

CITY OF MANTECA

REQUEST FOR PROPOSAL

FOR THE

2019 GOVERNMENT BUILDING FACILITY FEE UPDATE



Issued: June 26, 2019
Due: July 25, 2019

**REQUEST FOR PROPOSAL
FOR
2019 GOVERNMENT BUILDING FACILITY FEE UPDATE**

I. INTRODUCTION

The City of Manteca (City) is soliciting proposals from firms for Consulting Services. The purpose of this Request for Proposal (RFP) is to select a qualified consultant to assist the City of Manteca in updating the City's Government Building Facility Fee.

II. PROJECT DESCRIPTION

The City of Manteca (City) developed the Government Building Facility Fee (GBFF) as the implementing program for specific government facilities. Originally adopted in 1986, and last updated in 2006, the purpose of the GBFF is to ensure that certain public facilities needed for growth are adequate as the City grows and develops in accordance with its General Plan.

Another purpose of the GBFF is to ensure that infrastructure is constructed in a timely manner and financed in a way that equitably divides financial responsibility in proportion to the demands placed on the new facilities.

The City now desires to perform an update for government building projects and fees that were adopted in 2006. The type and scope of facilities to be included as fee program components will be finalized by City Council direction expected to be received through a visioning workshop with the City Council conducted shortly after the selected consultant is under contract; however, it is anticipated that the following components may be included in some form:

- Public Safety Facilities (e.g., Police/Fire facilities)
- City Service Center (e.g., City Hall and other facilities related to provision of City services)
- Library

III. PROJECT SERVICES

An update of the GBFF shall include, at a minimum, the following tasks:

1. Preliminary Work
 - a. Meet with City to refine work plan details, tasks for and deliverables by the consultant and the City and their timing, and overall project schedule.
 - b. Review the 2006 GBFF Nexus Study and propose any recommended changes and present a rationale for such changes..
 - c. Identify, through a City Council workshop, projects that should be included in the GBFF.
2. Determine Land Uses/Growth Forecasts

- a. Develop accurate land use data and growth forecasts for the City using the General Plan, along with other related supporting documents and information.
 - b. Refine City population and employment forecasts to calculate the new development to which improvements costs will be attributable.
 - c. Review regulatory impacts on infrastructure requirements
3. Cost Allocation
- a. Determine Costs Attributable to Future Development
 - i. Develop a methodology for each fee component to identify existing deficiencies of current facilities and improvements and determine the portion of estimated costs that is attributable to new development versus the portion attributable to existing deficiencies.
 - ii. Consultant may suggest financing strategies, to identify opportunities for additional revenue to accommodate citywide growth.
 - b. Evaluate Current Allocation Factors and Recommended Alternate Methods
 - i. Review and evaluate the allocation factors used for the existing GBFF and provide recommended alternatives.
 - ii. Review strategies for impact fees implement in neighboring communities and make recommendations where applicable.
4. Develop Nexus and Calculate Impact Fees
- a. Develop a model to create the nexus between unfunded improvement costs and projected future development based upon the allocation factors identified in Task 3.
 - b. Model should be designed to easily allow City staff or policymakers to refine the included facilities or allocation factors at any point during the public outreach and approval process.
 - c. Model should take into account existing deficiencies and any existing funding sources.
5. Provide Implementation and Administration Recommendations
- a. Consultant shall include in the nexus study report detailed methodologies for the ongoing administration of the program including annual fee adjustments, periodic reviews of the program, and program implementation.
 - b. Consultant will review all calculations and fee study methodology with City staff to allow for future fee updates.
6. Report Preparation and Presentation
- a. Consultant shall draft a report detailing the improvement costs, cost allocation methodology, nexus relationship, and the resulting recommended development impact fees, along with any other information and/or analysis required.
7. Public Outreach
- a. Consultant is expected to attend and present findings at a minimum of one (1) public meeting.

- b. Consultant is expected to conduct at a minimum of one (1) meeting with the BIA of the Greater Valley to solicit feedback.

The above list of tasks is not intended to be inclusive but to highlight major items that are anticipated to be included in the 2019 PFIP Update.

IV. MATERIALS FURNISHED BY CITY

The City will post the following documents to the City's website during the RFP period:

1. 2006 Public Government Building Facilities Fee Nexus Study
2. Manteca General Plan Update, GPAC Preferred Land Use Map, February 2019 (currently available on the Community Development webpage – community development / planning development / general plan update / documents)

All software, data, reports, surveys, drawings, and other documents furnished to the Consultant by City for the Consultant's use in the performance of services shall be made available only for use in performing the assignment and shall remain the property of the City. Work product resulting from this 2019 GBFF Update effort shall be owned by the City.

V. CONTRACT TYPE

The Professional Services Agreement for this project is planned to be a time and materials contract, with a total not to exceed amount. Any services provided by the Consultant, which are not specifically covered by the Agreement, will not be reimbursed unless previously approved in writing by the City. It is the Consultant's responsibility to recognize and notify the City when services not covered under the Contract have been requested or may become necessary.

VI. MINORITY BUSINESS OPPORTUNITIES

The City encourages participation from Disadvantaged Business Enterprises (DBEs), Underutilized Disadvantaged Business Enterprises (UDBEs), Women-owned Business Enterprises (WBEs), and Disabled Veterans Business Enterprises (DVBEs). However, there is no specified DBE/UDBE/DVBE/WBE contract goal for this project.

VII. QUALIFICATIONS/PROPOSAL INSTRUCTIONS

Proposals will be accepted until 3:00 p.m., Pacific Time, on Thursday, July 25, 2019. Three hardbound (3) copies of the Proposal, and 1 (one) electronic copy in .pdf format on Compact Disk (CD) or Flash Drive are to be submitted to:

Johanna Ferriera
Management Analyst
City of Manteca
1001 W. Center Street
Manteca, CA 95337

All Proposals are to be submitted in a sealed package, clearly marked with "Proposal - 2019 GBFF Update." Fees for professional services are to be submitted in a sealed envelope

separate from the Proposal, but attached, clearly marked with “Fees for Professional Services, 2019 GBFF Update.”

The City reserves the right to accept or reject late proposals at its sole discretion.

The City does not recognize the U.S. Postal Service, or any other organization, as their agent for the purposes of accepting Proposals. All Proposals received after the deadline may be rejected and returned unopened. No extensions will be granted.

Proposers shall include the following information.

1. COVER LETTER & MEMORANDA

Provide the following information:

- A statement requesting the City to evaluate the submitted proposal based upon the tasks identified in the Work Plan for the 2019 PFIP Update.
- Identification of all proposed sub-consultants including description of the work to be performed by the prime firm and each sub-consultant firm proposed for the project.
- Indicate the location of the office from which the work will be performed.
- Acknowledgement of any and all addenda.
- A signed statement by an officer of the firm attesting that all information in the proposal is true and correct.

2. CONTRACT TERMINATION CIRCUMSTANCES

Provide a response to the following question: Has your firm ever been terminated from a contract?

If Consultant has been terminated from a contract, describe the facts and circumstances in detail, on a separate sheet.

3. TECHNICAL CONTENT

The technical content of the Proposal shall include the following:

A. Qualifications, Related Experience, and References

This section of the Proposal should establish the ability of the proposed team to satisfactorily perform the required work by reasons of: experience in performing work of the same or similar nature; demonstrated experience working with the City directly involved in this project (or similar districts and cities); staffing capability; work load; record of attaining schedules on similar projects; and supportive client references. Specifically:

1. Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; number of employees.

2. Provide a general description of the firm's current financial condition; identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede ability to complete the project.
3. Describe the firm's experience in performing work of a similar nature to that solicited in this RFP, and the participation in such work by the key personnel proposed for assignment to this project. Highlight the firm's experience and key personnel's experience with impact fee studies.
4. Provide a brief description of the project team, key staff and subconsultants, and discussion of their relevant experience as it relates to this project.
5. Provide a minimum of three (3) references who can discuss the firm and project team's qualifications to deliver the project Work Plan tasks. The references shall be knowledgeable and able to discuss the qualifications of the firm and project team correlating with the work experience cited. Furnish the name, title, address and telephone number of the person(s) at the client's organization who are most knowledgeable about the work performed.
6. Provide a list of past joint-work by the offeror and each sub-consultant, if applicable. The list should clearly identify the project and provide a summary of the roles and responsibilities of each party.

B. Statement of Understanding and Approach

In this section, provide a description of the methodology the firm will use to complete the Work Plan tasks identified in this RFP. Discuss and describe the firm's experience working on similar projects and provide a statement of the services your firm feels differentiates your firm from others. Additionally, as a part of the summary, identify the responsibilities of the City and the responsibilities of the firm.

C. Proposed Team, Staffing and Project Organization

This section of the Proposal should discuss and identify key personnel, qualifications and assignments, specifically:

1. Furnish brief resumes [not more than two (2) pages each] for the proposed Project Manager and other key personnel (resumes are included in the total page count).
2. Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this Project, current assignment, level of commitment to that assignment, availability for this assignment, and how long each person has been with the firm.
3. Include a Project organization chart that clearly delineates communication / reporting relationships among the Project staff, including subconsultants.
4. Include a statement that key personnel will be available to the extent proposed for the duration of the Project, acknowledging that no person designated as "key" to the Project shall be removed or replaced without the prior written concurrence of the City.

D. Work Plan

A final Scope of Services will be negotiated with the selected consultant. Consultant shall provide a proposed Scope of Services and narrative to illustrate their understanding of the specific project needs, requirements, and potential risks.

The Scope of Services shall include thorough details with specific task descriptions to demonstrate that the proposer has considered all aspects of the proposal.

The Scope of Services should include detailed discussions of the means and methods for achieving the following objectives and requirements below:

1. Review and update the GBFF fees, based on a nexus to the necessary improvements, to be cost-competitive within the region.
2. Review and update the GBFF fee program to be flexible and responsive to changing market conditions.
3. AB 1600 sets forth the procedural requirements for establishing and collecting development impact fees. These procedures require that “a reasonable relationship,” or nexus, must exist between a governmental exaction and the purpose of the condition. The GBFF Update shall include Nexus Study documents that demonstrate a reasonable relationship exists between the development impact fee to be levied on each land use category and the cost of proposed facility improvements.

Nexus Study requirements include:

- Identifying the purpose of the fee.
 - Identifying how the fee is to be used.
 - Determining that a reasonable relationship exists between the fee’s use and the type of development project on which the fee is imposed.
 - Determining how a reasonable relationship exists between the need for the public facility and the type of development project on which the fee is imposed.
 - Demonstrating a reasonable relationship between the amount of the fee and the cost of the public facility attributable to the development on which the fee is imposed.
4. Preparation and distribution of informational material necessary to educate the Building Industry Association, the Planning Commission and the City Council regarding the project.
 5. At a minimum, attendance at one (1) joint City Council/Planning Commission visioning workshop, two (2) meetings with the Building Industry Association, one (1) public outreach meeting, one (1) Planning Commission meeting and one (1) City Council meeting.

E. Deliverables

Provide a list of deliverables that the proposer plans to provide to the City upon completion of services. List should include at minimum the following:

1. Four (4) hard copies of bound report documents
2. PDF version of report documents
3. PowerPoint presentation for Planning Commission and City Council

F. Appendices

Information considered pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Consultants are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials; appendices should be relevant and brief.

4. CONTRACT COMMENTS

Provide a written discussion of any proposed deviations to the included Professional Services Agreement. Please note that the City reserves the right to disqualify any Consultant that does not provide a complete written discussion of its contractual objections or to disqualify any Consultant based on objections that the City considers non-negotiable. The City does not anticipate making substantive changes to its Terms and Conditions, but reserves the right to do so upon final contract negotiation.

5. ENTIRE PROPOSAL PACKAGE

The Consultant's statement of qualifications package is limited to 30 (8 ½" x 11") pages double-sided. Charts and schedules may be included in 11" x 17" format and will count towards the page count. Proposals shall not include any unnecessarily elaborate or lengthy promotional material. Lengthy narratives are discouraged, and presentations should be brief and concise. Page limit does not include the outside cover, section dividers, cover letters, or appendices. Statements that do not contain the required information or submittals that do not contain the required number of copies may be rejected.

6. CHANGES

At any time during the procurement process, if a firm makes any changes to proposed key personnel or sub-consultants; they must notify the City in writing of those proposed changes. The City reserves the right to accept or reject such proposed changes or to revise the evaluation scoring to reflect the proposed staffing changes.

7. HOURLY RATES

A copy of the Consultant's proposed hourly rates shall be included with each submittal. Rate Schedules must indicate that they are valid for the term of the agreement or must provide an escalation factor that applies for the term of agreement.

8. FEE PROPOSAL/REQUIREMENTS

The proposal is not to include a fee proposal. The fee proposal shall be submitted in a separate sealed envelope.

A. The consultant's fee proposal shall contain the following:

1. The fee proposal shall be submitted for the consultant services outlined in the proposed scope of work. The basis of payment for the services provided under this agreement shall be a Time and Materials, Not-To-Exceed fee.
2. The consultant shall submit a breakdown of the anticipated costs based on tasks outlined in the Work Plan. Indicate the anticipated number of staff hours and hourly rates. Include all anticipated materials and equipment costs that will be necessary in completing each task.
3. Fee proposals shall also be broken out to clearly identify the tasks described in the proposed Scope of Work.
4. Fee proposals should include a category for, and itemize, anticipated reimbursable expenses separate from professional expenses.

VIII. ACCEPTANCE OF PROPOSALS

The City reserves the right to accept or reject any and all qualifications/proposals, or any item or part thereof, or to waive any informalities or irregularities in the proposals. The City reserves the right to withdraw or cancel this RFP at any time without prior notice and the City makes no representation that any contract will be awarded to any firm responding to this RFP. The City reserves the right to re-issue a new RFP for the same or similar services. The City reserves the right to postpone proposal openings for its own convenience. Qualifications/proposals received by the City are public information and must be made available to any person upon request. Submitted proposals are not to be copyrighted.

IX. CONSULTANT SELECTION

The primary objective of the City is to select a qualified firm to perform necessary services for the City at a fair and reasonable fee. To that end, the City has established the following criteria for the selection process:

Rejections:

All Proposals will be reviewed to determine conformance with the RFP requirements. Any Proposals that the City deems incomplete, conditional, or non-responsive to the requirements of the RFP may be rejected. As was stated above, the City reserves the right to reject any and all Proposals as well.

- The selection process shall be fair, open, and competitive.
- The selection of the consultant firm preferred for this project will be based on clearly stated objectives.
- Selection of consultants/firms preferred for this project shall be based upon demonstrated competence, professional qualifications, experience, and capabilities to perform the required services.

Scoring Criteria:

1. Understanding the Project and project approach (25 pts)
 2. Work Plan (20 pts)
 3. Responsiveness to the RFP (15 pts)
 4. Experience and qualifications of the firm, project manager, key personnel, and sub-consultant's qualifications on similar projects:
 - a. Experience of the firm (10 pts)
 - b. Experience of the project manager (10 pts)
 - c. Experience of key personnel (10 pts)
 - d. Experience of sub-consultants (10 pts)
 - e. Information obtained from references (0 pts – can be used to deduct points)
- TOTAL 100 points

Upon review of the Proposals, the City may, but is not required to, invite several firms to an interview at the City of Manteca, 1001 W. Center Street, Manteca, CA 95337. The City reserves the right not to conduct interviews and negotiate a Professional Services Agreement for consulting engineering services with the consultant with the highest ranked proposal.

X. NEGOTIATIONS AND ENGAGEMENT

The opportunity to negotiate a Professional Services Agreement for consulting engineering services for this study may be awarded to the consultant who is deemed the most responsible and responsive to the RFP, demonstrates the greatest technical qualifications, experience and skill to complete this project in conformance with intent of the RFP, and is in the opinion of the City, the most advantageous and suitable to meet the specific needs for this project. The City reserves the right to reject any and all proposals and to negotiate with any responsible, responsive firm. The City is under no obligation to issue contracts for the subject services.

The final agreement and Scope of Services will be negotiated. When the highest ranked consultant is identified, the sealed cost estimate will be opened and negotiations will begin with said consultant. Consultants are encouraged to include in their proposal any comments relating to the terms and conditions of the included standard Professional Services Agreement. In addition, Consultants are reminded that any comments regarding the terms and conditions included in the standard Agreement must be noted in the proposal. The City reserves the right to disqualify any firm that does not provide written comments it has relative to terms and conditions. The City does not anticipate making any substantive changes to its terms and conditions.

In the event that contract negotiations are unsuccessful with the consultant submitting the highest-ranked proposal, the City reserves the right to reject the highest-ranked proposal and move to negotiate with the consultant submitting the next highest-ranked proposal. This process may continue until a negotiated contract can be agreed to by both parties to the satisfaction of the City.

XI. CONFLICT OF INTEREST

The selected consultant will not be prevented from participating in future projects to the extent that no direct conflict of interest exists at the time. The determination of a conflict of interest, direct or incidental, shall be at the sole discretion of the City.

XII. SCHEDULE FOR CONSULTANT SELECTION (please note, these dates are tentative and are subject to change.)

Issue Request for Proposals	June 26, 2019
Written Questions	July 15, 2019 (before 3:00 PM)
Proposals Due	July 25, 2019 (before 3:00 PM)
Consultant Interviews (if needed)	August 5, 2019 (tentative)
City Council Award	August 20, 2019 (tentative)
Notice to Proceed	August 27, 2019 (tentative)

Dates are subject to change. Schedule updates will be posted on City’s internet website: <https://www.ci.manteca.ca.us/Pages/RequestForProposal.aspx>

Any questions or comments to this RFP shall be submitted, on or before the date & time shown above, in writing to:

Johanna Ferriera, Management Analyst
jferriera@ci.manteca.ca.us

Attachments:

- Attachment 1 - Example Professional Services Agreement
- Attachment 2 - Insurance Requirements for Professional Service

ATTACHMENT 1
EXAMPLE PROFESSIONAL SERVICE 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:

(Signature)

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

Benjamin J. Cantu, Mayor

ATTEST:

By: _____

(Signature)

(Signature)

Lisa Blackmon, City Clerk

(Type name and title)

By: _____

(Signature)

COUNTERSIGNED:

(Type name and title)

(Signature)

Address: _____

Jeri Tejada, Finance Director

Telephone: _____

COUNTERSIGNED:

(Signature)

Jeri Tejada, Interim Director of Risk Management

APPROVED AS TO FORM:

(Signature)

John Brinton, City Attorney

ATTACHMENT 1
REQUEST FOR PROPOSAL

ATTACHMENT 2
CONSULTANT'S PROPOSAL

ATTACHMENT 3
SCHEDULE OF ACTIVITIES

ATTACHMENT 2
INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICE

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.