

City of Manteca



Request for Proposal (RFP)

Development of the 2020 Urban Water Management Plan

Issued: August 11, 2020

Due: August 31, 2020, 5:00 PM PST

**Request for Proposals (RFP) for
Development of the
2020 Urban Water Management Plan**

The City of Manteca, California (City) is requesting proposals from qualified consultants to develop the following:

- **2020 Urban Water Management Plan (UWMP):** The UWMP shall be a precise and systematic evaluation conducted in full compliance with the California Urban Water Management Planning Act, as codified in Section 10610 *et.seq.*, of the California Water Code (Act) and the Department of Water Resources' (DWR) *2020 Urban Water Management Plan Guidebook for Water Suppliers* ("DWR Guidebook"). The UWMP shall provide the City with analytical data and detailed recommendations in order to meet the above- mentioned regulations and statutory requirements.

1. Introduction

The City of Manteca is currently seeking a qualified consultant to complete the 2020 UWMP. The City is distributing this Request for Proposals (RFP) for qualified firms to update the City's UWMP.

2. Time is of the Essence

Time is of the essence with respect to this contract; please refer to **Table 1** for project milestones and deadlines. The successful proposer should be able to perform all required tasks set forth in the Scope of Services section. The 2020 UWMP will need to be adopted and submitted to DWR by July 1, 2021.

Table 1: Anticipated Project Schedule

Milestone	Date
RFP Issued	August 11, 2020
Deadline for Clarifications/Inquiries	August 19, 2020 - 5:00 PM PST
Deadline for Proposal Submittal	August 31, 2020 - 5:00 PM PST
Signed PSA (Exhibit A) and Certificate of Insurance (Exhibit B)	September 14, 2020

Table 1: Anticipated Project Schedule

Milestone	Date
Award of Contract (tentative)	October 20, 2020
Notice to Proceed (tentative)	October 21, 2020
Public Hearing for the UWMP is	February 16, 2021
2020 UWMP Due to City (tentative)*	April 12, 2021
Submittal of Adopted 2020 UWMP	July 1, 2021
*Deadlines allow time for City Council consideration and adoption.	

3. Submittal Deadline and Proposal Contents

Proposal packages are to be submitted to the City on or before 5:00 p.m. Pacific Standard Time (PST) on Monday August 31, 2020. Proposals received after the stated deadline will not be accepted. The time of delivery shall be definitively determined by the time-stamping clock located in the City of Manteca City Clerk’s Office, 1001 W. Center Street, Manteca, CA 95337. It is the proposer’s sole responsibility to see that its proposal was received in proper time, and proposers assume all risks arising out of the means of delivery. Any proposal received after the deadline will be returned to the proposer unopened. Proposal packages are to be submitted to:

City of Manteca
Attn: Elba Mijango, Assistant Engineer
1001 W. Center Street
Manteca, CA 95337

All responses must be completed as required, signed by an officer of the firm who is authorized to enter into a binding agreement with the City on behalf of the company, and must be received in the place and time designated above. Proposals (including both a Work Proposal and a Cost Proposal, as described below) are to be submitted in a USB drive. USB drive shall be placed in sealed envelope clearly marked with the consultant’s name, address, telephone number, and e-mail address. Envelope shall be clearly identified as the “**2020 UWMP Work Proposal**”. Proposals shall be concise, well-organized, and demonstrate the consultant’s qualifications and experience relating to the proposed project. At minimum, proposals shall include the following information:

A. Work Proposal – submit electronic copy

i. Cover Letter

- a. The consultant’s legal name, address, telephone number, e-mail address, and contact person for the remainder of the selection process;

- b. Any qualifying statements or comments regarding the consultant's proposal, including proof of consultant's capabilities to meet requirements for completion of the 2020 UWMP; and
- c. Statement indicating the validity of the proposal for a minimum period of 90 calendar days subsequent to the proposal due date.
- d. The proposals shall be in PDF file format with a maximum of fifteen (15) pages including the consultants' schedule of charges.

ii. Statement of Qualifications

- a. Brief description of the consultant's firm, including the year firm was established, the type of organization (partnership, corporation, etc.) and a listing of the proposed project personnel, including personnel experiences and resumes for prime consultants and sub-consultants. Emphasis should be given to highlighting work completed for comparable municipalities and water districts; and
- b. Consultant and sub-consultant experience with preparation of an UWMP, including names and current telephone numbers and e-mail addresses of references for existing and past municipal and water district clients.

iii. Project Understanding and Approach

- a. Description of consultants' understanding of the Scope of Services and how consultant will approach work;
- b. Proposed staffing plan/organizational chart indicating anticipated work hours per week by classification both on and off-site. This should convey how consultant will provide public utility engineering and financial services in most efficient, cost effective manner. Innovative staffing plans are encouraged based on best management practices and/or methods utilized successfully by the firm in other municipalities; and
- c. Other information that will assist City in selecting the most qualified consultant.

iv. Objections to Professional Services Agreement

Objections shall be submitted in writing with justification clearly stated. Any consultant with objections to terms contained in the City's Professional Services Agreement (see Exhibit A) must advise the City of such objections and requested modifications as part of its Technical Proposal. Failure of a proposer to accept the terms of the City's Professional Services Agreement may result in the rejection of the proposal. It shall be the responsibility of the prospective consultants to review all sections and exhibits of the Professional Services Agreement, including insurance

requirements (Exhibit B). If no objections are received, the City will assume the proposer is able to and will enter into the Professional Services Agreement and fulfill the terms and requirements set therein. The City may recover any damages accruing to the City as a result of the successful consultant's failure or refusal to execute the City's Professional Services Agreement.

B. Cost Proposal

The firm should submit a detailed cost proposal for all services and materials anticipated in completing the services/work. This should include the classification and hourly rate of all employees who would be assigned to the contract. Innovation is encouraged to provide the City with comprehensive services in the most efficient, cost effective manner.

4. Scope of Services

The Scope of Services is comprised of the following tasks:

Task 1 - Kick-Off Meeting

The consultant shall attend a project kick-off conference call with the use of screen sharing capability with City staff to discuss project parameters, scheduling constraints, and other relevant information regarding services required by this RFP to create the 2020 UWMP. An overall project schedule shall be reviewed, revised, and updated by the consultant.

If in-person meetings or gatherings are needed, considerations for enhancing protection of individuals and preventing spread of coronavirus disease 2019 (COVID-19) will need to be implemented. City staff and consultant will coordinate and determine, whether and how to implement these considerations, making adjustments to meet the unique needs and circumstances of the local community. ZOOM or similar remote meeting applications may be used to conduct meetings will be required if in-person meetings or gatherings are not recommended given the COVID-19 pandemic. City staff and consultant will coordinate the best use of remote meeting applications to encourage public participation.

The consultant shall prepare a detailed schedule of the project for a completion date. The consultant is responsible for reviewing and becoming familiar with all pertinent data and requirements for completion of the UWMP.

Task 2 - Data Analysis and Evaluation

2020 UWMP

The consultant will provide data review and analysis, development of demand projections and analysis of demand management measures. Consultant shall develop the UWMP

according to the DWR Guidebook, and California Water Code. The UWMP should also comply with and address all relevant updated statutes and mandates including that the UWMPs be submitted to DWR.

As key sections of the UWMP are developed, namely the demand projection and water shortage contingency planning components, the consultant shall be required to make presentations to the City Council and the public at scheduled Council meetings in conjunction with City staff. The purpose of these presentations will be to solicit City Council and public input well in advance of developing a final draft UWMP. The consultant shall also assist the City with making the required notifications to other local agencies and public hearing notifications as specified by the Act.

- Water Shortage Contingency Plan (WSCP) - the WSCP will be a separate requirement per the new State requirements. The purpose of the WSCP is to prepare for drought, water supply reductions, failure of a water distribution system, other emergencies, or regulatory statutes, rules, regulations or policies reducing water supplies by state and federal agencies. The WSCP must demonstrate the ability of the City to meet demands under a supply shortage of greater than 50 percent. Emphasis is placed on protection of public health, sanitation, fire protection, and general public welfare.
- Starting in 2022, each water supplier will have to submit reports to DWR annually on their water supply and demand for that year in an annual water budget. The 2020 UWMP must document the information each water supplier will use to make the assessment and the method of preparing the assessment. City staff and consultant will work to create a process of assessment that will meet requirements to comply with yearly submittals.

Task 3- Information and Data Collection

The necessary data and information needed to complete project work may include but not limited to the following:

- Demographic data (e.g. population, housing unit and employment projections, etc.) from General Plans for the adjacent cities and the 2010 U.S. Census, etc.;
- Historical and current water production data and consumption data by user class (single- family residential, multifamily residential, commercial, institutional, dedicated irrigation, fire and other). Trends in water use reduction at the City since 2000 should be analyzed and factored into the demand projection update;
- Data to estimate impacts of the current and future CALGreen Codes and the City's Water Use Efficiency Standards, as well as the impact of on-going behavioral modification/social forming programs;
- Historical and current water savings estimates from on-going City conservation

programs;

- Economic information including historical, current and projected rates in regards to elasticity impacts; and
- Any other information the Consultant feels is necessary or beneficial for completion of the UWMP.

Task 4- Water Demand Projection

Using the above information, the consultant shall develop water demand projections in five-year increments from 2020 through 2040.

Task 5- City Council Presentations & Meetings with City Staff

In conjunction with City staff, the consultant shall present the draft water demand projections to the City Council and the public at up to two (2) City Council meetings. Based on the input received, the consultant shall make any necessary adjustments to the demand projections and finalize the corresponding chapters of the UWMP. The Consultant shall provide technical expertise and answer questions posed at the City Council meetings, prepare and review draft and final agenda reports, and assist with creation of City Council presentations.

Task 6- First Draft Report

In conjunction with staff, the consultant shall present the first draft report to the City Council and the public. Subsequent to the presentation, consultant shall make any necessary adjustments/revisions and finalize the draft report.

Task 7- Second Draft Report

The consultant shall identify any remaining data needs and draft any remaining required chapters of the UWMP, any supporting sections (e.g., Table of Contents, List of Tables and Figures, Acronyms and Abbreviations, References, Appendices, etc.), as well as the optional section on climate change impacts to supply, and the checklist developed by DWR to assist DWR with its review. *(Note: City staff may take remaining chapters to the City Council for feedback as they are developed. However, it is not anticipated that the consultant will need to attend.)*

The consultant shall send electronic copies of the draft UWMP (or notify of the UWMPs availability on-line) to 5 local water agencies and 7 other public agencies designated by City staff, and provide advance notification prior to the public hearing. Consultant must inform City staff of all requirements, time frames, and costs for obtaining permits from the required

regulatory agencies (if any).

The consultant shall present a final draft of the second draft to the City Council and the public for review and make revisions to the UWMP.

Task 8 – Final Plan

In conjunction with City staff, the consultant shall present the final draft to the Council and the public at a public hearing. After the close of the public hearing, the City Council will consider final adoption of the UWMP.

Task 9 – Submittals

Following adoption of the UWMP, the consultant shall submit the plan electronically as required by the DWR. ***Please note submissions are due by July 1, 2021, and the City would like to make a good faith effort to submit the Plan to the DWR as soon as possible.***

Task 10- Deliverables

The Consultant shall provide to the City the following products and services as part of this project and any others the consultant deems necessary to provide a complete the UWMP.

A. Draft UWMP

- a. One (1) PDF copy;
- b. One (1) electronic version of the complete document in Word 2010 file format.

B. Final UWMP

- a. One (1) PDF copy;
- b. One (1) electronic version of the complete document in Word 2010 file format.
- c. The consultant shall provide expertise, and review agenda reports that will be put together by City staff, create City Council presentations, and to be available to support staff and answer questions, for up to two (2) City of Manteca Council meetings.
- d. The consultant shall coordinate UWMP adoption, assuring notification requirements for public hearing; and submittal of draft UWMP to all appropriate State, local agencies and stakeholders,
- e. The consultant shall coordinate with City and County agencies to receive the Final UWMP within 30 days of adoption.
- f. The consultant shall coordinate the posting notice and submittal of the Final UWMP to DWR.

C. Meeting Agendas, meeting materials, and meeting notes for meetings/workshops in electronic format: PDF and MS Word. Consultant is required to use ZOOM or similar remote meeting applications, with screen sharing capabilities, to hold remote meetings and/or public webinars in light of the COVID-19 pandemic. The consultant shall be experienced in using the remote meeting application of choice to ensure meetings and workshops start on time, are efficiently managed, and held within the allotted timeframe.

6. Inquiries and Addenda

For inquiries regarding this RFP, please contact Elba Mijango, Assistant Engineer via electronic mail at emijango@ci.manteca.ca.us no later than 5:00 PM on Tuesday, August 18, 2020. Inquiries received after that date will be disregarded. Please include the following in the subject line of the email: "Inquiry Re: 2020 UWMP Proposal." Telephonic inquiries will not be taken.

The City will issue any revisions to this RFP as addenda. The City will distribute addenda to all potential proposers. Proposers are responsible for receipt of all addenda. To this end, each proposer should contact the City to verify that he or she has received all addenda issued, if any. The City's issuance of a written addendum is the only official method whereby the City will interpret, clarify or provide additional information concerning this RFP. No oral revisions to any provision in this RFP shall be binding.

7. Evaluation Procedure

City staff will evaluate each proposal for completeness and content. Each proposal is to be evaluated based upon the relevant qualifications and experience of the consultant. The proposal review will focus on the following criteria:

A. Organization

Does the firm offer the breadth and quality of services required for the services listed in the Scope of Services? Does the firm's organizational structure show sufficient depth/capacity for its present and additional workload?

B. Project understanding/project approach

The firm's proposal adequately demonstrates an understanding and experience in preparing UWMPs, which is documented in its proposal. In addition, the consultant has experience in conducting data analysis and calculations required by the DWR Guidebook. This understanding can be demonstrated in various manners, including but not limited to the firm's successful completion of UWMPs for other cities in accordance with the DWR Guidebook and identification of critical issues to the project and methods to address those issues to ensure timely and on budget completion of the project.

C. Experience

The firm's expertise and professional qualifications with similar work. Qualifications of the firm and individuals assigned to perform the work.

D. Project Schedule

The thoroughness of the project schedule; the firm's ability to complete the project within the selected timeframe.

8. Professional Services Agreement

The City will identify the firm that best meets the needs of the City and enter contract negotiations with that highest ranked firm. Should the City fail to reach agreement with the top ranked firm, the City may enter negotiations with the next highest rated firm and so on. City Staff will make a recommendation to the City Council for the award of the Professional Services Agreement to the firm that best furthers the City's objectives.

The successful consultant will be expected to execute the attached Professional Services Agreement (Exhibit A) per the date listed in **Table 1**.

9. Insurance Requirements

Additionally, the successful consultant shall also secure all insurance required (Exhibit B) under the Professional Services Agreement, and provide any necessary documentation to the City, per the date listed in **Table 1**.

10. Acceptance or Rejection of Proposal

The City reserves the right to accept or reject any and all proposals. The City also reserves the right to waive any informality or irregularity in any proposal or in the bidding as deemed to be in its best interest. Additionally, the City may, for any reason, decide not to award an agreement as a result of this RFP or cancel the RFP process. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by the submission of the proposal. The City reserves the right to negotiate project deliverables and associated costs.

11. Equal Opportunity Clause

Contractors shall ensure against discrimination in employment practices on the basis of race,

color, national origin, ancestry, sex or religion will be required. The City hereby ensures that minority business enterprises will be afforded full opportunity to submit proposals in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, sex, or religion in any consideration leading to the award of contract.

12. Equal Opportunity Employment Compliance

Proposer certifies that it has sought out and considered minority business enterprises for those portions of the work to be subcontracted, and has fully documented such actions that said documentation is open to inspection, and that said action will remain in effect for the life of any contract awarded hereunder. Furthermore, Proposer certifies that all steps will be taken to meet all equal employment opportunity requirements of the contract documents. Proposer certifies that in all previous contracts or subcontracts, all reports which may have been due under the requirements of any agency, State, or Federal equal employment opportunity orders have been satisfactorily filed, and that no such reports are currently outstanding.

13. Legal Responsibilities

All proposals must be submitted, filed, made, and executed in accordance with State and Federal laws relating to proposals for contracts of this nature whether the same or expressly referred to herein or not. Any company submitting a proposal will by such action thereby agree to each and all of the terms, conditions, provision, and requirements set forth, contemplated, and referred to in the RFP, and other contract documents, and to full compliance therewith.

14. Discrepancies and Misunderstandings

Contractors and consultants must satisfy themselves by personal examination of the work site, specifications, and other contract documents and by any other means as they may believe necessary, as to the actual physical conditions, requirements and difficulties under which the work must be performed. No contractor or consultant will at any time after submission of a proposal make any claim or assertion that there was any misunderstanding or lack of information regarding the nature or amount of work necessary for the satisfactory completion of the job. Any errors, omissions, or discrepancies called to the attention of the City will be clarified by the City in writing to all proposers prior to the submission of proposals.

15. Proposer Interested in More than One Proposal

No person, firm, or corporation will be allowed to make or file, or be interested in more than one proposal for the same work unless alternate bids are specifically called for. No proposal will be accepted from a consultant who has not been licensed in accordance with the provisions of the State Business and Professional Code.

16. Non-Collusion Affidavit

Proposer declares that the only persons or parties interested in this proposal as principals are those named herein; that no officer, agent, or employee of the City is personally interested, directly or indirectly, in this proposal; that this proposal is made without connection to any other individual, firm, or corporation making a bid for the same work and that this proposal is in all respects fair and without collusion or fraud.

17. Exhibits:

Exhibit A – Professional Services Agreement

Exhibit B – Insurance Requirements

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into this ____ day of _____, 20____, by and between the **CITY OF MANTECA**, a public body, corporate and politic ("City") and _____, a _____ corporation ("**Consultant**").

RECITALS

- A. **Consultant** is specially trained, experienced, and competent to perform the professional services required by this Agreement.
- B. **Consultant** possesses the skill, experience, ability, background, certification, and knowledge to provide the services described in this Agreement on the terms and conditions specified herein.
- C. City desires to retain **Consultant** to render the professional services set forth in this Agreement.

AGREEMENT

- 1. Scope of Services. **Consultant** shall perform the _____ services described in the attached Attachment 1 that is incorporated by this reference, and pursuant to the Proposal submitted by **Consultant** dated _____, and attached hereto as Attachment 2. **Consultant** shall provide these services at the time, place, and in the manner specified in Attachment 1, subject to the direction of the City through its staff that may be provided from time to time. Performance of the _____ services is sometimes referred to herein as “the Project.”
- 2. Work Through City Staff. **Consultant** shall perform its services pursuant to this Agreement solely through City staff. No communications, information or documentations shall be made directly to any applicant to the City without the prior written consent of the City. This shall not apply to the sole request of information or clarification of information by **Consultant** from the applicant. All requests shall be noted to City in an expeditious manner.
- 3. Time of Performance. **Consultant’s** services will commence upon execution of this Agreement and shall be completed in accordance with the Schedule of Activities, attached hereto as Attachment 3. All work shall be completed no later than _____. Failure to submit work products in accordance with the Schedule of Activities may result in the City withholding progress payments. Repeated failure to complete work products in accordance with the Schedule of Activities may result in a reduction of the total compensation provided for in Section 4 herein.
- 4. Compensation. Without additional authorization from the City, compensation to be paid to **Consultant** shall not exceed _____ DOLLARS (\$_____). Payment by City under this Agreement shall not be deemed a waiver of any defects, even if those defects were known to the City at the time of payment.

5. Method of Payment. **Consultant** shall submit monthly billings to City specifying and describing the work performed during the preceding month. **Consultant's** bills shall include a brief description of the services performed, the date the services were performed, the number of hours expended and by whom, and a description of any reimbursable expenditures. Full payment of each task will only be made at such time as each task is completed.

City shall pay **Consultant** no later than 30 days after approval of the monthly invoice by City staff. Payments may be delayed by City if **Consultant** fails to provide services in accordance with the Schedule of Activities, unless the City has provided prior written consent to any delay in the schedule.

6. Extra Work. At any time during the term of this Agreement, City may request that **Consultant** perform Extra Work. As used herein, the term "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. **Consultant** shall not perform, nor be compensated for, Extra Work without the City's prior written authorization.

7. Termination. This Agreement may be terminated by the City immediately for cause, or by either party without cause upon 15 days' prior written notice of termination. Upon termination, **Consultant** shall be entitled to compensation for services performed up to the effective date of termination upon submittal of an invoice for same.

8. Ownership of Documents; Confidentiality.

A. All plans, studies, documents, and other writings prepared by and for **Consultant**, its officers, employees, agents, and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of City upon payment to **Consultant** for such work. City shall have the sole right to use such materials in its discretion without further compensation to **Consultant** or to any other party. **Consultant** shall, at **Consultant's** expense, provide such reports, plans, studies, documents and other writings to City upon written request by City. **Consultant** shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose.

B. All memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data, either created by or provided to **Consultant** in connection with the performance of this Agreement, shall be held confidential by **Consultant**. These materials shall not, without the City's prior written consent, be used by **Consultant** for any purposes other than the performance of the services under this Agreement. Nor shall these materials be disclosed to any person or entity not connected with the performance of services under this Agreement. Nothing furnished to **Consultant** that is otherwise known to **Consultant**, or is generally known, or has become known to the related profession shall be deemed confidential. **Consultant** shall not use City's name or insignia, photographs relating to the Project for which **Consultant's** services are rendered, or any publicity pertaining to the **Consultant's** services under this Agreement in any magazine, trade paper, newspaper, television or radio production, or other similar medium without the City's prior written consent.

9. Consultant's Books and Records.

A. **Consultant** shall maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City, for a minimum period of three years, or for any longer period required by law, from the date of final payment to **Consultant** under this Agreement.

B. **Consultant** shall maintain all records that document performance under this Agreement for a minimum period of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at **Consultant's** address specified in Section 16 of this Agreement.

D. Where City has reason to believe that records or documents may be lost or discarded due to the dissolution or termination of **Consultant's** business, City may, by written request, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to these records and documents shall be granted to any party authorized by **Consultant, Consultant's** representatives, or **Consultant's** successor-in-interest.

10. Independent Contractor. In the performance of the work and services required by this Agreement, **Consultant** shall act as and be an independent contractor and not an agent, or employee of the City. **Consultant** shall obtain no rights to retirement or other benefits that accrue to City's employees, and **Consultant** expressly waives any claim it may have to any such rights.

11. Interest of **Consultant**.

A. **Consultant** represents that neither it nor any employee has any investment or interest in real property, and shall not acquire any such interest, direct or indirect, within the area covered by this Agreement, or any other source of income, interest in real property, or investment that would be affected in any manner or degree by the performance of **Consultant's** services hereunder. **Consultant** further represents that, in the performance of its duties hereunder, no person having any such interest shall perform any services under this Agreement.

B. **Consultant** is not a designated employee within the meaning of the Political Reform Act because **Consultant**:

- (1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City, or of any City official, other than normal Agreement monitoring; and

- (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (FPPC Reg. 18700(a)(2).)

12. Professional Ability of Consultant.

A. City is relying upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

B. The primary provider of the services required by this Agreement shall be _____. A list of other individuals assigned to the Project will be provided to City for its review and approval, and these individuals shall not be replaced without the City's prior written consent.

13. Compliance with Laws. Consultant shall use the customary standard of care in its profession to comply with all applicable federal, state, and local statutes, codes, ordinances, and regulations.

14. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance, and approvals that are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance, and approvals that are legally required of Consultant to practice its profession.

15. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, and hold harmless the City, its officers, officials, agents, employees, and volunteers, from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith), arising out of Consultant's performance of this Agreement, or Consultant's failure to comply with any of its obligations contained in this Agreement; excluding, however, any claim arising out of the active negligence or willful misconduct of the City, its officers, agents, employees, or volunteers.

16. Insurance Requirements.

A. Job specific insurance requirements can be found on the attached Attachment 4. Other insurance provisions can be found below:

B. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing an A.M. Best's rating of no less than A:VII and shall be endorsed with language substantially as follows:

- (1) The City, its elected and appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with

respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work.

- (2) The policy shall be considered primary insurance as respects the City, its elected and appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.
- (3) The insurance shall apply to each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- (4) The insurer waives all rights of subrogation against the City, its elected and appointed officers, officials, employees, and agents.
- (5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officers, officials, employees, agents, or volunteers.
- (6) The insurance provided by the policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 days written notice has been received by the City.
- (7) The City will not accept any endorsements that were issued in 2004. Acceptable endorsement forms are CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, **Consultant** shall demonstrate financial capability for payment of those deductibles or self-insured retentions.

D. Certificates of Insurance. **Consultant** shall provide to City certificates of insurance with original endorsements as evidence of the required insurance coverage. Certificates of insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

17. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Manteca
 1001 W. Center Street
 Manteca, CA 95337
 Attention: _____

If to **Consultant**: _____

Attention: _____

18. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and **Consultant**. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in their entirety by this Agreement.

19. Amendments. This Agreement may be amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience, and competence of **Consultant**. Assignments of any or all rights, duties, or obligations of the **Consultant** under this Agreement will be permitted only with the express written consent of the City. **Consultant** shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, **Consultant** shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay any monies due to any such subcontractor other than as may be required by law.

21. Waiver. Waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach or default of the same or any other provision under this Agreement.

22. Severability. If any provision of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

23. Controlling Law; Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California, and any legal action relating to this Agreement shall take place in the Superior Court, County of San Joaquin.

24. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

25. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five

mediators selected by JAMS, and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

26. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy has been signed by both parties.

27. Authority to Enter Agreement. **Consultant** warrants that it has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants to the other that the signatories to this Agreement have the legal power, right, and authority to enter into this Agreement and to bind each party.

28. Prohibited Interests.

A. **Consultant** warrants that it has not employed or retained any person, other than a bona fide employee working solely for **Consultant**, to solicit or secure this Agreement. Further, **Consultant** warrants that it has neither paid nor agreed to pay any person, other than a bona fide employee working solely for **Consultant**, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For any breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

B. For the term of this Agreement, no member, officer, or employee of City, during the period of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

29. Equal Opportunity Employment. **Consultant** represents that it is an equal opportunity employer, and it shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

30. Precedence. In case of conflict between **Consultant's** Proposal dated ____ and this Agreement (which includes Attachment 1 and Attachment 3) this Agreement and its attachments shall take precedence over **Consultant's** proposal.

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TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth in the introductory paragraph on page 1 above.

CITY OF MANTECA:

CONSULTANT:

Miranda Lutzow,
City Manager

*(Type name of Consultant/form of organization)**

ATTEST:

By: _____
(Signature)

John Tresidder,
Director of Legislative Services

(Type name and title)

COUNTERSIGNED:

By: _____
(Signature)

Lisa Blackmon,
Acting Director of Finance

(Type name and title)

COUNTERSIGNED:

Address: _____

Dawn Lichti,
Acting Administrative Services Director

Telephone: _____

APPROVED AS TO FORM:

John Brinton,
City Attorney

ATTACHMENT 1
REQUEST FOR PROPOSAL

ATTACHMENT 2
CONSULTANT'S PROPOSAL

ATTACHMENT 3
SCHEDULE OF ACTIVITIES

EXHIBIT B
INSURANCE REQUIREMENTS

EXHIBIT 1

Insurance Requirements for Professional Services

INSURANCE REQUIREMENTS

Consultants shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontractors.

Minimum Limits of Insurance: Coverage shall be at least as broad as:

Commercial General Liability

- Commercial General Liability Insurance with \$2,000,000 minimum limit per occurrence.
- If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Commercial General Liability Additional Insured Endorsement naming the following as insured **on 2001 or earlier issued endorsement forms:**
"City of Manteca, its officers, officials, employees, agents, and volunteers".

Automobile Liability

If the vehicles are brought onto city facilities, covering any auto, or of Contractor has no owned autos, hired, and non-owned autos, the Contractor shall maintain automobile liability with limits no less than:

- Automobile Liability Insurance with \$1,000,000 minimum limit per accident for bodily injury and property damage.
- Automobile Liability Additional Insured Endorsement naming the following as additional insured:
"City of Manteca, its officers, officials, employees, agents, and volunteers".

Worker's Compensation

As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Professional Liability (Errors and Omissions)

Insurance appropriate to the Contractor's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Manteca, its officers, officials, employees, agents and volunteers are to be covered as insured's as respect to: liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 and CG 20 37 if completed operations coverage is required.
2. For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers, shall be excess of the Consultant's insurance and shall not contribute with it.

3. The applicant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Manteca.

Verification of Coverage

Consultant shall furnish the 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 the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Manteca reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Manteca

Waiver of Subrogation

Consultant hereby grants to The City of Manteca a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that The City of Manteca is an additional insured on insurance required from subcontractors.

SPECIAL RISKS OR CIRCUMSTANCES

The City of Manteca reserves the right to modify these requirements based on the nature of the risk, prior events, insurance coverage, or other special circumstances.