone city surrounded by productive agricultural land. The "Jewel of the Central Valley" has long been coined to describe the community's tree lined streets, friendly atmosphere and the charming Main Street which offers a unique taste of Hometown America. In addition to Historic Downtown Turlock which has delightful antique stores, jewelry and fashion boutiques, and enchanting niche stores; Turlock has set itself apart from other San Joaquin Valley communities.

The City of Turlock currently enjoys amenities and activities within the community that have become a driving factor to Turlock budding emergence as a destination location. This new recognition has come with little comprehensive focus, but has benefited the community tremendously. Hotel room stays continue to grow with hotelier reporting 90% and higher occupancy rates ten months or more each year.

The City of Turlock is home to California State University Stanislaus (CSUS), which is part of the highly regarded California State University System. CSU Stanislaus serves almost 10,000 students. Programs offered include 100 academic majors, minors and areas of concentration, along with 24 Master's Degree programs and a Doctorate in Educational Leadership. All of these highly regarded academic programs primarily take place on the 228 acre main campus which offers breathtaking scenery and includes waterfalls, bridges, an open-air amphitheater and sprawling greens. The University has constructed state of the art sports facilities and has hosted several NCAA national sports events.

Further, the City benefits from being home to the Stanislaus County Fairgrounds, a state agricultural facility which hosts events more than thirty two (32) weekend per year and include events such as the largest antique car swap meet in the western United States.

In addition to 24 parks and two major sports complexes scattered throughout the City, residents can enjoy a variety of outdoor activities and sports including the Stanislaus County Fair, Turlock Farmers Market, and Turlock Lake State Recreation Area which is open all year for camping, picnicking, fishing, swimming, boating, and water skiing. Arts and culture also flourish including theatrical and musical performances at the Turlock Community Theatre along with fine arts events at CSU Stanislaus. Other nearby venues/activities include the Carnegie Arts Center, CSU Stanislaus downtown Art Space, Turlock Historical Museum, Hilmar Cheese Company, Pageo Lavender Farm, and much more.

Turlock strives to be the "Silicon Valley of Food Processing" with a strong ag manufacturing base. The ag manufacturing cluster has also spun off ag tech firms, laboratories and related service businesses which continues to strengthen the City's jobs to housing balance. Base sector employers in the City include Blue Diamond Growers, Foster Farms, Hilmar Cheese, Sensient, Evergreen Packaging, Consolidated Dairy Industries, Meyenberg Goat Milk, and ConAgra and many others.

The City of Turlock has a 9% transit occupancy tax which generates more than \$1 million annually. Historically, the City has allocated approximately 1/3 of these funds to be utilized for tourism and visitor enhancing services.

### *Economic Development and Marketing Efforts*

*The City of Turlock has also issued two Request for Proposals addressing the City's for Marketing and Branding (RFP 16-377) and Tourism Services (RFP 16-378) which have been sequentially issued. Consultants may submit proposals for more than one of the RFP's. The City expects that the submission also include a detailed outline of how the consulting firm will work to interface and collaborate on meshing the output of the three RFP's into a cohesive and useable product.*

The City of Turlock is implementing an Economic Development Plan, first adopted in 2003 to foster a healthy business community. The subsequent 2014 Economic Development Plan rewrite included the development of a marketing strategy to promote increased patronage of Turlock businesses and attract new businesses as well.

The City is seeking a branding and marketing consultant to develop a marketing and branding strategy, assist with community marketing efforts that support the updated City of Turlock Economic Development Strategy.

In concert with community stakeholders and business community, the City has developed a Marketing Strategy ("Strategy") to bolster the local business climate. The Draft Strategy outlines the following key marketing targets:

- Resident consumers,
- Non-resident consumers,
- Existing Turlock businesses (retention and expansion), and
- New businesses (recruitment).

For each of these targets, the Draft Strategy should identify a series of marketing and branding tactics and implementation initiatives. The City is seeking a marketing consultant to finalize the Draft Strategy and begin efforts to create a Turlock brand and launch an identity and brand awareness campaign. The marketing consultant must have experience with developing a public sector brand, and with community marketing campaigns. In order to gain insights from Turlock residents regarding their consumer behavior, the marketing consultant must also be experienced with community outreach in order to assess current consumer attitudes and perceptions.

### *Project Overview*

The City of Turlock is interested in protecting its identity as a pleasant place to live while positioning itself for additional residential, commercial and industrial growth. The City's mission is to keep Turlock a pleasant place by providing a safe family atmosphere, superior public services, and policies that promote the highest standards of community life.

In 2014, the City completed an Economic Development Plan with annual action goals. A new update to the Economic strategy is also being conducted simultaneously with this RFP process. As part of the economic development plan, one of the goals identified was to create marketing materials which include a branding component for the City of Turlock.

The objective of this effort is to develop a clear, strong, and resilient brand identity that represents the varied attributes of the Turlock community. The resulting brand messaging should support all goals of the City's Economic Development Plan, with particular emphasis in the following areas:

- Attracting, retaining and growing businesses
- Building upon our successes in our vibrant downtown
- Transitioning the City from a “growth” model to one of long-term sustainability
- Emphasizing the benefits of the City's central location
- Maintaining and enhancing City's high quality of life
- Encouraging residents of all ages to engage in community life, civic activities and
- Ideally, the brand package would consist of an overall brand identity, logo and messaging that effectively “tells the Turlock story” and can be used for the myriad of communication opportunities the City has with our residents, businesses, development community, visitors and other groups. The brand package should identify short and long-term strategies and tactics for maximizing the brand's value to the community.

## *Scope of Work*

### *Task #1 - Research & Foundation*

This task encompasses the initial research necessary to define target audiences, identify what value the City offers to the targeted audiences, develop a brand positioning statement and test recommended brand concepts using targeted focus groups, surveys, and other methodologies as appropriate. It is anticipated that the selected consultant will review research results with staff and the City's Economic Development Committee as appropriate. To complete these tasks, the successful consultant will be expected to draw from existing research and community planning documents as well as conduct their own research and focus groups. Community engagement and input from Turlock residents, businesses, members of the development community, visitors, partner organizations and any other identified key group is critical to the success of all tasks. It may be necessary, as part of the community engagement process to educate groups on what branding means and why it is important for the City of Turlock. This task should answer the question, “Who are we as a City and how do we relate our ‘products’ and services in a way that's meaningful to our customers and the values they hold dear?”

#### Deliverables:

- Research summary
- Brand positioning statement

### *Task #2 - Branding & Message Development*

In this phase of the project, the selected consultant will create the messaging, the expression of brand, and visual elements that will effectively communicate the City's identity to target audiences. Messaging should connect to the hearts and minds of our audience and be believable, relevant and simple. Consistency will be key, but flexibility that allows use by the wide variety of departments, programs and services that make up the City is also important. Visual elements will include recommended logo, colors, fonts, graphic style and elements that are adaptable for use across a variety of media applications, including the City website.

#### Deliverables:

- Style guide with visual and graphic standards, including logo
- Templates for common needs such as letterhead, web page layout, report covers, brochures, etc.
- Design concept for tradeshow display

### *Task #3 - Strategic Brand Implementation & Community Engagement*

This task will define the activities designed to effectively establish the City's new brand identity to the target audiences as well as identify ongoing strategies for communicating, maintaining and enhancing the brand's value over the first three years following introduction. These strategies should:

- Prioritize both short and long-term strategies and tactics, including a timeline.
- Employ a variety of communication tools.
- Engage Turlock's citizens, businesses & visitors.
- Enable target audiences to connect and interact with the City and use feedback
- To further build the City's brand.
- Provide opportunities for target audiences to become advocates.
- Effectively tell the "Turlock" story.
- To ensure effective implementation, the brand strategy should recommend methods for tracking results and measuring success with target audiences.

#### Deliverables:

- Brand Strategy
- Tracking & Measurement Recommendations

*Task #4 - Collaborate and interface with consultants that have been contracted to prepare the Economic Development Strategy as well as the consultants contracted to prepare the Tourism strategy.*

### *Task #5 - Final Report and Presentation*

The selected consultant will deliver one (1) unbound copy, five (5) printed bound copies and one (1) electronic copy of their final report, including style guide and related graphics, to the City. Graphics designed to be used for placement in letterhead, folders, handouts and other marketing materials shall be in an electronic form commonly used by most computer software and shall not require the purchase of Adobe Photoshop or some other marketing-based software to enable such use. In addition, the selected consultant will be required to make a formal presentation to the City's Economic Development Committee and the City Council at the completion of the project to present their final report.

## *Consultant Responsibilities*

At the beginning of the project the selected consultant shall meet with City Staff and selected individuals to discuss the approach and method to proceed.

The consultant will meet with the City Manager, Assistant to the City Manager, and selected individuals to review the progress of the work, to discuss any changes in direction or needed details, and in general to ensure that work is proceeding as required.

The City shall make available to the selected consultant all prior economic development related plans, and any other studies and/or products. These elements are critical to the creation and implementation of the marketing and branding strategy.

## *Submission*

Interested firms are encouraged to keep their proposals brief and relevant to the Scope of Services. All proposals should include the following:

- Cover letter with name, address, phone number, and e-mail address of the contact person; identify the capacity this person has to manage and execute a marketing strategy and branding campaign of this magnitude.
- Identify the project manager and the personnel to be assigned to this engagement (including names, addresses, current phone numbers, and e-mail addresses). Please include resumes for all team members, identify how many years this team has worked together, and a list of projects this team has completed or is currently working on.
- Identify all sub-consultants (including names, addresses, current phone numbers, and e-mail addresses) and include a resume of related experience, how long the sub-consultant has worked with the marketing consultant, and how many projects the sub-consultant has completed, or is currently working on, with the marketing consultant.
- Background on the firm and its experience in preparing comprehensive and strategic marketing programs and campaigns, especially for cities and public agencies. Preference shall be given to firms that have a local presence and knowledge of the San Joaquin Valley and the City of Turlock.
- A narrative that presents the services a firm would provide detailing the approach, methodology, deliverables, and client meetings.
- Description of overall knowledge of the City of Turlock.
- A list of tools used to measure reach and frequency when purchasing media (television, radio) and social media tools used to measure effectiveness of print and online advertising and a

branding awareness campaign. Experience in media negotiations and placement should be demonstrated.

- A summary of any suggested approaches the City should consider for this effort.
- A timeline for the preparation and implementation the tasks/activities being proposed per Scope of Services.
- At least three (3) public or private references for projects of similar nature to this engagement.
- List of billable rates for all personnel assigned to project, including hourly rate, media commission percentages, and any other charges that are proposed.
- Proof of financial soundness: financial statements, a balance sheet, and two years of federal tax returns.
- Identification of any concerns related to the City of Turlock's standard professional services agreement.
- Submit the cost proposal in a separate sealed package entitled "City of Turlock Tourism Services Cost Proposals".

### *Evaluation of Final Proposals*

Consulting firm, or teams, that submit proposals will be evaluated for further consideration on the basis of the following criteria. The content of the proposals must provide sufficient detail to enable the review committee to evaluate proposals on the basis of the criteria listed below.

*Qualifications.* Consulting firms, or teams, will be evaluated on the basis of experience in performing similar projects. References will be used to assist in this evaluation.

*Understanding of project.* Consulting firms, or teams, will be evaluated on the basis of how well the consultant communicates an understanding of the marketing and branding project outlined in this RFP.

*Approach to project.* Proposals will be evaluated on how the proposed project meets the objectives of the City.

*Quality of work.* Proposals will be judged on the apparent quality of the work performed in similar situations. References will be used to determine the consultants' ability to deliver the results expected.

*Personnel.* Proposals will be evaluated on the personnel assigned to the project. Specific attention will be placed on personnel who have similar project experience and qualifications to perform the tasks outlined in the RFP.

*Value.* Proposals will be evaluated on the basis of the approach that will position the City to obtain results and achieve the most success within the framework identified in the proposal – ultimately leading Turlock to economic expansion.

*Cost.* Proposals will be evaluated on the cost estimate provided in relation to the scope of services outlined.

*Collaborating and interfacing* – A detailed description outlining how consulting firm will interface and collaborate with the contracted consultants working to develop the economic development and tourism strategies.

### *Selection Process*

The City has the sole authority to select a consultant or a team of consultants for this project and reserves the right to reject any and all proposals. A Review Committee will be established to review and evaluate the submitted proposals based on the criteria outlined above. Additionally, the committee may, in its sole discretion and in the course of its evaluation, request presentations/demonstrations with one or more selected Consultants. Although cost is a significant factor, it will not be the dominant factor. The City reserves the right to continue negotiations after submission of the proposals.

In addition, the City reserves the right to retain all proposals submitted and to use any ideas in a proposal, regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the proposing consultant of the conditions contained in this request for qualifications, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the consultant selected.

All consultants will be notified of the status of the review process, and some, but not necessarily all, may be asked to participate in an interview process prior to selecting the successful consultant or team of consultants.

### *Timelines*

**Please note the Activity Anticipated Completion Dates**

RFP Issued Tuesday, October 18, 2016

Submittals due Friday, December 2, 2016

Review of Submittals week of December 5, 2016

Interviews Week of December 19, 2017

Recommendation to City Council January 26, 2017

Contract awarded and Professional Services

Agreement Executed February 2017

## *Proposal Due Date and Submission*

Respondents should submit 5 bound copies and 1 unbound reproducible copy by mail or courier. Submittals should not exceed 25 pages, inclusive of any graphic renderings or marketing materials. All hard copy submittals should be directed to the below contact no later than **5:00 p.m. on Friday, December 2, 2016:**

Maryn Pitt  
Assistant to the City Manager for Economic Development and Housing  
City of Turlock  
156 South Broadway, Suite 230  
Turlock, CA 95380  
[mpitt@turlock.ca.us](mailto:mpitt@turlock.ca.us)

Contact with other City officials or staff may result in disqualification of the submittal.

Any proposal received after the specified closing date shall not be considered. All submissions must be complete in every respect, and must answer concisely and clearly all questions proposed by the RFP. The City reserves the right to request additional information, as it deems necessary, for the evaluation of the proposals.

## *Rejection of Proposals*

The City of Turlock reserves the right to reject and negotiate any or all proposals received in response to this RFP. The City will not pay for any information requested, nor is it liable for any costs incurred by the respondents in preparing and submitting a proposal.

## *Award of Contract*

Award of contract, if any, will be to the respondent whose proposal for services and professional qualifications are determined by the Economic Development Committee to most fully comply with all the requirements of the RFP and any addenda thereto. The

The City's Evaluation Committee may select one consulting firm or a team of consultants. The selected consultant will be required to enter into a Professional Services Agreement with the City of Turlock which includes the City's standard terms and conditions including insurance requirements (Exhibit A) within thirty (30) business days of notification date of acceptance by the City of Turlock.

Written notification of the City of Turlock's intent to award the contract to a particular respondent will be made to all respondents.

## *Organization and Authority*

The City of Turlock shall retain its authority to provide direction to the project, monitor the progress and recommend acceptance of final submissions to the City of Turlock. All intellectual property acquired from the study will become the property of the City of Turlock.

*Appendix A*

CITY-STANDARD PROFESSIONAL SERVICES AGREEMENT  
(ATTACHED)



**AGREEMENT FOR SPECIAL SERVICES**  
**between**  
**CITY OF TURLOCK**  
**and**

\_\_\_\_\_

**for**

\_\_\_\_\_

**CITY PROJECT NO. XX-XX**

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**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 \_\_\_\_\_; 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 INDEPENDENT CONTRACTOR 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 INDEPENDENT CONTRACTOR of all of its duties and obligations under this Agreement. In no event shall the annual sum of this Agreement exceed \_\_\_\_\_ and No/100<sup>th</sup>s Dollars (\$\_\_\_\_\_). INDEPENDENT CONTRACTOR 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 \_\_\_\_\_ and end \_\_\_\_\_, 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 of the California Labor Code including, but not limited to Section 1776, regarding payroll records, and shall require its sub-consultants 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:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**PHONE:** \_\_\_\_\_  
**FAX:** \_\_\_\_\_

**for CITY:** **CITY OF TURLOCK**  
**ATTN:** \_\_\_\_\_  
**CITY MANAGER'S OFFICE**  
**156 SOUTH BROADWAY, SUITE 230**  
**TURLOCK, CALIFORNIA 95380-5454**  
**PHONE: (209) 668-5599 Ext. \_\_\_\_\_**  
**FAX: (209) \_\_\_\_\_**

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

Maryn Pitt  
Administration  
156 S. Broadway, Suite 230  
Turlock, California 95380-5456  
Telephone: (209) 668-5542 Extension 2227  
E-mail: mpitt@turlock.ca.us

**35. PERFORMANCE BY KEY EMPLOYEE:** CONSULTANT has represented to CITY that \_\_\_\_\_ will be the person primarily responsible for

the performance of the services referred to in this Agreement. CITY has entered into this Agreement in reliance on that representation by CONSULTANT. CONSULTANT therefore agrees that \_\_\_\_\_ percent (\_\_\_\_%) or more of the time to be devoted to the project that is the subject of this Agreement will be that of the above-named person.

**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 FORM:

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

Phaedra A. Norton, City Attorney

ATTEST:

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

Kellie E. Weaver, City Clerk