



City of Turlock
Development Services Department
Engineering Division

Request for Proposals

Construction Management Services

for

City Project No. 15-39D “Secondary Clarifier No. 5 and Denitrification”

Submit Proposals to:

City of Turlock
Development Services Department
Engineering Division
Attention: Stephen Fremming
156 South Broadway, Suite 150
Turlock, CA 95380

Proposal Submission Deadline:

Wednesday, June 7, 2017
5:00 p.m. PST

Direct questions with regard to this RFP to:

Stephen Fremming, Associate Civil Engineer
Development Services Department
Engineering Division
156 South Broadway, Suite 150
Turlock, CA 95380
(209) 668-5417
sfremming@turlock.ca.us

Background

The purpose of this Request for Proposals (RFP) is to seek proposals from qualified firms to provide construction management services for City Project No. 15-39D, “Secondary Clarifier No. 5 and Denitrification” at the Turlock Regional Water Quality Control Facility (TRWQCF).

The TRWQCF is a regional facility that treats wastewater from the City’s current population of 72,000 including California State University Stanislaus, other institutions, industries, businesses and neighboring Community Service Districts of Denair and Keyes and primary treated wastewater from the City of Ceres. The TRWQCF has been expanded or improved numerous times over the past 90 years. Secondary treatment capacity was expanded in 1994. Advanced secondary nitrification facilities were added in 2000. Tertiary treatment was added in 2006. A new Headworks facility and expansion of the primary and secondary treatment processes were completed in 2014. The current permitted capacity of the TRWQCF is 20 MGD.

The City has entered into agreements with Carollo Engineers to provide design, bidding services, and engineering services during construction for the subject project. City staff will seek City Council authorization to enter into an agreement with a consultant to provide construction management services based on the evaluation of proposals. The project consists of the following components:

1. Secondary Clarifier No. 5.
2. RAS Pump Station No. 2.
3. Mixed Liquor Flume Nos. 5 and 6.
4. Modifications to Aeration Basins No. 1 through No. 7.
5. Modifications to Junction Box No. 1A.
6. Modifications to crane at Biotower Pump Station.
7. Modifications to Electrical Building No. 7.
8. Additions and modifications to yard piping system.
9. Additions and modifications to electrical systems.
10. Additions and modifications to instrumentation systems.
11. Additions and modifications to grading, paving and drainage system.
12. Repair and reconstruction to existing improvements affected by the Work and all work necessary to render the facility complete and operational.

The construction project scope is fully described in the project plans and specifications dated March 2017. Electronic PDF files of approved plans and specifications are currently available for download on the City’s website at <http://ci.turlock.ca.us/capitalprojects/projectsouttobid/plans.asp?id=424>. The design engineer estimates a construction contract bid cost of \$ 16,600,000.

The TRWQCF must remain in service during construction. The construction contractor is required to abide by the requirements of in Section 01140, “Work Restrictions” of the project specifications. The successful consultant performing construction management services will be required to maintain excellent communication with City staff and the design engineer with regards to the contractor’s operations.

The successful construction management consultant will be provided with weather tight, air conditioned office space within an existing maintenance building at the site, which includes sufficient space for up to three workers at a time. Bathrooms are provided within the maintenance building. Contractor will provide the construction management consultant with office furniture, phone and data, and computers as per Section 01500 of the project specifications.

The estimated schedules for both the construction and construction management (CM) contracts are as follows:

Construction proposals due:	May 31, 2017
CM proposals due:	June 7, 2017
Construction contract Award of Bid:	July 11, 2017
Potential interviews with CM firms:	June 12 thru 16, 2017
Award of CM Agreement:	July 25, 2017
Construction contract execution:	July 27, 2017
Begin construction contract time:	August 9, 2017
End construction contract time:	June 29, 2019

Proposals must comply with the requirements specified in the section of this RFP entitled “Proposal Submittal Requirements.” The scope of services that the prospective consultant must provide as part of the agreement with the City is specified in the section entitled “Scope of Services.” City staff will recommend that the City Council award an agreement to the consultant based on the criteria specified in the section of this RFP entitled “Selection Criteria.”

Proposal Submittal Requirements

Proposals should provide a straight forward and concise presentation adequate to satisfy the requirements of this RFP. The consultants shall hand-deliver or mail three printed, bound copies of their proposal as well as one electronic copy (in PDF format) of their proposal on CD, DVD, or USB flash drive to the City at the address listed on the front page of the RFP so that the proposal is received no later than the date and time specified. The City does not recognize the U.S. Postal Service, its postmarks or any other organization as its agent for purposes of receiving proposals. All proposals received after the deadline will be rejected. All materials submitted will become property of the City and returned only at the City's option.

Each proposal must contain a statement of qualifications that includes the following information:

- General Information – Provide the name, address, and telephone number of the individual or firm, as well as the name of the person authorized to negotiate contract terms and make binding agreements. Include the professional qualifications necessary for completing the work.
- Background – Provide a narrative background of the company and its organization.
- Services – Provide a list of available services provided by the firm.
- Experience – Describe the experience of the firm. Specifically note experience as construction manager in the following areas:
 - Wastewater treatment construction and expansion projects
 - Teaming with the owner, engineer, and contractor
 - Maintaining cooperative atmosphere and attitude with contractor
 - Coordinating between the contractor and plant operators regarding shut down constraints
 - Construction general permit
 - Regulatory agencies
 - Timely contract close out
- Public Agencies – Include narrative description of experience with public agencies.
- References – Provide three or more references for three or more separate projects that can supply information on the quality of construction management services

provided by your firm within the last eight (8) years. Provide the name or title of the projects, the location of the projects, the name of the contracting agencies, the total project budget, a brief project description, and agency contact information.

- Pending Claims and Litigation – The consultant shall provide a statement of all claims/litigation (pending as well as finalized) the consultant has been involved with in the past five (5) years.
- Labor Estimate – Provide the estimated number of personnel hours, broken down by task and job title, that your firm will engage in to complete the scope of services. This estimate should be displayed in the form of a table which identifies key tasks to be performed by various employees' job titles. Do not include hourly rates or extended costs in the labor estimate table.
- Fees – In a separately sealed envelope, extend the cost of each task to be performed by each job title in the labor estimate with the respective hourly rate. Include any direct or indirect costs not covered in the hourly rates of employees, and clearly indicate the not to exceed cost of the work. The contract price shall be based on a lump sum, not to exceed cost. The selected consultant will not be allowed to update hourly rates of staff for the life of the project.

Each proposal must include a detailed scope of services that includes the following information:

- Provide a detailed scope of services
- Describe the approach for completing the scope of services
- Identify the key employees that will make up the CM team and describe qualifications of said team. The team shall remain consistent throughout the life of the project, except as may be approved by the City.
- Describe the methods and practices used to mitigate unreasonable construction costs and schedule overruns
- Describe the method of project status reporting
- Describe the firm's concept of the role of construction manager and how that role is implemented in projects designed by your firm and in projects designed by other firms

Each proposal must identify any subconsultants to provide services for the project and include a brief statement of qualifications for each subconsultant.

The consultant may submit a proposal organized according to their preference, provided it meets the requirements of the RFP. Resumes and a company qualification brochure may be added, provided they are located in an appendix at the back of the proposal.

Should a consultant have concerns about meeting any requirements of this RFP they may include a clearly labeled subsection within an appendix with individual statements specifically identifying their concerns and exceptions. If no exceptions are stated, it is assumed that the consultant understands all of the requirements of the RFP and agreement attached hereto and takes no exceptions to them. The RFP and the consultant's proposal shall be included as exhibits to the executed agreement to establish the scope of work of the contract.

Requests for Information (RFI) must be in writing and directed to the contact person specified on the front page of this RFP. If the City determines that a response to an RFI is necessary for clarification, then a response will be issued in writing as an addendum for the benefit of all interested consultants. The City will not respond to an RFI received less than (72) hours prior to the proposal submission deadline.

Scope of Services

The scope of services outlined below represents the minimum to be provided by the construction management consultant. Consultants shall describe their approach to these tasks in a detailed proposed scope of services. Consultant shall describe any other tasks proposed for proper control of the work as per the consultant's experience, knowledge, and capabilities.

1. Enter into and provide all required documentation specified in the Agreement (see attachment) and provide said documentation within ten (10) days of the award by the City Council.
2. Obtain a City of Turlock Business license. The cost of the business license is fifty cents per thousand dollars in revenue. Business Licenses are obtained through the Finance Division at Turlock City Hall, 156 S. Broadway, Suite 114. Additional information can be found on the City's website at <http://ci.turlock.ca.us/doingbusinessinturlock/businesslicenses/newbusinesslicense.asp>.
3. Study and become familiar with the project drawings and specifications, especially as relates to the role of construction manager.
4. Prepare a contract administration manual which establishes procedures for administration of the construction contract. The manual must be consistent with the project specifications.

5. Conduct and document a pre-construction meeting, in coordination with the Design Engineer.
6. Prepare video and photographic record of initial site conditions
7. Provide full time field inspection of the work for conformance with the contract documents.
8. Act as liaison between the Contractor and the City's hired special inspections and materials testing firm for scheduling materials testing and informing contractor of passing and failing results.
9. Act as liaison between the Contractor and the Design Engineer for scheduling critical special inspections by the Design Engineer relating to structural, mechanical, electrical, and instrumentation.
10. Conduct and document weekly progress meeting with City Staff and Contractor per Section 01312, "Project Meetings," of the project specifications.
11. Maintain detailed project records including inspection reports, photos, measurement of quantities, meeting minutes, and log decisions. Construction management documentation shall be entered in a web based system as described in Section 01322, "Web Based Construction Document Management" of the project specifications. An alternative software may be proposed to be used by the construction management consultant, provided that it meets or exceeds the capabilities of the software described in Section 01322. The Construction management consultant shall arrange and pay for the software to be used by the construction manager, the Contractor, and City staff for the life of the project as part of the original agreement between the consultant and the City.
12. Review and approve construction schedules per the project specifications.
13. Review progress payments and provide recommendation to City for payment.
14. Coordinate design clarifications between the Design Engineer and the Contractor.
15. Document, review, and negotiate contract change orders. Provide recommendation for owner's action of potential change orders. Change orders are only approved by the City Council.
16. Maintain notes and documents to support Owner and Design Engineer during claims proceedings.
17. Monitor the contractor's compliance with the project SWPPP.
18. Monitor and assure Contractor's recording of field changes to the record drawings and specifications as per the project specifications.
19. Preparation of monthly progress reports with narrative and photographic documentation of major work items completed and work to be pursued in the upcoming month.
20. Schedule and conduct substantial completion inspections, issue punchlist, and recommend acceptance by the Owner

Engineering Services During Construction (ESDC) will be provided by the Design Engineer, Carollo Engineers. ESDC include the following:

- Attend the pre-construction meeting
- Prepare conformed drawings and specifications and print hard copies for Contractor, City, and Construction Manager's use
- Attend construction progress meetings
- Responsibility for submittal and shop drawing review
- Respond to Requests for Information (RFI), in coordination with the construction manager
- Provide specialty structural, electrical, process, and instrumentation inspections as needed
- Prepare O&M manual
- Assist with start up of new facilities
- Conduct operations training
- Prepare record drawings

Selection Criteria

It is the City's intention to select one firm that has sufficient expertise to complete the work on time and within budget. However, the City reserves the right to reject all proposals or select and contract with more than a single firm for the specified services.

City staff will exercise discretion and judgment in evaluating proposals. Qualifying proposals will be scored based on the following factors, with a maximum scoring potential for each factor as shown, for a maximum potential score of 50 points.

- a. Demonstrated qualifications, competence, abilities, and knowledge of personnel assigned (18 points)
- b. Experience of the Consultant to provide the specified services (18 points)
- c. Record of the Consultant in accomplishing similar work within budget (4 points)
- d. Completeness of proposal (3 points)
- e. Financial responsibility [years in business, number of projects completed, annual volume of work in dollars, etc.] (3 points)
- f. Cost (4 points)

Once submitted, all proposals become public records and subject to disclosure, either in part or in whole, under the California Public Records Act.

The City may hold interviews with top ranking consultants. These interviews will be held solely at the discretion of the City and after the initial proposal scoring. The interviews, if held, are to be attended by representatives of the City as well as the consultant's team proposed to be utilized on this project. Interviews, if held, will be used to gain further insight into the consultant's capabilities for the purpose of making a selection recommendation to the City Council.

END OF REQUEST FOR PROPOSALS



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

_____ **for**
Construction Management Services
CITY PROJECT NO. 15-39D

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

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

(b) Payment:

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

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

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

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

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

5. TERM OF AGREEMENT: This Agreement shall become effective July 25, 2017 and end December 31, 2019, 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): \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

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

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

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

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

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

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

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

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

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

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

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

(g) Waiver of Subrogation: With the exception of professional liability, CONSULTANT hereby agrees to waive subrogation which any insurer of CONSULTANT may acquire from CONSULTANT by virtue of the payment of any loss. The commercial general liability policy and workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of CITY for all work performed by CONSULTANT, its agents, employees, independent contractors and subcontractors. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

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

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

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 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: _____

PHONE: _____
FAX: _____

for CITY: **CITY OF TURLOCK**
ATTN: MICHAEL G. PITCOCK
ENGINEERING DIVISION
156 SOUTH BROADWAY, SUITE 150
TURLOCK, CALIFORNIA 95380-5454
PHONE: (209) 668-5599 Ext. 4430
FAX: (209) 668-5563

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

Stephen Fremming
Engineering Division
156 S. Broadway, Suite 150
Turlock, California 95380-5456
Telephone: (209) 668-5417
E-mail: sfremming@turlock.ca.us

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

CITY OF TURLOCK, a municipal corporation _____

By: _____

Gary Soiseth, Mayor

or

Gary R. Hampton, City Manager

Date: _____

By: _____

Title: _____

Print name: _____

Date: _____

APPROVED AS TO SUFFICIENCY:

By: _____

Michael G. Pitcock, P.E., Development
Services Director/City Engineer

APPROVED AS TO FORM:

By: _____

Phaedra A. Norton, City Attorney

ATTEST:

By: _____

Jennifer Land, City Clerk