



City of Turlock
Development Services Department
Engineering Division

Request for Proposals

Construction Management Services

for

City Project No. 18-69 “Surface Water Distribution System Improvements”

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 30, 2021
5:00 p.m. PST

Direct questions to:

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

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Background

The purpose of this Request for Proposals (RFP) is to seek proposals from qualified firms to provide construction management (CM) services for City Project No. 18-69, “Surface Water Distribution System Improvements.” Proposals are required to be submitted prior to the date and time listed on the cover sheet of this RFP.

The City of Turlock currently relies entirely on groundwater as its primary source of drinking water. The City has constructed more than 40 potable water wells, though several of these are offline due to a combination of ground water supply and/or water quality issues. The City currently has 19 active wells that pump ground water directly into the City’s distribution system and serves approximately 18,500 service connections. Groundwater levels have been declining since the mid-1990s due to over pumping for agricultural and municipal purposes. Groundwater levels fluctuate with seasonal rainfall, withdrawal, and recharge. Rainfall in the Turlock Sub-basin Area averages about 12 inches per year, much less than the annual groundwater extraction and evapotranspiration. Inflows to the Turlock Sub-basin result primarily from the deep percolation of agricultural and landscape irrigation water and the infiltration of precipitation. The use of groundwater by the City and for adjacent agricultural purposes has resulted in periods of lowered groundwater levels near Turlock. Since the mid-1990s, the groundwater levels near the City have fallen by approximately about 15 feet.

The Stanislaus Regional Water Authority (SRWA) is a Joint Powers Authority (JPA), which includes the California Cities of Ceres and Turlock, working in partnership with Turlock Irrigation District (TID). The State of California has identified the Turlock Groundwater Subbasin as a high priority basin under the Sustainable Groundwater Management Act due to subsidence of the basin. Reliance on groundwater as a single source of supply is not sustainable and has become less reliable due to both the decline in water quality and the increasing number of regulated contaminants. For this reason, the SRWA has been evaluating water supply options to provide a diversified and sustainable water supply portfolio to the current and future residential and industrial customers in both Cities. SRWA has identified the Tuolumne River as a surface water supply that can be used in conjunction with the cities’ groundwater systems to provide a long-term, reliable drinking water supply. SRWA has contracted with Jacobs Engineering to design and build the Regional Surface Water Supply Project, which includes treatment facilities, pumps, and pipelines to deliver drinking water to diversify water supplies, improve water quality, and help replenish groundwater supplies. The Regional Surface Water Supply Project is currently in the design and construction phases and is scheduled to be delivering water to the Cities in the Spring of 2023.

In order to receive the new surface water supply, the City of Turlock must construct additional water distribution infrastructure. The City entered into an agreement for design and bidding services with Carollo Engineers (“Design Engineer”) in December 2018. Design plans and specifications are complete and the construction project is currently out to bid. As of this writing, construction bids are due by 2:00 PM on July 15, 2021. Carollo Engineers estimates a construction contract cost of \$35,700,000. Bid documents may be downloaded as PDFs at no charge from the City’s website at <http://ci.turlock.ca.us/capitalprojects/projectsouttobid>. Hard copies are available for purchase at a cost of \$420 for full size (22 in. x 34 in) and \$116 for half size (11 in. x 17 in.).

The project includes the following:

- 2.3 million gallon pre-stressed concrete tank
- 12 million gallon per day pump station and building
- Detention basin and storm water pump station
- 12,000 linear feet of 16-inch to 54-inch diameter potable water pipeline and appurtenances
- 2,500 linear feet of 15-inch storm drain pipeline and manholes
- Three (3) pressure reducing valve vaults
- Grading and pavement improvements
- Mechanical, electrical, and instrumentation equipment

The City is in the process of procuring the pumps, pump motors, and VFDs for the project directly from the regional vendor of Patterson Pumps, Thomas & Associates of Novato, California. The construction bid documents include provisions for the contractor to accept assignment of the contract, take delivery of the equipment, and install the equipment per the specifications.

Tentative Project Milestones

Mandatory pre-bid meeting

(CM firms not required to attend): June 16, 2021

CM proposals due: June 30, 2021 before 5:00 PM

Potential interviews with CM firms: July 12-14, 2021

Construction proposals due: July 15, 2021

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|---|--------------------|
| City Council approval of construction, CM, and ESDC agreements: | August 10, 2021 |
| Construction contract execution: | September 10, 2021 |
| Begin construction contract time: | September 24, 2021 |
| Milestone due date - Complete terminal tank, electrical room in pump station, SRWA control room, SCADA system, storm drain basin, storm drain pump station, storm drain pipeline | January 1, 2023 |
| Milestone due date - Complete Phase 1 commissioning of terminal tank and booster pump station. | March 1, 2023 |
| Substantial Completion due date: | August 6, 2023 |
| Final Completion due date: | September 6, 2023 |

During design, Carollo Engineers contracted with a 3rd party construction management professional to prepare a construction schedule without knowledge of any prescribed milestones. The purpose of the schedule's creation was to determine whether the City's intended milestones were in line with what a contractor might actually construct. This schedule is provided for information only as Appendix A to this RFP. The tentative milestones noted above supersede the dates included in the schedule provided in Appendix A.

Scope of Services to be provided by Construction Manager

The scope of services outlined below represents the minimum to be provided by the CM consultant. Proposers are encouraged to suggest additions or modifications to the scope required in this section that will enhance and clarify the scope of work per the proposers experience, knowledge, and expertise. Consultants shall describe their approach to all tasks in the proposed scope of services. While City staff has attempted to direct interested proposers attention to the full scope of CM work in this RFP, CM consultant shall provide all services specified in the construction contract specifications prepared by Carollo Engineers, including all issued addenda, where reference to "Construction Manager" is made. It is suggested that interested proposers perform a word search of "Construction Manager" of all construction contract specifications to assure that the submitted proposal captures all required work. The scope of services provided by the CM consultant shall be

provided through the estimated Final Completion due date as indicated in the section above, “Tentative Project Milestones.”

The scope of services to be provided by Construction Manager shall include the following:

1. Enter into and provide all required documentation specified in the sample agreement and provide said documentation within two weeks of the approval of the agreement by the City Council.
2. Business License: Obtain a City of Turlock Business license prior to execution of the contract. The cost of the business license is a up-front fee of eighty four dollars (\$84) plus fifty cents per thousand dollars in revenue received for work performed on the project, made payable on a semi-annual basis. 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. Web Based Construction Document Software: Provide a web-based construction document software program and sufficient licenses for the duration of the project for Owner, Design Engineer, and Contractor, and all others necessary for reviewing, approving, and viewing of construction documentation. Consultant shall provide software meeting the requirements of Section 01322, “Web Based Construction Document Management” of the construction project specifications. The CM consultant must identify the software proposed for use as well as itemize the cost of the software in the fee breakdown. The CM consultant shall arrange and pay for the software for the duration of time life of the project as part of the original agreement between the successful consultant and the City.
4. Perform duties of “Construction Manager” in contract specifications: The successful consultant shall assume all responsibility for performing the work described to be performed by the “Construction Manager” in the contract documents. Prospective consultants shall be responsible to check for addenda issued during the bidding process for the construction project and resulting proposals must include all CM work described in addenda at the time construction proposals are due to be submitted.
5. Contract Administration Manual: Prepare a contract administration manual which establishes procedures for administration of the construction contract. The manual must be consistent with the project specifications.
6. Project Meetings: Lead and document a pre-construction meeting, in coordination with the Design Engineer. Lead and document regularly scheduled construction

progress meeting. Meetings shall be held as per Section 01312, “Project Meetings,” of the construction project specifications.

7. Construction time management: Construction Manager shall create Weekly Statements of Contract Time on a weekly basis and post these to the web-based software as well as include them in the regular progress meeting agenda packets. The statements shall include the following information: Date, Day, weather conditions, tally of whether the day is 1) a counted calendar day as to contract time, 2) unworkable day caused by weather, or 3) day not worked for any reason other than weather, subtotal of days this week and previous to the weekly report for 1) 2) and 3) above, change orders that extend the number of contract days, start date for counting contract time, extended required completion date for major milestones, substantial completion, and final completion, calendar days counted to date, calendar days remaining to substantial completion, calendar days remaining to final completion.
8. Project Partnering: Construction Manager shall attend and participate in project partnering meetings as specified in Section 01305, “Project Partnering” of the construction project specifications.
9. Public Outreach: Public outreach efforts made by the Construction Manager shall include the following:
 - Draft and send letters to all property owners and residents (in the case of rental) within 500 feet of the proposed improvements providing basic project information, estimated start and completion dates, contact information to CM firm, and a summary of traffic impacts. This letter should be sent out a minimum of forty five (45) days before construction work begins within 500 feet.
 - Hold two (2) public outreach meetings and invite by letter and door hangers all property owners and residents within 500 feet of the improvements. A large conference room at City Hall may be utilized for the public outreach meetings. The CM firm shall provide a virtual meeting option, in addition to the live meetings. The two (2) meetings shall be identical in content but shall include two options for the meeting on different days of the week, as well as one meeting occurring in the morning and another in the evening (start time between 5 – 6 PM). The meeting shall be held in advance of construction activities. The CM firm shall present a slideshow with basic project information, purpose, need, and public benefits of the project, estimated start and completion dates, contact information to CM firm, and a summary of traffic impacts.

- Regularly engage and communicate with nearby property owners and residents in the form of periodic email blasts, social media, and/or other communication efforts.
 - Provide a 24 hour toll-free number for the public to make inquiries about the project. Provide the number for display on project construction signs provided by the contractor.
10. Escrow Bid Documents Review: Schedule the escrow bid document review meeting, lead the review of documents for conformance with specifications, and provide escrow services for storing the documents as described in the construction project specifications section 00823 “Escrow Bid Documents.”
 11. Review Photographic and Video Documentation: Contractor is required to provide photographic and video documentation per Section 01340 of the contract specifications. CM consultant shall review contractor’s performance in pursuing this work and shall advise contractor of any deficiencies.
 12. Full-Time Inspection: Provide full-time field inspection of the work in progress on the site for conformance with the project plans and specifications with skilled and professional personnel. This task includes monitoring all construction work and documenting the work. Daily written reports shall be maintained. Change order work shall be tracked and recorded on a Force Account basis, except when the cost of change order work has been approved as a lump sum amount prior to any change order work performed. This task includes daily inspection of temporary traffic control devices placed by the contractor for conformance with the approved temporary traffic control plan.
 13. Structural Observation: Provide structural observation by a registered professional engineer of structures as designated in Section 01455, “Regulatory Quality Assurance” of the construction project specifications.
 14. Observe and Report on Contractor’s Compliance with Work Restrictions: Fully understand and advise the contractor of any violations observed with regards to the contractor’s restrictions as defined in Section 01140, “Work Restrictions,” and Volume 4 of the construction contract documents, which contains permits and permit conditions from various governmental regulatory agencies. Construction manager shall establish and maintain communication with City staff, City’s hired biological monitoring consultant, Design Engineer, and construction contractor in following the work restrictions in place for this contract.
 15. Monthly progress reports: Provide monthly written progress reports. Progress reports should include the following information, at a minimum: Original contract cost, current contract cost, accepted pay requests, contract start date, original substantial completion due date, current substantial completion due date, percent of schedule elapsed, current critical path work items, cost of change orders approved to

date, cost of pending change orders, design changes issued to date, description of disputes and claims pending or in process, listing of failed materials testing results and resulting correction or planned corrections, description of work completed or in progress during the reporting month, items of work to be performed by contractor in the next month, and ten to thirty photos of construction work completed or in progress during the reporting month with captions describing the work.

16. Stormwater Pollution Prevention: Perform all duties of Construction Manager identified in Section 01355A of the project specifications, including review of Permit Registration Documents, review reports submitted by the contractor in connection with the Construction General Permit, and review effectiveness of Best Management Practices (BMPs) placed by contractor and advise contractor of any BMP deficiencies noted while inspecting the work.
17. Materials Testing and Special Inspection: Provide construction materials testing and special inspection services for quality assurance purposes. All testing shall be performed under the direct supervision and control of a qualified registered professional engineer employed by the firm providing these services. The testing firm shall upload reports to the aforementioned web based construction documentation software. Testing, sampling, and inspection reports may be handwritten or typed, but must be legible. A final report shall be provided within 30 days of the Notice of Completion of the project that includes a typed cover letter stamped and signed by the engineer, a typed summary page of all testing results, and copies of all field reports, field test reports, and lab test results and reports. Refer to Section 01450 "Quality Control" of the construction contract specifications for additional materials testing requirements. References to the independent testing firm in the project specifications is the materials testing to be provided by the construction manager under the CM scope of work. Proposers for the CM contract shall familiarize themselves and be aware of all testing requirements specified in the construction contract specifications in the preparation of a proposal.
18. Coordination with Design Engineer: Assist the Design Engineer and contractor with general coordination of submittals, RFIs, design clarifications, and Design Engineers' responses.
19. Coordination for Special Engineering Inspections: 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, as described in the construction project contract documents.
20. Coordination with Utility Owners: The scope of construction work includes work near existing utilities. The CM consultant shall provide general coordination with the construction contractor and affected utility owners in the pursuit of the work.

21. Project Records: Maintain detailed project records including inspection reports, photos, measurement of quantities, submittal logs, RFI logs, meeting minutes, and log decisions. Change order work shall be tracked and recorded on a Force Account basis, except when the cost of change order work has been approved as a lump sum amount prior to any change order work performed.
22. Review Schedules: Review and approve the construction baseline schedule and other schedules required to be submitted by the construction contractor per the project specifications. Monitor contractor's progress of the approved baseline schedule. Review baseline schedule updates and require recovery schedules as may be required in the progress of the work.
23. Review Quantities and Invoices: Review construction contractor's invoices on a monthly basis and provide recommendation to City for payment based on quantities placed and materials or equipment purchased and stored.
24. Change Orders: Document, review, and comment on change order requests and contract change orders. Provide assessment of schedule impacts and potential contractor delays. Provide recommendation for Owner's action on potential change orders.
25. Claims: Maintain notes and documents to support Owner and Design Engineer during claims proceedings. Include a separate task and an allowance in the amount of \$10,000 to analyze, coordinate, administer, and make recommendations regarding potential claims.
26. Labor Compliance Monitoring: Provide labor compliance monitoring activities. Include in the CM scope of work:
 - Verify that contractor is regularly uploading certified payroll reports to the DIR website.
 - Spot check contractor's certified payroll reports. For spot-checked records, track any payments noted as being less than the required prevailing wage rate and notify contractor of non-compliance.
 - Conduct contractor employee interviews to determine employee's understanding of their labor classification, wages, and equal employment opportunity information. Interviews shall be performed by CM consultant once per trade per month.
 - Maintain a record (electronic and/or hard copy) of all certified payroll records submitted by the contractor and safeguard the information to the maximum extent permitted by law.
27. As-Built Drawings: Monitor and assure Contractor's recording of field changes to as-built drawings. Review final as-built drawings at the completion of the project for accuracy.

28. Final inspections and Recommendation to Accept the Work: Inspect the work for required milestones, Substantial Completion, and Final Completion. Issue punchlists. Recommend final acceptance of the project upon completion of all punchlist items.

Scope of Services to be provided by others

City staff will seek the City Council's approval to amend the existing agreement with Carollo Engineers to provide Engineering Services During Construction (ESDC) at the same time as award of the construction contract and the agreement for CM services. The detailed ESDC scope is not yet available, however the CM consultant may assume that ESDC provided by Carollo Engineers includes, in general, the following items:

- Attend the pre-construction meeting
- Prepare conformed drawings and specifications and print hard copies for Contractor, City, and CM consultant use
- Attend construction progress meetings
- Provide 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 startup of new facilities
- Conduct operations training
- Prepare record drawings in CAD using as-built drawings prepared by contractor and reviewed by the CM firm.

City staff shall perform the following functions for the project:

- Provide available records
- General support and assistance

- Direct communication with outside agencies for permitting (i.e. Stanislaus County encroachment permit, San Joaquin Air Pollution Control District Authority to Construct [emergency backup generator])
- Enter information required of the Legally Responsible Person (LRP) into the Stormwater Multiple Application and Report Tracking System (SMARTS) to comply with Construction General Permit requirements
- Attend project meetings
- Provide information related to City's operations and maintenance of existing City-owned facilities
- Prepare staff reports for the City Council for approval of all Contract Change Orders and the Notice of Completion
- Provide final approval and arrange payment with the City's Finance Division for construction contractor payments
- The City of Turlock (City) is required to implement biological monitoring and mitigation measures prior to and during construction in accordance with the Project's Environmental Impact Report/Statement (EIR/EIS) as described in Volume 4 of the construction contract documents. Biological monitoring and reporting will be provided by Horizon Water and Environment under separate contract to the City. Biological monitoring activities include pre-construction surveys for special status plants, elderberry plants, giant garter snake, western pond turtle, burrowing owl, tricolored blackbird, Swainson's Hawk, White-tailed Kite, non-listed raptors (such as Red Tailed Hawk), and San Joaquin Kit Fox. The CM consultant shall be familiar with the work restrictions and protected biological resources and coordinate as necessary with Horizon Water and Environment and the contractor in the performance of biological monitoring work.

In addition to construction of the work, the construction contractor will provide the following:

- Field Office for CM: Temporary office space, office furniture, phone and data, and computers will be provided by the construction contractor for CM consultant's use as per Section 01500 of the project specifications. The location of the office shall be determined at a future time, though it will be located at some point along the alignment of the proposed pipeline.
- SWPPP: The construction contractor will retain a QSD and QSP to prepare the SWPPP and perform work related to the Construction General Permit as outlined in

section 01355A, “Stormwater Pollution Prevention Construction Activities: Best Management Practices.”

- Permits: The construction contractor will be required to obtain all permits required to perform the work not already covered under permits included in Volume 4 of the contract documents.

Proposal Submittal Requirements

SPECIAL NOTE

- The SRWA issued a RFP in 2020 to solicit proposals for construction monitoring services for the SRWA project and construction management services of the City of Ceres’ local facilities project. In the background section of this separate RFP states: “...the City of Turlock will consider qualifications of those firms submitting proposals for use in soliciting proposals at a later date.” Additionally, this separate RFP states: “The City of Turlock is not intending to award a construction management contract from this RFP but intends to use proposer qualifications to solicit construction management proposals at a later date.” The City of Turlock is in possession of the proposals submitted by various firms in response to the RFP for the SRWA and City of Ceres projects. All interested firms may submit a proposal in response to this RFP and be considered for award of the CM services agreement for the City of Turlock, regardless if the firm submitted proposals for either the SRWA project or the City of Ceres project. If a firm supplied a qualifications packet in response to the RFP for the SRWA and City of Ceres solicitation, the firm may either submit a new, updated qualifications packet, or indicate whether the qualifications previously submitted should be reviewed by the City of Turlock. However, all CM firms interested in providing services for the City of Turlock’s project are required to comply with the proposal content requirements of this RFP.

Once submitted, all proposals become public records and subject to disclosure, either in part or in whole, under the California Public Records Act. No amendment, addendum, or modification will be accepted to a proposal after the deadline for the submission of proposals. A public opening of proposals will not be held.

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 (3) 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.

Proposals are limited to twenty (20) pages, though employee resumes may be attached as an appendix that does not count against this page limit.

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:
 - Water tank and pipeline projects teaming with the owner, engineer, and contractor
 - Maintaining cooperative atmosphere and attitude with contractor
 - Coordinating between the contractor and owner regarding shut down constraints
 - Stormwater 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 CM services provided by your firm within the last five (5) 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.

In addition to the general qualifications described above, each proposal must include a detailed scope of services that includes the following information:

- 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
- Provide a detailed scope of services to be provided
- 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 due to termination of employment, or if required by the City due to failure to perform the scope of the contract.
- Describe the methods and practices used to mitigate unreasonable construction costs and schedule overruns
- Describe the method of project status reporting including the web based construction management software proposed to be utilized.
- 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 (see above) with the respective hourly rate. Break down the fee by in-house labor and subcontractor fees. 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. Clearly identify any optional tasks that are not included in the base fee.

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

Concerns or exceptions to the requirements described in this RFP may be made in the proposals in a clearly labeled subsection. The successful proposer will be required to enter into an Agreement for Special Services with the City of Turlock. A proposed agreement enumerating the terms and conditions of the agreement is attached as Appendix B. Proposers must specifically note any exceptions to the language of the sample agreement in writing in the proposal. Exhibit A to the agreement shall consist of the consultant's proposal.

Requests for Information

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 a RFI is necessary for clarification, a response will be issued in writing via an addendum emailed to those listed as a "planholder" on the City's website. In order to receive notification of addenda, potential proposers must have downloaded the RFP from the City's website and selected the option to be placed on the planholder's list. (See <http://ci.turlock.ca.us/capitalprojects/projectsouttobid>).

Requests for information may not be considered if submitted after 5:00 PM on June 25, 2021.

Selection Criteria

It is the City's intention to select one firm that has sufficient expertise to complete the CM scope of work. However, the City reserves the right to reject all proposals.

City staff will exercise discretion and judgment in evaluating proposals based on the following factors:

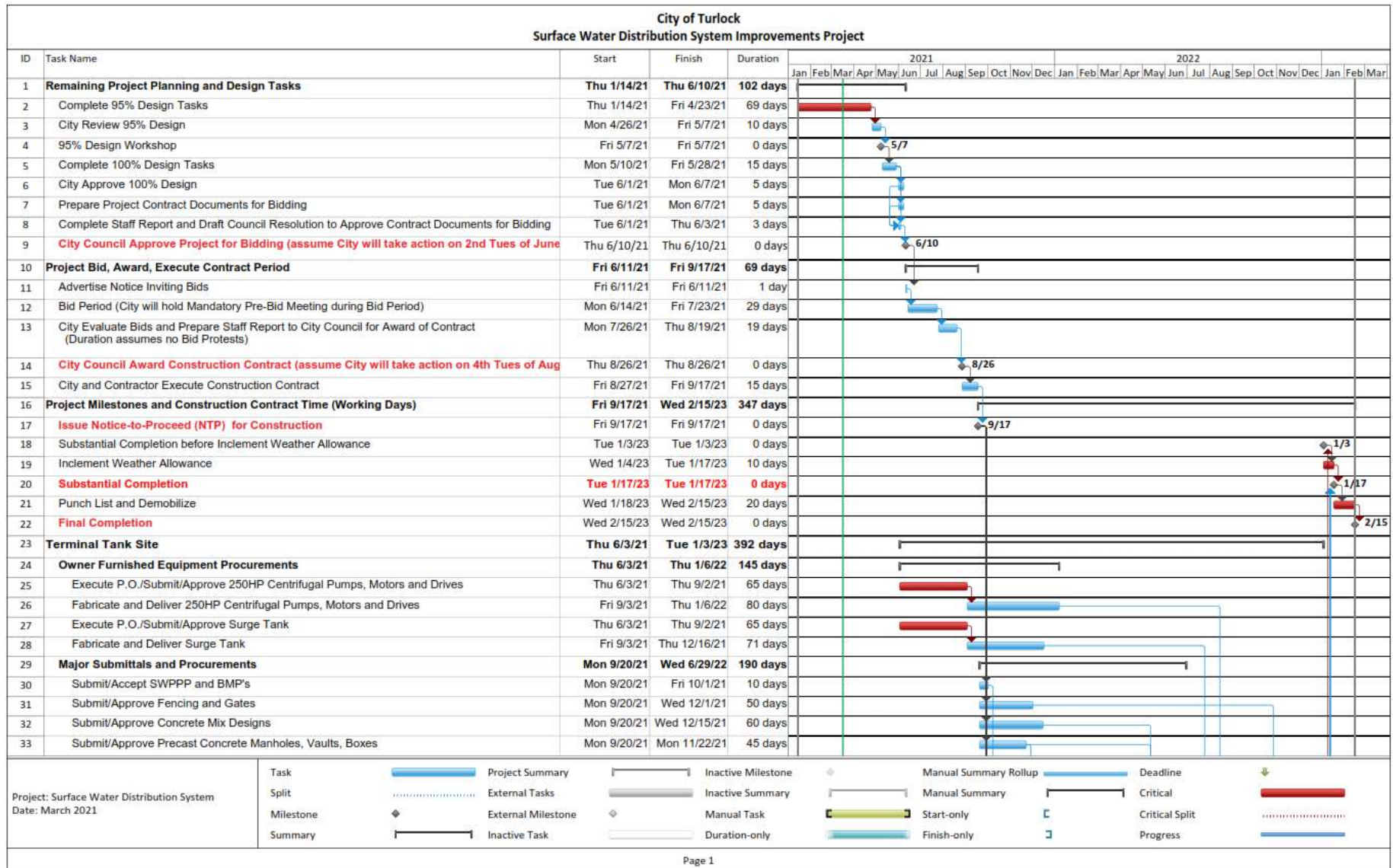
- a. Demonstrated qualifications, competence, abilities, and knowledge of personnel assigned
- b. Experience of the Consultant to provide the specified services
- c. Record of the Consultant in accomplishing similar work within budget
- d. Completeness of proposal

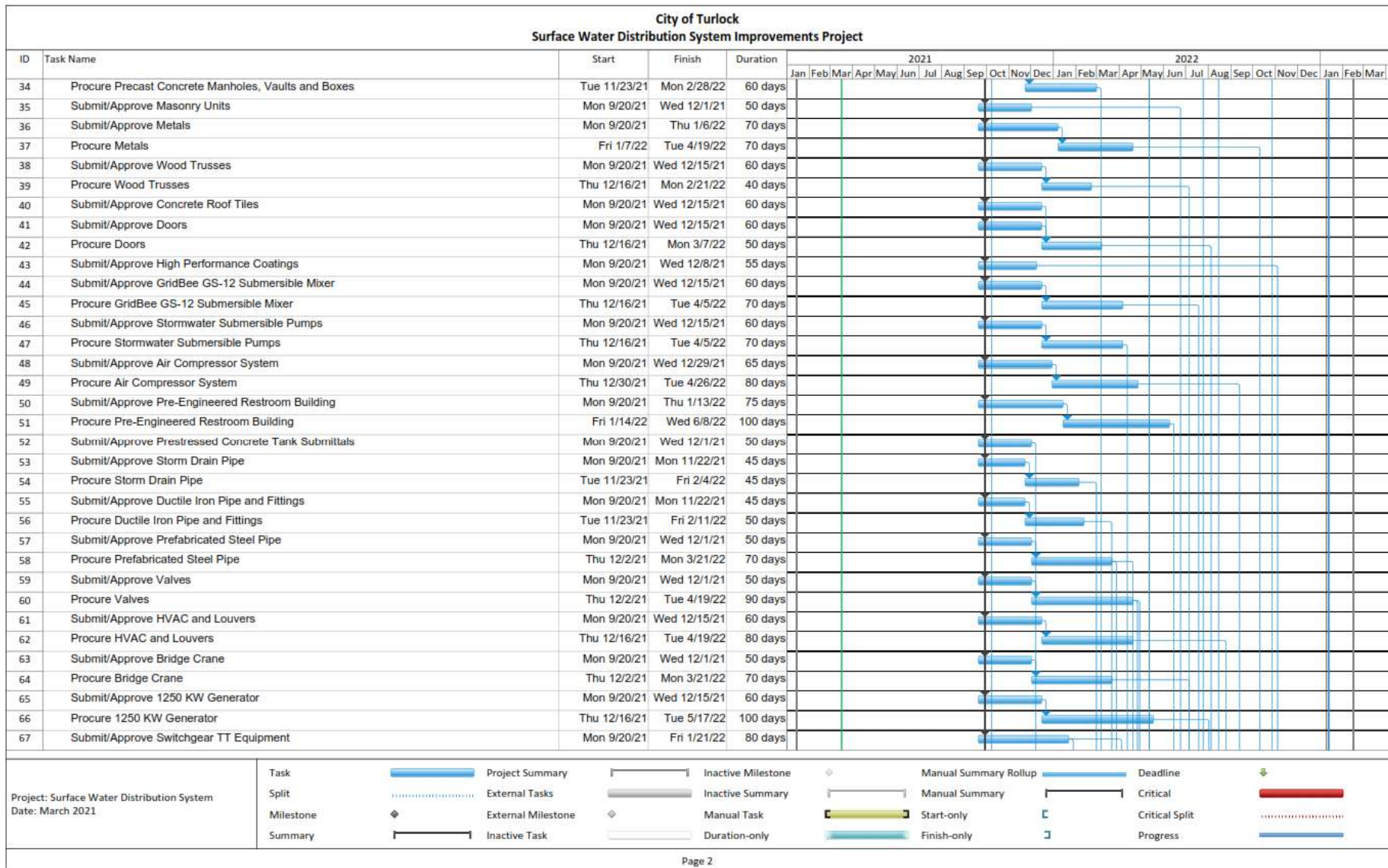
- e. Financial responsibility [years in business, number of projects completed, annual volume of work in dollars, etc.]
- f. Consultant Fees

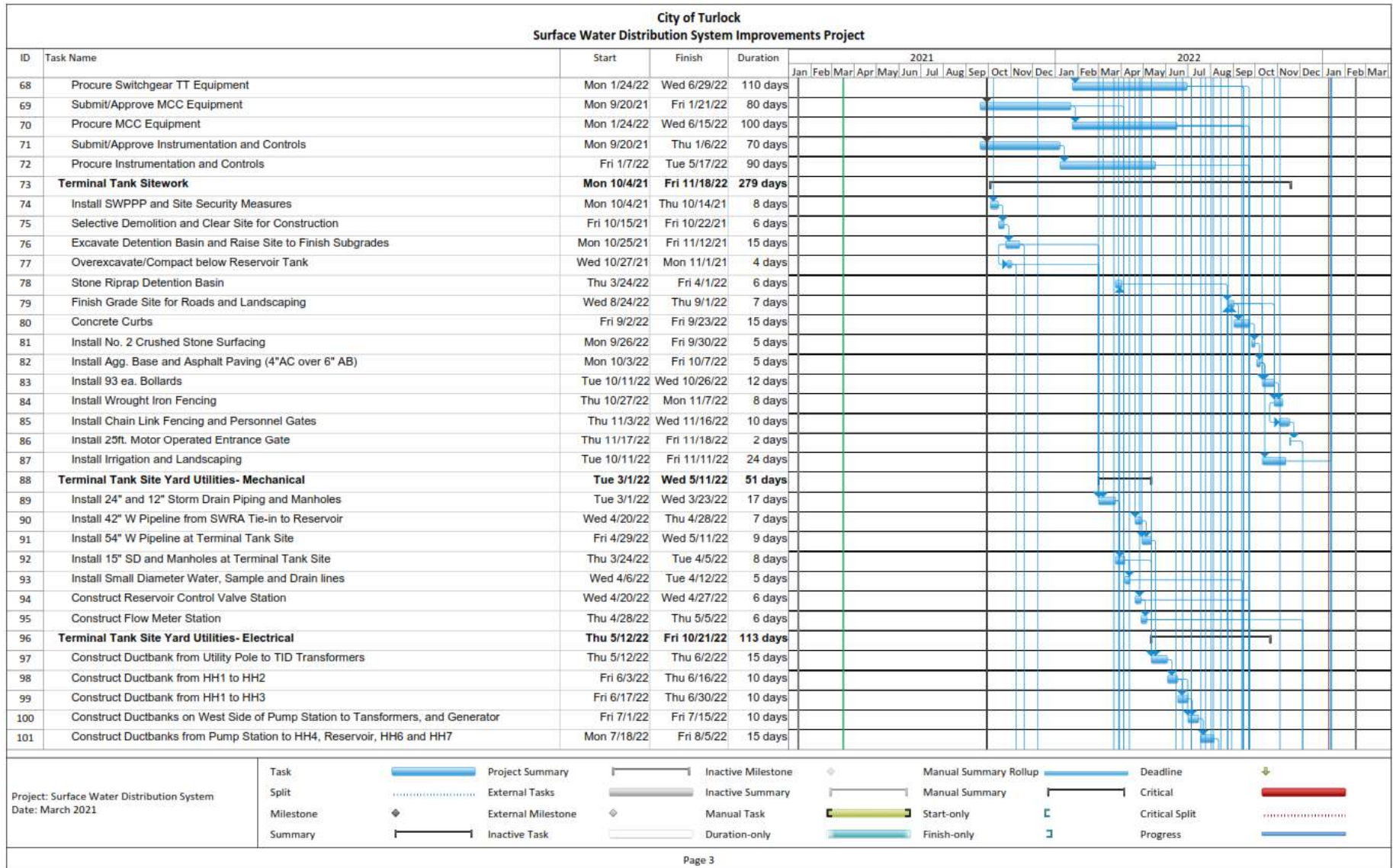
City staff will use the above criteria for purposes of identifying top ranking proposals. City staff may hold interviews with top ranking consultants at the sole discretion of City staff to gain further insight into the consultant's capabilities for the purpose of making a recommendation to the City Council to approve the agreement. The interviews, if held, are to be attended by representatives of the City as well as the consultant's team proposed for the project.

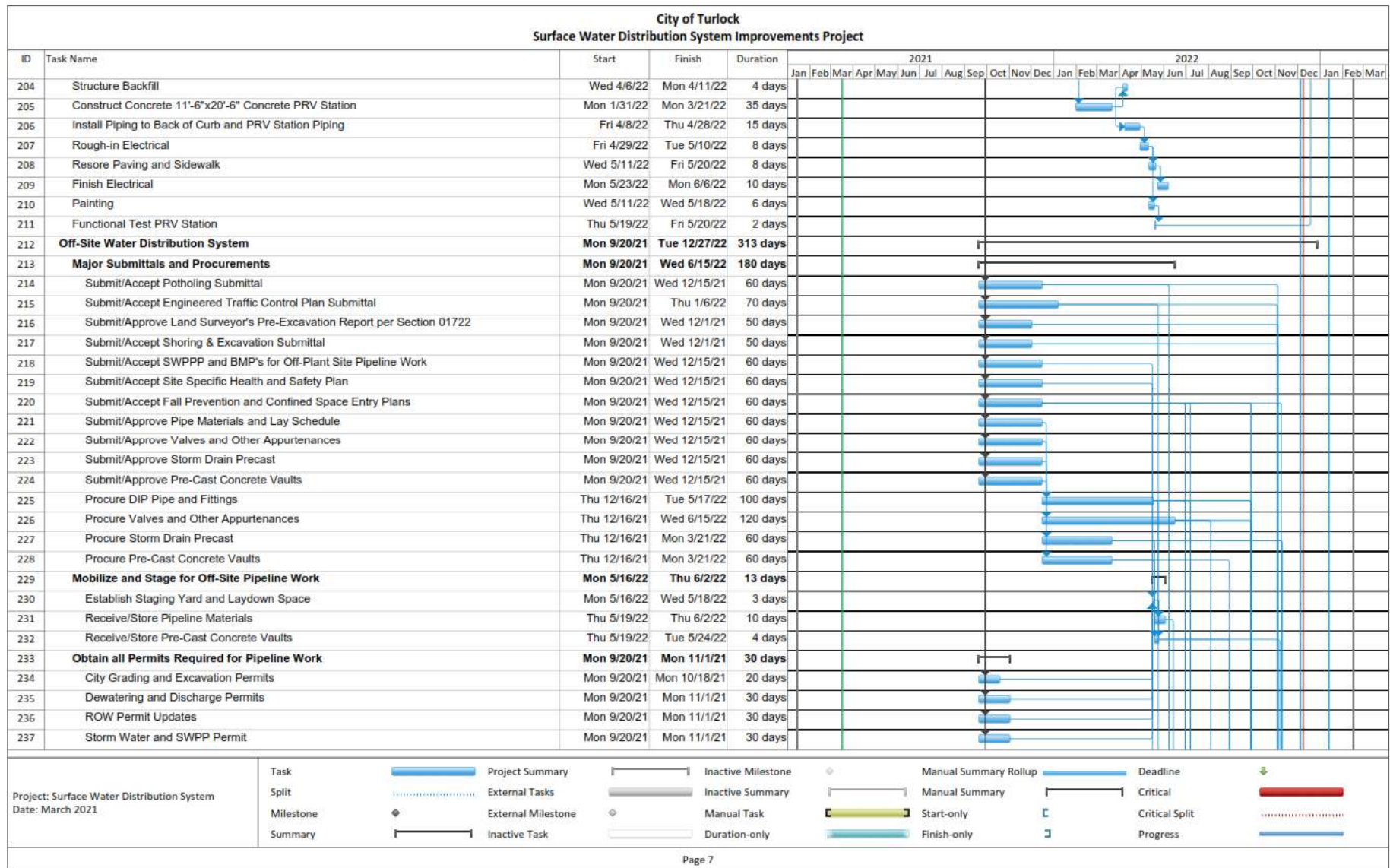
Appendix A

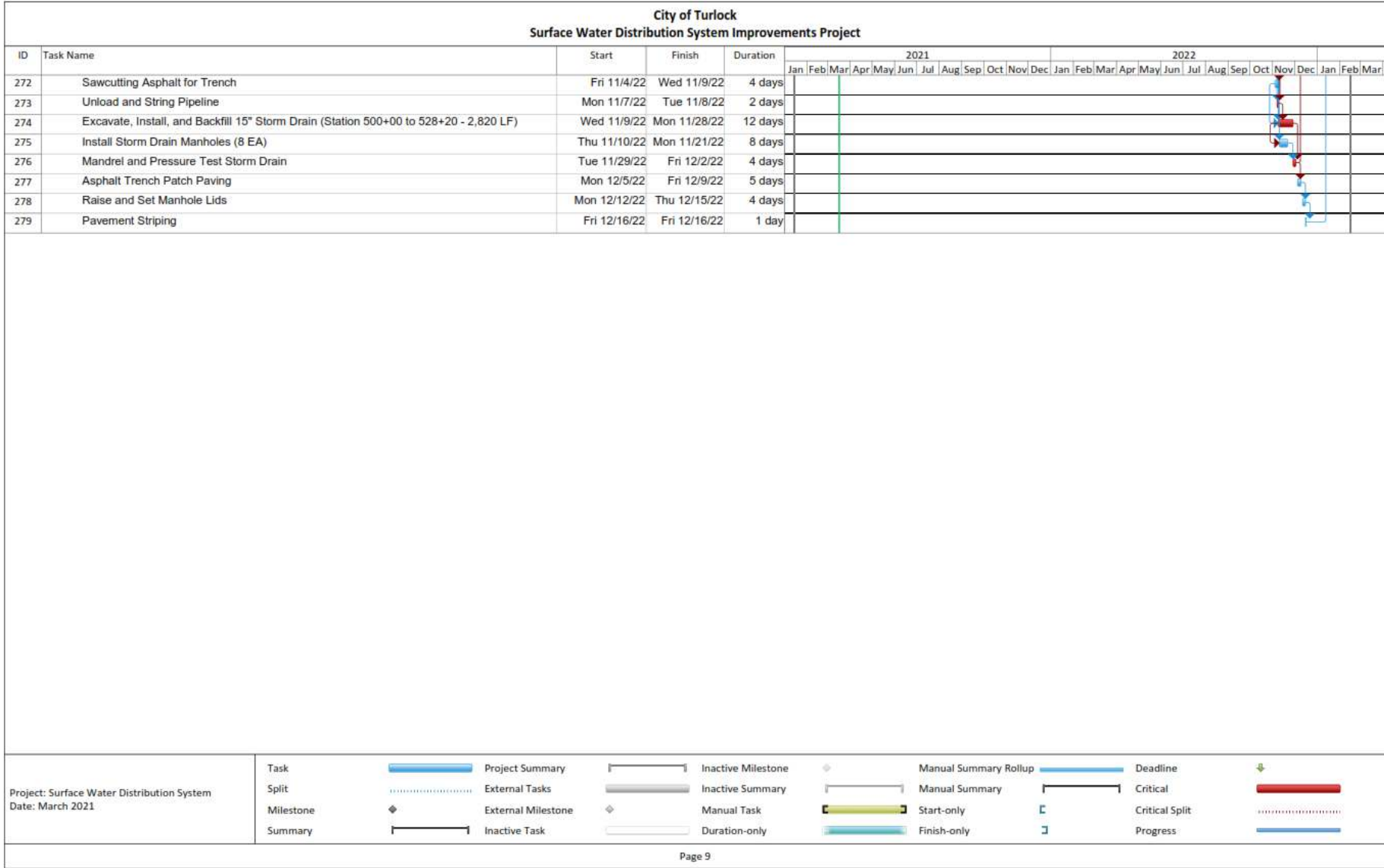
Independent Construction Schedule











Appendix B

Agreement for Professional Services (Sample)



**AGREEMENT BETWEEN THE CITY OF TURLOCK
and**

for

_____ **SERVICES**

City Project No. XXXX-XX

THIS SERVICE AGREEMENT (the “Agreement”) is entered into by and between the CITY OF TURLOCK, a California municipal corporation (“City”), and _____, a _____ (“Professional”), on this _____ day of _____ 20__ (the “Effective Date”). City and Professional may be collectively referred to herein as the “Parties” or individually as “Party.” There are no other parties to this Agreement.

RECITALS

A. City seeks to hire an independent contractor to perform professional services to assist City with the _____ (the “Project”).

B. Professional has made a proposal to City to provide such professional services. A description of the services Professional proposes to provide is included in the Scope of Services in **Exhibit A** attached hereto and incorporated herein by reference (“Services”). City desires to retain Professional to perform the Services, subject to the terms and conditions set forth in this Agreement.

C. The Parties have outlined the schedule or timeline for providing the Services (“Completion Schedule”), which shall be included in the Scope of Services in **Exhibit A**.

D. The Parties have outlined the rates and method of payment to Professional for its performance of the Services under this Agreement (“Compensation Schedule”), which shall be included in the Scope of Services in **Exhibit A**.

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Section 1 through 53 of this Agreement, Sections 1 through 53 shall prevail. (CONFIRM THE TOTAL NUMBER OF SECTIONS)

2. **Term.** The term of this Agreement shall be ____ years and will commence on the Effective Date and terminate on the ____ day of _____, 20____ (“Term”) unless the Parties mutually agree in writing to terminate the Agreement earlier or extend the Term pursuant to this Agreement.

3. **Extension of Agreement.** City may elect to extend this Agreement for ____ (__) additional ____ year (__) terms, on the same terms and conditions, upon issuing an “Election to Extend Agreement” letter executed by the City Manager to Professional thirty (30) days prior to the expiration of this Agreement.

4. **Effective Date.** This Agreement shall only become effective once all of the Parties have executed the Agreement (the “Effective Date”).

5. **Work.**

5.1. **Services.** Subject to the terms and conditions set forth in this Agreement, Professional shall provide City the Services described in **Exhibit A**. Any request for Services not included in **Exhibit A** will be considered a request for additional or modified Services (“Modification” or “Modifications”). Professional shall not receive additional compensation for any Modification of the Services unless the Parties agree otherwise in a writing executed by both Parties.

5.2. **City Requested Modification of Services.** City may, by written order, authorize Modifications to the Services described in **Exhibit A**. If such Modifications cause an increase in the cost or time required for performance of Professional’s Services, the Parties shall enter into a written amendment to this Agreement to adjust the Services and the compensation to be paid to Professional and, if necessary, amend the Completion Schedule or Compensation Schedule. The Services, Completion Schedule, or Compensation Schedule shall not be revised unless City and Professional mutually agree to a written amendment to this Agreement reflecting such revisions, additional compensation, time for performance or such other terms or conditions mutually agreed upon by the Parties.

5.3. **Professional Requested Modification in Services.** Professional shall not be compensated for work outside the Services described in this Agreement, unless, prior to the commencement of the Services:

(a) Professional provides City with written notice that specific work requested by City or required to complete the Project is outside the agreed upon Services. Such notice shall:

(1) be supported by substantial evidence that the work is outside the Services; (2) set forth the Professional's proposed course of action for completing the work and a specific request for City to approve the Modification to the Services; (3) set forth the Professional's proposed revisions, if any, to the Completion Schedule; and (4) set forth the Professional's proposed revisions, if any, to the Compensation Schedule; and

(b) City agrees that the work requires a Modification;

(c) City approves all adjustments, if any, to the Completion Schedule and Compensation Schedule; and

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

6. Compensation.

6.1. Amount, Time and Manner of Payment for Professional Services. City shall pay Professional according to the rates and timing set forth in the Compensation Schedule. On each anniversary date of the Effective Date, Professional will be allowed to increase prices with thirty (30) days' written notice to City. Increases may not exceed increases in the San Francisco-Oakland Consumer Price Index for all urban consumers or percentage increases in Professional's published prices, whichever is lower. In all cases, City may cancel this Agreement if a requested price increase is not acceptable. City's total compensation to Professional shall not exceed _____ Dollars (\$ _____) ("Maximum Payment"), unless the Parties mutually agree in writing otherwise.

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

6.3. Invoices. Professional shall provide City with monthly invoices sufficiently evidencing Professional's expenses and completion of the Services. All invoices furnished to City by Professional shall be in a form approved by City. The payments specified shall be the only payments made to Professional for performance of the Services, including compensation for any Modification. Professional shall submit all billings for Services to City within forty-five (45) days of the performance of such Services. City shall issue payment according to City's customary procedures and practices for issuing payments to independent contractors.

7. Notice to Proceed. Professional shall not commence the performance of the Services until it has been given notice by City ("Notice to Proceed"), with which City shall also deliver the Deposit.

8. Time of Performance. Professional warrants that it will commence performance of the Services within _____ () calendar days of the date the agreement was executed and shall conform to the Completion Schedule. The time of performance is a material term of this Agreement relied on by City in entering into this Agreement.

9. Time and Personnel Devoted to Services. Professional shall devote such time and personnel to the performance of this Agreement, as is necessary to perform the Services in compliance with the Completion Schedule, Compensation Schedule, and this Agreement.

10. Performance by Qualified Personnel; No Subcontracting. Services under this Agreement shall be performed only by competent personnel under the supervision and direct employment of Professional. Professional will conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Professional. Professional is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is expressly approved by City in writing. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void.

11. Representations of Professional. City relies upon the following representations by Professional in entering into this Agreement:

12.1. Qualifications. Professional represents that it is qualified to perform the Services provided in **Exhibit A** and that it possesses the necessary licenses and permits required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are required. Professional shall also ensure that all subcontractors are similarly licensed and qualified. Professional and all subcontractors shall also obtain a business license from City before they commence performance of the Services. Professional represents and warrants to City that Professional shall, at Professional's sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and approvals which are legally required for Professional to practice Professional's profession at the time the Services are rendered.

12.2. Professional Performance. Professional represents that all Services under this Agreement shall be performed in a professional manner and shall conform to the customs and standards of practice observed on similar, successfully completed projects by specialists in the Services to be provided. Professional shall adhere to accepted professional standards as set forth by relevant professional associations and shall perform all Services required under this Agreement in a manner consistent with generally accepted professional customs, procedures and standards for such Services. All work or products completed by Professional shall be completed using the best practices available for the profession. Professional agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Professional shall re-perform or replace unsatisfactory Service at no additional expense to City.

12.3. No Waiver of Claims. The granting of any progress payment by City, or the receipt thereof by Professional, or any inspection, review, approval or oral statement by any representative of City, or state certification shall not, in any way, waive, limit, or replace any certification or approval procedures normally required or lessen the liability of Professional to re-perform or replace unsatisfactory Service, including, but not limited to, cases where the unsatisfactory character of such Service may not have been apparent or detected at the time of such payment, inspection, review or approval.

12.4. City's Remedies are Cumulative. Nothing in this Section shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which City or Professional may have under this Agreement or any applicable law. All rights and remedies of City, whether under this Agreement or applicable law, shall be cumulative.

12.5. No Conflict of Interest. Professional represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement.

12. Conformity with Law and Safety. Professional shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of Services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the Americans with Disabilities Act, any copyright, patent, or trademark law, and all other applicable federal, state, municipal and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. All Services performed by Professional must be in accordance with these laws, ordinances, codes and regulations. Professional's failure to comply with any laws, ordinances, codes, or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Professional shall immediately notify City's risk manager by telephone. If any accident occurs in connection with this Agreement, Professional shall promptly submit a written report to City, in such form as City may require. This report shall include the following information: (a) name and address of the injured or deceased person(s); (b) name and address of Professional's subcontractor, if any; (c) name and address of Professional's liability insurance carrier; and (d) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of this Agreement, Professional shall immediately notify City. Professional shall not store hazardous materials or hazardous waste within City limits without a proper permit from City.

13. Contact by Professional with Project Owner or Project Applicant. Unless otherwise set forth in the Services, neither Professional nor Professional's subcontractors shall directly contact the owner of the property involved in the Project or any party who is the applicant for the

Project (“Interested Party”), or an employee or contractor of an Interested Party, on any matter relating to the Project without the prior consent of the Contractor Administrator. In no event shall Professional take any instructions or directions from an Interested Party on any matter pertaining to the Professional's Services to be performed for City under this Agreement.

14. Confidentiality. Professional understands and agrees that, in the performance of Services under this Agreement or in the contemplation thereof, Professional may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City (“Confidential Information”).

Professional shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Professional written authorization to make any such disclosure, Professional shall do so only within the limits and to the extent of that authorization. Professional may be directed or advised by the City Attorney on various matters relating to the performance of the Services on the Project or on other matters pertaining to the Project and, in such event, Professional agrees that it will treat all communications between itself, its employees and its subcontractors as being communications which are within the attorney-client privilege.

Notwithstanding the foregoing, Professional may disclose Confidential Information required to be disclosed under law, provided that, prior to disclosure, Professional shall first give notice to City and make a reasonable effort to obtain a protective order requiring that City's Confidential Information not be disclosed. This exception is limited to the extent disclosure is required under law.

15. Excusable Delays; Notice to Other Party of Delay. Professional shall not be in breach of this Agreement in the event that performance of Services is temporarily interrupted or discontinued due to a “Force Majeure” event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Professional. Force Majeure does not include: (a) Professional's financial inability to perform; (b) Professional's failure to obtain any necessary permits or licenses from other governmental agencies; or (c) Professional's failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Professional.

16. Assignment Prohibited. No Party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

17. Suspension of Services by City. City reserves the right to suspend Professional's Services under this Agreement when City determines that it is necessary to do so. When possible, City shall give Professional notice of such suspension and Professional shall, upon receipt of said notice, suspend all Services except any Services, the completion of which is authorized by the notice given by City. If the Services are suspended by City for more than sixty (60) consecutive days, for

reasons other than the fault of the Professional, the Professional shall be compensated for Services performed prior to notice of such suspension. When the Project is resumed, the Professional's compensation shall be equitably adjusted by City to provide for expenses incurred by the interruption of the Services. In this regard, Professional shall furnish to City such financial information that, in the judgment of the City Manager, is necessary to determine the reasonable value of the Services rendered by Professional during the period when Services were suspended.

If the Parties are unable to agree upon the amount of extra compensation which is due to Professional within thirty (30) days of Professional resuming Services, the amount of such additional compensation, if any, that is required to appropriately compensate the Professional for its expenses incurred by the interruption of Services may, upon the request of either Party, be determined by arbitration conducted in accordance with the "Arbitration of Disputes" section of this Agreement. Such arbitration shall be commenced by the Professional no later than sixty (60) calendar days following the event which entitles the Parties to pursue arbitration unless the Parties agree in writing to an extended time period for commencement of arbitration. Unless otherwise agreed in writing, all Parties shall carry on the Services and perform their duties during any arbitration proceedings, and City shall continue to make payments for the Services in progress as required by this Agreement.

18. Ownership of Work Product. Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes, professional or technical information or data, photographs, notes, letters, emails or any original works of authorship created by Professional or its subcontractors or subcontractors in connection with Services performed under this Agreement ("Products") shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of City. In the event it is ever determined that any Product created by Professional or its subcontractors, or subcontractors under this Agreement, are not works for hire under U.S. law, Professional hereby assigns all copyrights to such Products to City. With the prior written approval of City's point of contact for the Project, Professional may retain and use copies of such Products for reference and as documentation of its experience and capabilities.

All Products shall become the property of City irrespective of where located or stored, and Professional agrees to deliver all such documents and information to City, without charge and in whatever form it exists, on the completion of the Professional's Services hereunder. Professional shall have no ownership interest in such Products.

All work product of Professional under this Agreement, including written information which City will cause to be distributed for either internal or public circulation, including both preliminary and final drafts, shall be delivered to City in both printed and electronic form, or as may be specified in **Exhibit A**.

When this Agreement is terminated, Professional agrees to return to City all documents, drawings, photographs and other written or graphic material, however produced, that it received

from City, its contractors or agents, in connection with the performance of its Services under this Agreement. All materials shall be returned in the same condition as received.

19. Termination of Work by City for Its Convenience. City shall have the right to terminate this Agreement at any time for its convenience by giving notice of such termination to Professional. In the event City shall give such notice of termination, Professional shall cease rendering Services upon receipt of said notice given as required in this Agreement. If City terminates this Agreement:

(a) Professional shall deliver copies of all Products prepared by it pursuant to this Agreement.

(b) If City terminates this Agreement for convenience before City issues the Notice to Proceed to Professional or before Professional commences any Services hereunder, whichever last occurs, City shall not be obligated to make any payment to Professional. If City terminates this Agreement after City has issued the Notice to Proceed to Professional and after Professional has commenced performance under this Agreement, City shall pay Professional the reasonable value of the Services rendered by Professional pursuant to this Agreement prior to termination of this Agreement. City shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the Services. Professional shall furnish to City such financial information that, in the judgment of the City Manager, is necessary to determine the reasonable value of the Services rendered by Professional prior to termination. In the event of a dispute as to the reasonable value of the Services rendered by Professional prior to termination and the Parties are unable to agree upon said amount within sixty (60) calendar days following the date of the notice of termination by City, such dispute may, upon the request of either Party, be resolved by arbitration conducted in accordance with the "Arbitration of Disputes" section of this Agreement.

(c) Except as provided in this Agreement, in no event shall City be liable for costs incurred by or on behalf of Professional after the date of the notice of termination.

20. Assurance of Performance. If, at any time, City believes Professional may not be adequately performing its obligations under this Agreement or may fail to complete the Services as required by this Agreement, City may submit a written request to Professional for written assurances of performance and a plan to correct observed deficiencies in Professional's performance. Failure to provide written assurances subsequent to such written request, constitutes grounds to declare a breach under this Agreement.

21. Cancellation for Breach by Either Party. Should either Party fail to substantially perform its obligations in accordance with the provisions of this Agreement, the other Party shall thereupon have the right to cancel the Agreement by giving written notice and specifying the effective date of such cancellation. If City cancels this Agreement for breach and it is subsequently determined that Professional did not fail to substantially perform its obligations in accordance with this Agreement, then cancellation for breach by City shall be deemed, and treated, as termination for convenience.

Neither Party waives the right to recover damages against the other for breach of this Agreement, including any amount necessary to compensate City for all detriment proximately caused by Professional's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. City reserves the right to offset such damages against any payments owed to Professional.

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

22. Non-Discrimination. In its performance of the Services, Professional shall adhere to City's EEO Policy which states, "The City is committed to ensuring that all qualified individuals have a full and fair opportunity to compete in all phase of the hiring process and promotion, and to enjoy the benefits of employment with the City. All employees and applicants shall receive equal consideration and treatment in employment without regard to race, color, religion, gender, sexual orientation, national origin, age, disability, genetic information, marital status, amnesty, or status as a covered veteran in accordance with applicable federal or state statutes, the City's ordinances, resolutions, rules or regulations."

In addition, all agreements with sub-contractors will include language as required by the Office of Federal Contract Compliance Programs (OFCCP) that requires sub-contractors to maintain equal employment opportunity policies, and, as necessary, affirmative action policies.

23. Arbitration of Disputes. All claims, disputes, and other matters in question between City and Professional arising out of or relating to this Agreement or the breach thereof, including claims of Professional for extra compensation for Services related to the Project, shall be decided by arbitration before a single arbitrator in accordance with the provisions of Sections 1281 to 1284.2 of the California Code of Civil Procedure (the "Arbitration Laws") unless the Parties mutually agree otherwise. The provisions of Section 1283.05 of the Arbitration Laws apply to any arbitration proceeding except as otherwise provided in this Agreement. The arbitrator shall have authority to decide all issues between the Parties including, but not limited to, claims for extras, delay and liquidated damages, if any, provided for in this Agreement, matters involving defects in the work product of the Professional, rights to payment, and whether the necessary procedures for arbitration have been followed. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Notice of the demand for arbitration shall be filed in writing with the other Party. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitation.

The Parties shall jointly appoint an arbitrator within fifteen (15) calendar days of the date of giving of the notice of the demand for arbitration. If the Parties are unable to jointly agree upon the appointment of an arbitrator within said fifteen (15) calendar day period, and do not agree in writing to extend said period for a fixed period, then either Party may seek to have the

arbitrator appointed by the Superior Court of Stanislaus County in accordance with the Arbitration Laws.

If any proceeding is brought to contest the right to arbitrate and it is determined that such right exists, the losing Party shall pay all costs and attorneys' fees incurred by the prevailing party.

In addition to the other rules of law which may be applicable to any arbitration hereunder, the following shall apply:

(a) Promptly upon the filing of the arbitration, each Party shall be required to set forth in writing and to serve upon each other Party a detailed statement of its contentions of fact and law.

(b) All parties to the arbitration shall be entitled to the discovery procedures as provided in Section 1283.05 of the California Code of Civil Procedure.

(c) The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein.

(d) These additional rules shall be implemented and applied by the arbitrator.

The costs of arbitration shall be borne by the Parties as determined by the arbitrator, but each Party shall bear its own attorney's fees associated with the dispute with the other Party and to the arbitration.

24. Insurance Coverage. During the Term, the Professional shall maintain in full force and effect policies of insurance set forth herein, which shall be placed with insurers with a current A M Best's rating of no less than A VII and will provide City with written proof of said insurance. Professional shall maintain coverage as follows:

24.1 General Liability. Professional shall carry general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or another form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate shall be Two Million Dollars (\$2,000,000.00).

24.2 Workers' Compensation Insurance and Employer's Liability. Professional shall carry workers' compensation insurance as required by the State of California under the Labor Code. Professional shall also carry employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) per accident, with a One Million Dollar (\$1,000,000.00) policy limit for bodily injury by disease, and a One Million Dollar (\$1,000,000.00) limit for each employee's bodily injury by disease.

24.3 Errors and Omissions Liability. Professional shall carry errors and omissions liability insurance in the amount of no less than Two Million Dollars (\$2,000,000.00) per claim or greater if appropriate for the Professional's profession. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to City, its elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents"); or the Professional shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claims administration and defense expenses.

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

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

25. Additional Insurance Requirements. Within five (5) days of the Effective Date, Professional shall provide City with certificates of insurance for all of the policies required under this Agreement ("Certificates"), excluding the required workers' compensation insurance. Such Certificates shall be kept current for the Term of the Agreement and Professional shall be responsible for providing updated copies and notifying City if a policy is cancelled, suspended, reduced, or voided. With the exception of the workers' compensation insurance, all of the insurance policies required in this Agreement shall: (a) provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days' prior written notice to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; (b) name City, and City's Agents as additional insureds with respect to liability arising out of Services, work or operations performed by or on behalf of Professional; (c) cover products and completed operations of Professional, premises owned, occupied, or used by the Professional, or automobiles owned, leased, or hired or borrowed by the Professional; contain no special limitations on the scope of protection afforded to City; (d) be primary with respect to any insurance or self-insurance programs covering City or City's Agents and any insurance or self-insurance maintained by City or City's Agents shall be in excess of Professional's insurance and shall not contribute to it; (e) contain standard separation of insured provisions; and (f) state that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to City.

26. Indemnification by Professional. To the fullest extent permitted by law (including, without limitation, California Civil Code sections 2782 and 2782.8), Professional shall defend with legal counsel reasonably acceptable to City, indemnify and hold harmless City and City's Agents

from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Professional or its subcontractors), expense and liability of every kind, nature and description that arise out of, pertain to, or relate to acts or omissions of Professional, or any direct or indirect subcontractor, employee, contractor, representative or agent of Professional, or anyone that Professional controls (collectively “Liabilities”). Such obligations to defend, hold harmless, and indemnify City and City’s Agents shall not apply to the extent that such Liabilities are caused in whole by the sole negligence, active negligence, or willful misconduct of City or City’s Agents, but shall apply to all other Liabilities. With respect to third party claims against the Professional, the Professional waives any and all rights of any type of express or implied indemnity against City and City’s Agents.

27. Liability of City. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

28. Independent Contractor. At all times during the Term, Professional shall be deemed to be an independent contractor and shall be wholly responsible for the manner in which Professional performs the Services required under this Agreement. Professional shall be liable for its acts and omissions and those of its employees, contractors, subcontractors, representatives, volunteers, and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between City and Professional. City shall have the right to control Professional only insofar as the result of Professional’s Services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Professional accomplishes Services rendered pursuant to this Agreement.

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

30. Payment of Taxes and Other Expenses. Payment of any taxes, including California sales and use taxes, levied upon this Agreement, the transaction, or the Services or goods delivered pursuant hereto, shall be the obligation of Professional.

31. Notices. All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid. Any Party hereto may at any time, by giving ten (10) days’ written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below.

If to City:

City of Turlock
Attn: Department Director

**156 S. Broadway, Suite XXX
Turlock, CA 95380-5461**

With courtesy copies to:

**Petrulakis Law & Advocacy, APC
Attn: George A. Petrulakis, Interim City Attorney
P.O. Box 92
Modesto, California 95380**

If to Professional:

Attn: _____

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

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

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

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

35. Modification. No alteration, amendment, modification, or termination of this Agreement shall be valid unless made in writing and executed by all of the Parties to this Agreement.

36. Waiver. No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

37. Assignment. No Party to this Agreement shall assign, transfer, or otherwise dispose of this Agreement, in whole or in part, to any individual, firm, or corporation without the prior written consent of the other Party. Subject to the forgoing provisions, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties hereto.

38. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by state or federal law in order to enter into the Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

39. Drafting and Ambiguities. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting Party does not apply in interpreting this Agreement.

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

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

42. Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

43. Counterparts. This Agreement may be executed simultaneously, and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

44. Audit. City shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Professional's charges to City under this Agreement.

45. Entire Agreement. This Agreement, together with its specific references, attachments, and exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof and supersedes any and all prior negotiations, understanding, and agreements with respect hereto, whether oral or written.

46. Supersedes Prior Agreement. It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, whether written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

47. Mandatory and Permissive. “Shall” and “will” and “agrees” are mandatory. “May” and “can” are permissive.

48. Successors and Assigns. All representations, covenants, and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of, any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

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

50. Attorney’s Fees and Costs. If any action at law or in equity not resolved pursuant to the “Arbitration of Disputes” section of this Agreement, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

51. Necessary Acts and Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

52. Time is of the Essence. Time is of the essence in this Agreement for each covenant and term of a condition herein.

[Signatures on Following Page]

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

PROFESSIONAL

_____, a

By: _____

Print Name: _____

Title: _____

Date _____

CITY

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

By: _____
City Manager

Date: _____

APPROVED AS TO SUFFICIENCY:

By: _____
Nathan Bray, P.E., Interim Director of
Development Services / City Engineer

APPROVED AS TO FORM:

By: _____
George A. Petrulakis, City Attorney

ATTEST:

By: _____
City Clerk