



# CITY OF STOCKTON

## ADDENDUM NO. 1

ISSUE DATE: \_\_\_\_\_

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Issued By:

CITY OF STOCKTON  
425 N. EL DORADO STREET STOCKTON, CA 95202-1997

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This addendum forms a part to the Contract Documents. The addendum items supersede and supplement all portions of the bidding documents with which it conflicts. All workmanship, materials, appliances and equipment which may be included in the following addendum items shall be of the same relative quality as described for similar work set forth in the general or main specifications of which these addendum items shall be considered a part.

This Addendum shall be acknowledged in the space provided on the Bid/Proposal Form and is considered part of the bid documents.

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1. **NOTICE:** Invitation for Bids (IFB), also known as Request for Sealed Bids (RFB), and Requests for Proposals(RFP) will be received by the City using electronic mail (email) until further notice in accordance with the March 12, 2020 local emergency proclamation and adopted guidelines to reduce the spread of the coronavirus (COVID-19).

2. **MODIFICATIONS:**

**BID SUBMISSION:** All IFBs, RFBs and RFPs shall be submitted via email by referencing the project number and name in the subject line of the email. The submittals should be in .pdf format and sent via email to [city.clerk@stocktonca.gov](mailto:city.clerk@stocktonca.gov)

Late IFBs, RFBs, and RFPs will not be accepted or opened.

**BID BONDS:** Bid Bond requirements, when applicable, shall include a scanned copy of the Bid Bond in the emailed submittal AND the original Bid Bond shall be postmarked no later than the prescribed date and time in the bid documents.

**WITHDRAWAL OF BIDS:** IFBs, RFBs, and RFPs may be withdrawn by sending an email to [city.clerk@stocktonca.gov](mailto:city.clerk@stocktonca.gov) and referencing in the subject line "WITHDRAWAL OF BID – PROJECT NUMBER AND PROJECT DESCRIPTION" as long as the request is received prior to the bid opening prescribed date and time.

**BID OPENINGS:** Bid openings will be live streamed from Council Chambers (no audience) at the prescribed time. Viewing is accessible at the following link and selecting “Bid Opening” for the desired project: [stocktonca.gov/government/oMeetings/councilMeetings.html](http://stocktonca.gov/government/oMeetings/councilMeetings.html) or by dialing the open conference line at (209) 232-4684.

**BID DOCUMENTS:** The following documents and/or provisions within bid documents may be impacted by this modification. As IFBs, RFBs, and RFPs vary in content, the list below includes standard documents and provisions but is not a comprehensive list. In the event a document or reference within the documents is not listed below but has reference to any of the guidelines stated in this Addendum, said documents, even when not listed, are governed by this Addendum to modify said documents.

- Notice Inviting Bids/Proposals
- Notice to Contractors
- Bid Forms
- Bid Checklist
- Bidder Security
- Withdrawal of Bids
- Public Openings of Bids

**END OF DOCUMENT.**

# CITY OF STOCKTON



**REQUEST FOR PROPOSALS (RFP)  
EXTERNAL AUDIT  
FOR THE CITY OF STOCKTON, CALIFORNIA  
(PUR 20-034)**

**PROPOSALS WILL BE RECEIVED UNTIL THE HOUR OF  
2:00 O'CLOCK P.M., THURSDAY, DECEMBER 10, 2020,  
IN THE OFFICE OF THE CITY CLERK,  
FIRST FLOOR, CITY HALL, 425 NORTH EL DORADO STREET,  
STOCKTON, CALIFORNIA 95202-1997**

REQUEST FOR PROPOSALS (RFP)  
EXTERNAL AUDIT  
PUR 20-034

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## NOTICE INVITING PROPOSALS

NOTICE IS HEREBY GIVEN that Request for Proposals (RFP) are invited by the City of Stockton, California for specifications for an **EXTERNAL AUDIT (PUR 20-034)** in strict accordance with the specifications.

The City of Stockton is requesting proposals from qualified firms of Certified Public Accountants to audit its financial statements, to express an opinion on the fair presentation of the City's basic financial statements in conformity with generally accepted accounting principles, to provide an "in-relation-to" report on the additional information based on the auditing procedures applied during the audit of the combining and individual fund statements and schedules for the fiscal year ending June 30, 2021 and four (4) subsequent fiscal years.

**Proposal forms and specifications are available on the City's website at [www.stocktonca.gov/adminbid](http://www.stocktonca.gov/adminbid) and must be delivered to the Office of the City Clerk, City Hall, 425 North El Dorado Street, Stockton, up to but not later than, **Thursday, December 10, 2020, at 2:00 p.m.****

The City reserves the right to reject any and/or all proposals received.

### **Information on Process/Clarification**

John Driscoll, Procurement Division  
(209) 937-8350  
e-mail: [stocktonbids@stocktonca.gov](mailto:stocktonbids@stocktonca.gov)

DISCLAIMER: The City does not assume any liability or responsibility for errors/omissions in any document transmitted electronically.

Dated: November 12, 2020

ELIZA GARZA  
CITY CLERK OF THE CITY OF STOCKTON

CITY OF STOCKTON  
REQUEST FOR PROPOSALS (RFP)

**PROPONENT'S CHECKLIST**

Did You:

- \* \_\_\_ Complete the following proposal documents (FROM THIS PACKET ONLY SUBMIT PAGES 29 to 31 AND PLACE IN THE FRONT OF YOUR PROPOSAL):
  - \* \_\_\_ Sign and notarize by jurat certificate the "Non-Collusion Affidavit" form. An "All-Purpose Acknowledgment" form will not be sufficient.
  - \* \_\_\_ Complete and sign a "Proponent's Fee Schedule" form, (under separate cover).
  - \* \_\_\_ Sign the "Proponent's Covenant" form. **Include (with proposal) name and e-mail address for City contact, if different from signatory.**
  - \* \_\_\_ Include your proposal, as outlined in these specifications.
  - \* \_\_\_ Submit one (1) ORIGINAL (unbound, no staples) and FIVE (5) COPIES of all proposal documents. Additionally, submit one (1) USB with an electronic version of the proposal.
  - \* \_\_\_ Review all clarifications/questions/answers on the City's website at [www.stocktonca.gov/adminbid](http://www.stocktonca.gov/adminbid) .
  - \* \_\_\_ Deliver sealed proposal to City Hall, City Clerk's Office (1st floor), 425 North El Dorado Street, Stockton, CA 95202, before **December 10, 2020, at 2:00 p.m.** Sealed proposal shall be marked "Proposal" and indicate project name, number, and proposal opening date (in the same format below). Please note that some overnight delivery services do not deliver directly to the City Clerk's Office. This could result in the proposal arriving in the City Clerk's Office after the proposal opening deadline and therefore not being accepted.
    - A) "RFP – TO PROVIDE AN EXTERNAL AUDIT"
    - B) PUR 20-034
    - C) DECEMBER 10, 2020

**CONTACT INFORMATION:**

Information on Process/Clarification
John Driscoll, Procurement Division (209) 937-8350 e-mail: <a href="mailto:stocktonbids@stocktonca.gov">stocktonbids@stocktonca.gov</a>

\*If not completed as required, your proposal may be rejected.

DISCLAIMER: The City does not assume any liability or responsibility for errors/omissions in any document transmitted electronically.

CITY OF STOCKTON  
REQUEST FOR PROPOSALS (RFP)

**1.0 GENERAL INFORMATION**

**1.1 REQUEST FOR PROPOSAL (RFP) PROCESS**

The purpose of this Request for Proposal (RFP) is to request proponents to present their qualifications and capabilities to provide an **EXTERNAL AUDIT (PUR 20-034)** for the City of Stockton.

**1.2 INVITATION TO SUBMIT A PROPOSAL**

Proposals shall be submitted no later than **2:00 p.m., on Thursday, December 10, 2020**, in the office of:

CITY CLERK  
CITY OF STOCKTON  
425 NORTH EL DORADO STREET  
STOCKTON, CA 95202-1997

One (1) original and FIVE (5) copies of the proposal shall be submitted. Additionally, submit one (1) USB with an electronic version of the proposal. The proposal should be firmly sealed in an envelope which shall be clearly marked on the outside, "**EXTERNAL AUDIT for the City of Stockton (PUR 20-034)**." Any proposal received after the due date and time indicated may not be accepted and may be rejected and returned, unopened, to the proponent.

**1.3 LOCAL BUSINESS PREFERENCE**

**Stockton Municipal Code Section 3.68.090 reads as follows:**

Preference shall be given to the purchase of supplies, materials, equipment, and contractual services from local merchants, quality and price being equal. Local merchants who have a physical business location within the boundaries of San Joaquin County, and who have applied for and paid a business license tax and registration fee pursuant to Stockton Municipal Code Title 5, Chapter [5.08](#), License Taxes, shall be granted two (2) percent bid preference. Local merchants who have a physical business location within the boundaries of the City of Stockton, and who have applied for and paid a business license tax and registration fee pursuant to Stockton Municipal Code Title 5, Chapter [5.08](#), License Taxes, shall be granted five (5) percent bid preference. This section is intended to provide preference in the award of certain City contracts in order to encourage businesses to move into and expand within the City. (Ord. 2014-03-18-1601 C.S. § 1; prior code § 3-106.1)

**1.4 LOCAL EMPLOYMENT—PUBLIC WORKS CONTRACTORS**



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Proponent must comply with City of Stockton Municipal Code (SMC) Section 3.68.095, Ordinance No. 011-09 adopted September 1, 2009, effective October 1, 2009.

**1.5 CONSEQUENCE OF SUBMISSION OF PROPOSAL**

- A. The City shall not be obligated to respond to any proposal submitted nor be legally bound in any manner by the submission of a proposal.
- B. Acceptance by the City of a proposal obligates the proponent to enter into an agreement with the City.
- C. An agreement shall not be binding or valid against the City unless or until it is executed by the City and the proponent.
- D. Statistical information contained in these documents is for informational purposes only. The City shall not be responsible for the accuracy of said data. City reserves the right to increase or decrease the project scope.

**1.6 ACCEPTANCE OR REJECTION OF PROPOSAL**

The City reserves the right to select the successful proposal and negotiate an agreement as to the scope of services, the schedule for performance and duration of the services with proponent whose proposal is most responsive to the needs of the City. Further, the City reserves the right to reject any and all proposals, or alternate proposals, or waive any informality or irregularity in the proposal as is in the City's best interest.

The City reserves the right to reject any and all proposals, or portions thereof, received in response to the RFP or to negotiate separately with any source whatsoever, in any manner necessary, to serve the best interests of the City. Additionally, the City may, for any reason, decide not to award an agreement as a result of this RFP.

Non-acceptance of any proposal shall not imply that the proposal was deficient. Rather, non-acceptance of any proposal will mean that another proposal was deemed to be more advantageous to the City or that the City decided not to award an agreement as a result of this RFP.

**1.7 RIGHT TO CHANGE OR AMEND REQUEST**

The City reserves the right to change the terms and conditions of this RFP. The City will notify potential proponent of any material changes by posting on the City's website. No one is authorized to amend any of the RFP requirements in any respect, by an oral statement, or to make any representation or interpretation in conflict with its provisions. If necessary, supplementary information and/or clarifications/questions/answers will be posted on the City's website at [www.stocktonca.gov/adminbid](http://www.stocktonca.gov/adminbid) . Failure of any proponent to not have received such

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information and/or clarifications/questions/answers shall not relieve such proponent from any obligation under his/her proposal as submitted.

**Any exceptions to this Proposal shall be clearly stated in writing.**

**1.8 CANCELLATION**

The City reserves the right to rescind award of the contract at any time before execution of the contract by both parties if rescission is deemed to be in City's best interest. In no event shall City have any liability for the rescission of award. The proponent assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.

**1.9 EXAMINATION OF PROPOSAL MATERIALS**

The submission of a proposal shall be deemed a representation and warranty by the proponent that it has investigated all aspects of the RFP, that it is aware of the applicable facts pertaining to the RFP process and its procedures and requirements, and that it has read and understands the RFP. No request for modification of the provisions of the proposal shall be considered after its submission on the grounds the proponent was not fully informed as to any fact or condition. Statistical information which may be contained in the RFP or any addendum is for informational purposes only. The City disclaims any responsibility for this information which may subsequently be determined to be incomplete or inaccurate.

**1.10 ADDENDA AND INTERPRETATION**

The City will not be responsible for, nor be bound by, any oral instructions, interpretations, or explanations issued by the City or its representatives. Any request for clarifications/questions/answers of this RFP shall be made in writing/e-mail and deliverable to:

CITY OF STOCKTON  
ATTN: JOHN DRISCOLL  
PROCUREMENT DIVISION  
400 E MAIN, 3<sup>RD</sup> FLOOR  
STOCKTON, CA 95202  
[stocktonbids@stocktonca.gov](mailto:stocktonbids@stocktonca.gov)

Such request for clarifications/questions/answers shall be delivered to the City by **Thursday, November 19, 2020**. Any City response to a request for clarifications/questions/answers will be posted on the City's website at [www.stocktonca.gov/adminbid](http://www.stocktonca.gov/adminbid) by **Wednesday, November 26, 2020**, and will become a part of the RFP. The proponent should await responses to inquiries prior to submitting a proposal.

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**1.11 DISQUALIFICATION**

Any of the following may be considered cause to disqualify a proponent without further consideration:

- A. Evidence of collusion among proponents;
- B. Any attempt to improperly influence any member of the evaluation panel;
- C. Any attempt to communicate in any manner with a City of Stockton elected official during the RFP process will, and shall be, just cause for disqualification/rejection of proponent's proposal/Proponent's bid submittal and considered non-responsive.
- D. A proponent's default in any operation of a professional services agreement which resulted in termination of that agreement; and/or
- E. Existence of any lawsuit, unresolved contractual claim, or dispute between proponent and the City.
- F. No person, firm, or corporation shall be allowed to make or file or be interested in more than one bid for the same supplies, services, or both; provided, however, that subcontract bids to the principal bidders are excluded from the requirements of this section: Section 3.68.120 of the Municipal Code.

**1.12 INFORMAL PROPOSAL REJECTED**

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from, or to a proposal may be sufficient grounds for rejection of the proposal. The City has the right to waive any defects in a proposal if the City chooses to do so. The City may not accept a proposal if any document or item necessary for the proper evaluation of the proposal is incomplete, improperly executed, indefinite, ambiguous, or missing.

**1.13 CONDITIONS TO BE ACCEPTED IF ANY WORK IS SUBCONTRACTED**

- A. The proponent assumes full responsibility, including insurance and bonding requirements, for the quality and quantity of all work performed.
- B. If proponent's supplier(s) and/or subcontractor's involvement requires the use of a licensed, patented, or proprietary process, the proponent of the process is responsible for assuring that the subcontractor, supplier, and/or operator have been properly authorized to use the process or for providing another process which is comparable to that which is required prior to submission of a proposal.

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**1.14 LICENSING REQUIREMENTS**

Any professional certifications or licenses that may be required will be the sole cost and responsibility of the successful proponent.

Proponent must be properly licensed as a Certified Public Accountant in California to perform the work specified within these documents.

**A City of Stockton Business license may be required for this project. Please contact the City of Stockton Business License Division at (209) 937-8313.**

**1.15 INSURANCE REQUIREMENTS**

Proponent/Bidder, at Proponent's/Bidder's sole cost and expense and for the full term of the resultant contract or any extension thereof, shall obtain and maintain at least all of the insurance requirements listed in attached Exhibit 1 (or Exhibit A).

All coverage shall be provided by a carrier authorized to transact business in California and shall be primary. All policies, endorsements, and certificates shall be subject to approval by the Risk Manager of the City to Stockton as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager.

Maintenance of proper insurance coverage is a material element of this contract, and failure to maintain or renew coverage or to provide evidence of renewal may be treated as a material breach of contract.

**The Proponent shall assert that these insurance requirements will be met as part of their proposal response. *Failure to comply with these insurance requirements may result in a proposal being deemed unresponsive.* Proponent shall satisfy these insurance requirements concurrently with the signing of the contract prior to commencement of work. *It is strongly suggested that insurance requirements be reviewed with Proponent's broker to ensure any additional costs are included in the proposal pricing component.***

**Any questions pertaining to insurance requirements, please contact City of Stockton Risk Services at (209) 937-5037.**

**1.16 INDEMNITY AND HOLD HARMLESS**

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton and its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions

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of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. This obligation is independent of, and shall not in any way be limited by, the minimum Insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.

**1.17 APPLICABLE LAW**

Applicable law shall be governed by the laws of the State of California. Venue shall be proper in the Superior Court of the State of California, County of San Joaquin, Stockton Branch, or, for actions brought in Federal Court, the United States District Court for the Eastern District of California, Sacramento Division.

**1.18 METHOD OF PAYMENT**

Payment will be made within thirty (30) days after invoices are received and accepted by the City Manager. Invoices are to be rendered monthly.

**1.19 NOTICE TO OUT-OF-STATE VENDOR**

It is the policy of the City of Stockton to pay all applicable California sales/use tax directly to the State Board of Equalization (BOE) pursuant to California Revenue and Taxation Code 7051.3. The City of Stockton will self-accrue all sales/use tax on purchases made from out-of-state vendors.

Sales and use tax on purchases made by the City of Stockton from all companies located outside California and whose products are shipped from out of state will be remitted to the BOE directly by the City under permit number **SR KHE 28-051174 DP**. **Please do not include sales/use tax on the invoice that you submit to the City of Stockton.**

Questions regarding the City of Stockton's payment of sales/use tax can be directed to the City of Stockton's Procurement Division at (209) 937-8357.

**1.20 TERM**

Five (5) year contract.

**1.21 COMPETITIVE PRICING**

Proponent warrants and agrees that each of the charges, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any similarly situated commercial or other government customer of proponent. If proponent enters into any arrangements with another customer of proponent to provide product under more favorable charges, economic or product terms or

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warranties, proponent shall immediately notify City of such change and this Contract shall be deemed amended to incorporate the most favorable charges, economic or product terms or warranties.

**1.22 FUNDING**

Any contract which results from this RFP will terminate without penalty at the end of the fiscal year in the event funds are not appropriated for the next fiscal year. If funds are appropriated for a portion of the fiscal year, this contract will terminate without penalty, at the end of the term for which funds are appropriated.

**1.23 UNCONDITIONAL TERMINATION FOR CONVENIENCE**

The City may terminate the resultant Agreement for convenience at any time by mailing a notice in writing to the Contractor.

**1.24 AUDITING OF CHARGES AND SERVICES**

The City reserves the right to periodically audit all charges and services made by the successful proponent to the City for services provided under the contract. Upon request, the proponent agrees to furnish the City with necessary information and assistance.

**1.25 PROPOSAL SECURITY**

Every proposal offered shall be accompanied by an acceptable financial instrument (proponent's bond, certified or cashier's check) in favor of and payable to the City of Stockton for an amount not less than **N/A**. A proponent's bond shall be executed by a surety authorized by the Insurance Commissioner to transact business of insurance in the State of California, made out in favor of the CITY OF STOCKTON for an amount not less than **N/A** and no proposal shall be considered unless accompanied by such certified or cashier's check or proponent's bond.

If proponent elects to accompany their proposal with a proponent's bond, then said bond shall state on its face that, "in the event the person, firm, or corporation is awarded the contract and the said proponent shall fail, neglect, or refuse to enter into a contract to said equipment, materials or services, then the amount therein mentioned in the proponent's bond accompanying the proposal of said person, firm, or corporation shall be declared to be forfeited to the City."

In the event that the person, firm, or corporation to whom said contract may be awarded fails, neglects, or refuses to enter into contract to furnish said service, equipment or material, as hereinbefore provided within thirty (30) days of award, then the cashier's check, or certified check and the amount therein mentioned, accompanying the proposal of said person, firm, or corporation, shall be declared to be forfeited to said City; or, if non-complying proponent has accompanied their

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proposal with a proponent's bond, appropriate legal action to collect the proponent's bond shall be undertaken.

As information, the City will **NOT** accept company or personal checks for proposal security.

**1.26 CONTRACT BONDS**

The successful proponent will be required to furnish the City of Stockton with a Faithful Performance Bond in the amount of **N/A** which shall be furnished concurrently with the signing of the contract.

The surety which provides the bond(s) must be authorized by the Insurance Commissioner to transact business of insurance in the State of California.

Said bonds shall be executed by the surety and contractor concurrently with the signing of the contract. The form and content of said bonds must be approved by the appropriate City departments.

All alterations, extension of time, extra and additional work, and other changes authorized by these specifications or any part of the contract shall be made without securing the consent of the surety or sureties on the contract bonds.

**1.27 CHANGES**

The City's Representative has the authority to review and recommend or reject change orders and cost proposals submitted by the proponent or as recommended by the proponent's project manager, pursuant to the adopted City of Stockton Standard Specifications.

**1.28 AWARD**

Upon conclusion of the RFP process, a contract may be awarded for an EXTERNAL AUDIT for the City.

The City reserves the right to select the successful proponent and to negotiate terms of a contract with the proponent whose proposal is most responsive to the needs of the City. Further, the City reserves the right to reject any and all proposals, or alternate proposals, or waive any informality in the proposal as is in the City's best interest.

**1.29 LIQUIDATED DAMAGES**

Liquidated damages in the amount of **N/A** dollars per day will be assessed per each working day over the **N/A** allotted for this project.

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**1.30 PRODUCT OWNERSHIP**

Any documents, products or systems resulting from the contract will be the property of the City of Stockton.

**1.31 CONFIDENTIALITY**

If proponent believes that portions of a proposal constitute trade secrets or confidential commercial, financial, geological, or geophysical data, then the proponent must so specify by, at a minimum, stamping in bold red letters the term "**CONFIDENTIAL**" on that part of the proposal which the proponent believes to be protected from disclosure. The proponent must submit in writing specific detailed reasons, including any relevant legal authority, stating why the proponent believes the material to be confidential or a trade secret. Vague and general claims as to confidentiality will not be accepted. The City will be the sole judge as to whether a claim is general and/or vague in nature. All offers and parts of offers that are not marked as confidential may be automatically considered public information after the contract is awarded. **The proponent is hereby put on notice that the City may consider all or parts of the offer public information under applicable law even though marked confidential.**

**1.32 OTHER GOVERNMENTAL AGENCIES**

If mutually agreeable to all parties, the use of any resultant contract/purchase order may be extended to other political subdivisions, municipalities, or tax supported agencies.

Such participating governmental bodies shall make purchases in their own name, make payment directly to successful Proponent and be liable directly to the successful Proponent, holding the City of Stockton harmless.

**1.33 PRE-PROPOSAL CONFERENCE**

N/A

**1.34 PREVAILING WAGES & CONTRACTOR/SUBCONTRACTOR REGISTRATION REQUIREMENTS**

N/A

**1.35 PROPONENT'S SAFETY RESPONSIBILITY**

The scope of work for this project has been reviewed for special risks or hidden dangers that may be present to employees of the proponent or any subcontractor. The proponent is required to identify, notify employees, and implement special precautions to prevent injuries to employees. Additionally, the proponent is required to identify its skill, experience, and equipment in dealing with the types of



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risk to employees.

**1.36 PROTEST POLICY**

Protest and Appeal Procedures. In order to maintain fairness and impartiality, the City of Stockton has established a solicitation protest policy and procedure.

**A. Protest Procedure**

1. All protests must be in writing and stated as a formal protest.
2. A casual inquiry, complaint, or a statement of intent to protest that does not provide the facts and issues, and does not comply with the content requirements or deadlines, will not be considered or acted upon as a protest.
3. The protest must contain a complete statement of the basis for the protest and must include all relevant supporting documentation.
4. The solicitation process and procedures, including evaluation criteria, shall not be proper grounds for protest. Concerns related to the solicitation process and procedures, including evaluation criteria, should be raised and addressed, if at all, prior to the bid/proposal due date and time to allow adjustments before evaluation of the solicitation.
5. Protests must be filed with the City's Chief Financial Officer, or designee, at the address listed in the Solicitation Protest FAQ sheet and Procurement Procedure Manual, not later than five (5) days after the date the City mails the Letter of Intent to Award .
6. Deliveries of the protest by hand, mail, email or fax are acceptable.
7. The City is not responsible for lost or misplaced protests, or to assure the protest is received within the protest deadlines
8. The party challenging the award decision to bear the burden of proof of material error to justify invalidation of the proposed award.

**B. Protest Review**

1. The Chief Financial Officer or designee shall respond in writing at least generally to each material issue raised in the protest.
2. The Chief Financial Officer's, or designee 's, administrative decision may be appealed in writing to the City Manager no later than (5) business days after the date the Chief Financial Officer's, or designee's , the decision is mailed to the protesting party.
3. The City Manager shall review and decide the appeal based on the grounds and documentation set forth in the original protest to the Chief Financial Officer, or designee.
4. Each party shall bear its own costs and expenses involved in the protest and appeal process, including any subsequent litigation .
5. The City Manager's administrative decision is final. After the City Manager issues the final administrative decision, the time in which

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judicial review of the decision must be sought shall be governed by California Code of Civil Procedure Section 1094 or as such section may be amended from time to time.

6. If the protested procurement involves state or federal funds , the Chief Financial Officer, or designee, shall give notice to the interested party that he or she has the right to appeal to the appropriate agency, which shall be identified by name and address. An appeal hereunder shall be filed with the appropriate agency within five (5) working days of the dispatch of rejection notices to the interested party(ies).
7. The City may require the protesting party to submit a City Council approved non-refundable protest fee to cover the administrative cost of processing the protest.

Bidders, proposers , and contractors wishing to protest or appeal a procurement or contracting decision by the City must follow the procedures provided by this section. The City will not review protests or appeals that are not submitted in accordance with these provisions and procedures.

A copy of this policy can be requested from the procurement specialist noted in Section 1.10 of this document.

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**2.0 BACKGROUND/GENERAL NATURE OF SERVICE**

The City of Stockton (City) was incorporated July 25, 1850 and under the charter adopted in 1923, operates under a Council-Manager form of governments. The City is situated 345 miles north of Los Angeles and 78 miles east of San Francisco Bay Area. It is the seat of San Joaquin County and serves an area of 60.8 square miles with a diverse population of approximately 319,000. The City government is divided into 13 departments. These City departments provide services ranging from police and fire services to public works, parks, recreation, and library services.

The City of Stockton has a June 30 fiscal year end. The 2020-2021 annual adopted budget for the City of Stockton is approximately \$788 million (\$610 million operating, \$38 million debt, and \$140 million capital). The gross salary for fiscal year 2019-2020 was approximately \$120 million, which covered 1,547 full time employees.

The City maintains on average from \$500 million to \$600 million in its total pooled cash and investments throughout the year. The long-term portion of the City's pooled investment portfolio, with a current market value of over \$500 million, is managed by PFM Asset Management, LLC. The City has over 150 bank accounts, including trustee held accounts, which make up its overall portfolio of accounts.

The City receives a number of Federal and State grants each year. Although the number and dollar amount of grants vary from year to year, the City had \$16.4 million in Federal grant expenditures in fiscal year 2018-2019 under eleven (11) different CFDA numbers, included in the total for Single Audit testing in that year. The City has continuing compliance requirements over its Housing loan portfolio under Department of Housing and Urban Development of approximately \$6.4 million, which is included in the total of \$16.4 million. The City's most recent Single Audit for fiscal year ended June 30, 2019 reported no current year findings and no material weaknesses or significant deficiencies.

The City's Comprehensive Annual Financial Report (CAFR) for the year ended June 30, 2020 is scheduled to be issued in December 2020.

**2.1 SCOPE OF SERVICES**

The City of Stockton is requesting proposals from qualified firms of Certified Public Accountants to audit its financial statements, to express an opinion on the fair presentation of the City's basic financial statements in conformity with generally accepted accounting principles, to provide an "in-relation-to" report on the additional information based on the auditing procedures applied during the audit of the combining and individual fund statements and schedules for the fiscal year ending June 30, 2021 and four (4) subsequent fiscal years.

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These audits are to be performed in accordance with generally accepted auditing standards, the standards set forth for financial audits in the U. S. Government Accountability Office's (GAO) *Government Auditing Standards* (GAS), the provisions of the Federal Single Audit Act and U.S. Office of Management and Budget (OMB) Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations (A-133).

- 2.1.1 The proponent is not required to audit the introductory section.
- 2.1.2 The proponent shall be responsible for performing certain limited procedures involving management's discussion and analysis and required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.
- 2.1.3 The proponent shall provide opinions as to the compliance with the Federal Single Audit Act and OMB Circular A-133. The proponent is not required to audit the Schedule of Expenditures of Federal Awards. However, the proponent is to provide an "in-relation-to" report on that schedule based on the auditing procedures applied during the audit of the financial statements.
- 2.1.4 The proponent shall test compliance with the Single Audit Act and applicable laws and regulations. The proponent shall prepare and publish a Single Audit Report including the appropriate schedules; report on internal control when federal expenditures meet or exceed the threshold requiring a Single Audit. The City will prepare the Schedule of Expenditures of Federal Awards.
- 2.1.5 The proponent shall test compliance with Article XIII B pertaining to the City's appropriation limit and prepare a letter to the City Council regarding compliance.
- 2.1.6 Proponent shall audit the schedule of revenues, expenditures and changes in fund balance of the Measure W Public Safety Tax Fund of the City. Measure W is a ¼ cent sales tax measure approved by voters in 2004.
- 2.1.7 Proponent shall review major revenues in accordance with the agreed upon procedures required by the Bankruptcy Agreement with the Assured Guarantee.
- 2.1.8 Prepare Management Letter that includes non-reportable recommendations for improvements to internal controls.
- 2.1.9 The selected proponent may also be asked to examine or prepare other reports or perform other services as required.

**2.2 AUDITING STANDARDS**

To meet the requirements of this request for proposal, the audit shall be performed in accordance with:

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- 2.2.1 Generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants (AICPA),
- 2.2.2 Standards for financial audits set forth in the U.S. Government Accountability Office's *Government Auditing Standards*,
- 2.2.3 Provisions of the Single Audit Act,
- 2.2.4 Provisions of U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and non-Profit Organizations*, and
- 2.2.5 Applicable State of California audit guidelines.

**2.3 REQUIRED REPORTING**

2.3.1 Comprehensive Annual Financial Report

Signed Independent Auditors' Report on auditor letterhead (electronic copy).

The City of Stockton will send its comprehensive annual financial report to the Government Finance Officers Association of the United States and Canada for review in its Certificate of Achievement for Excellence in Financial Reporting program beginning with fiscal year ended June 30, 2021. It is anticipated that the proponent will be required to provide assistance to the City of Stockton to meet the requirements of this program.

2.3.2 Report on Internal Control

Independent Auditors' Report on Internal Control Over Financial Reporting and On Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards (electronic copy).

2.3.3 Single Audit Report

Single Audit Report including appropriate schedules and auditors' reports and Data Collection Form.

The proponent shall provide five (5) bound copies of the Report, one (1) unbound original, and one (1) electronic copy.

2.3.4 Appropriations Limit (Article XIII B)

Independent Auditors' Report on Agreed-Upon Procedures Applied to Appropriations Limit Calculation (electronic copy).

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2.3.5 Additional Audits/Services

- Measure A  
Signed Independent Auditors' Report on auditor letterhead and Agreed Upon Procedures Report for the Measure A
- Measure W  
Signed Independent Auditors' Report on auditor letterhead for the Measure W Public Safety Fund
- Measure M  
Signed Independent Auditors' Report on auditor letterhead for the Measure M Strong Communities
- Entertainment Venues  
Signed Independent Auditor's review of revenue and expenditures for ASM managed entertainment venues including Arena, Events Center Common Areas, Ballpark, Oak Park Ice Arena, and the Bob Hope Theatre
- Downtown Marina  
Signed Independent Auditor's review of revenue and expenditures for ASM managed Downtown Marina.
- Cannabis License Audits

2.3.6 Management Letter

A Management Letter addressed to the City Council recommending improvements to the City's internal control that are otherwise non-reportable (electronic copy).

2.3.7 Agree Upon Procedures

Signed Independent Auditor's review of major revenues required by the Bankruptcy Agreement with Assured Guarantee

2.3.8 Communication of Internal Control Related Matters

The proponent shall communicate in a Report to designated City management and the Audit Committee any deficiencies in internal control identified as a significant deficiency or material weakness during the audit. Other matters not meeting that criteria and discovered by the auditor shall be communicated in the Management Letter as noted above.

The Report to the Audit Committee shall also include the status of prior year findings and recommendations. During the first year, the proponent shall

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follow-up on material weaknesses and significant deficiencies made in connection with the June 30, 2015 audit.

The proponent will provide five (5) reports to the Audit Committee, one (1) unbound original, and one (1) electronic copy.

The proponent shall be required to make immediate written notification to the City Council, Audit Committee, City Manager, Chief Financial Officer and City Attorney of all irregularities and illegal acts or indications of illegal acts of which the auditor becomes aware.

#### 2.3.9 Audit Committee

Annually, the proponent shall assure himself or herself that the City of Stockton's Audit Committee is informed of each of the following:

- The auditor's responsibility under generally accepted auditing standards,
- Significant accounting policies,
- Management judgments and accounting estimates,
- Significant audit adjustments and uncorrected misstatements,
- Other information in documents containing audited financial statements,
- Disagreements with management,
- Management consultation with other accountants,
- Major issues discussed with management prior to retention,
- Difficulties encountered in performing the audit, and
- Errors, irregularities, and illegal acts.

If desired by the City, the proponent must be available to present the audit plan to the Audit Committee prior to beginning fieldwork. In addition, the proponent must be available to present all final reports to the Audit Committee, once the audit is completed.

## 2.4 **ADDITIONAL OPTIONAL SERVICES**

The proponent may include a proposal to prepare the following State Controller's Office regulatory filings for the City. The deadline for the filing of these reports is stated below. The response should be included in a separate section of the proposal and include an outline of the process, as well as the all-inclusive cost for each report.

- Cities Annual Financial Transactions Report (90 days after the close of the fiscal year (110 days if filing in the electronic format report prescribed by the California State Controller)
- Annual Street Report to the State Controller (By October 1)

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The City will consider responses to these additional optional services separate and apart from the responses for professional audit services. The City reserves the right to reject any and all responses to these additional optional services

**2.5 SPECIAL CONSIDERATIONS**

- 2.5.1 The City of Stockton currently anticipates it may prepare one or more official statements in connection with the sale of debt securities that will contain the basic financial statements and the proponent's report thereon. The proponent shall be required, if requested by the fiscal advisor and/or the underwriter, to issue a "consent and citation of expertise" as the external auditor and any necessary "comfort letters."
- 2.5.2 The City of Stockton has determined that the U.S. Department of Housing and Urban Development functions as the cognizant agency in accordance with the provisions of the Single Audit Act and OMB Circular A-133.
- 2.5.3 The City of Stockton anticipates the need for assistance from the proponent to comply with GASB pronouncements that take effect during the term of the contract. The level of assistance to be provided will be discussed on a case by case basis and mutually agreed upon by proponent and Chief Financial Officer.
- 2.5.4 The City establishes materiality levels for posting year end transactions at the commencement of the audit to assist with year-end closing. A schedule of unposted transactions will be provided to the auditor.
- 2.5.5 It is the City of Stockton desire and intent to issue each year's financial statements no later than **December 1**. Careful planning by both the proponent and the City will be required to accomplish this goal. Proponent should propose an audit staffing and work plan in order to meet those filing requirements.
- 2.5.6 The City of Stockton obtains grants from various State of California agencies and desires to meet the audit requirements in the most cost-efficient method possible. This may require some additional audit services as mutually agreed upon by the proponent and the City of Stockton.

**2.6 WORKING PAPER RETENTION AND ACCESS**

All working papers and reports must be retained, at the proponent's expense, for a minimum of five (5) years, unless the firm is notified in writing by the City of Stockton of the need to extend the retention period. The working papers are subject to review by federal and state agencies and other individuals designated by the City of Stockton. Accordingly, the work papers shall be made available upon request.



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In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers.

**2.7 DESCRIPTION OF FINANCE**

The accounting and financial reporting functions of the City are centralized in the Administrative Services Department.

**2.7.1 Principal Contact**

The proponent's principal contact with the City of Stockton Accounting Manager, or a designated representative, who will coordinate the assistance to be provided by the City of Stockton to the proponent. Names and phone numbers of key contacts are:

**2.7.2 Computer Systems**

The City is in the process of replacing its current financial system that runs on an AS400 IBM operating system and was developed by SunGard HTE, Inc. with Tyler MUNIS. Phase 1 (Core Finance) is scheduled to go live November 16, 2020, with Phases 2 (Miscellaneous Billing) and 3 (HR/Payroll) scheduled to go live in 2021. These dates are subject to change.

File management and email is accomplished using Microsoft Outlook. Application software includes Word, Excel, Access, On Base, and Omni-forms.

**2.7.3 Fund Structure**

The City of Stockton uses the following fund types in its financial reporting:

<u>Fund Type</u>	<u>Number of Individual Funds</u>	<u>Number Included in Legally Adopted Annual Budget</u>
General fund	1	1
Special revenue funds	33	33
Debt service funds	35	4
Capital projects funds	57	33
Enterprise funds	19	19
Internal service funds	12	12
Permanent Funds	13	9
Trust (Special Revenue) funds	13	6
Agency Funds	8	1

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The new Fund Structure can be found in Attachment A.

2.7.4 Internal Audit Function

Article XV of the City of Stockton Charter establishes the City Auditor and defines the Auditor’s authority. By ordinance, the City Auditor performs audits in accordance with Government Auditing Standards. Until September 2012, the City Auditor was an employee of the City and appointed by the City Council. In fall 2012, the City issued a request for proposal to engage a contract firm into the position of the City Internal Auditor function. The City of Stockton hired Moss Adams LLP in March 2013 at the completion of the proposal process. The firms completed its latest peer review and received a passing report from another nationally recognized firm, Clifton Gunderson LLP, dated August 26, 2011. Moss Adams LLP reports directly to the City Council under the City’s charter. Moss Adams is in the process, under its internal audit plan and risk assessment, of identifying and improving the City’s key controls, systems policies, and procedures.

Audit reports issued by the Office of the City Auditor are available on the City’s website:

<http://stocktongov.com/government/departments/auditor/default.html>

**2.8 TIME REQUIREMENTS**

**2.8.1 Audit Calendar**

Below is the City’s tentative timing for FY 2021:

<b><u>CAFR, Single Audit, Measure W, GANN:</u></b>	<b><u>FY 2021</u></b>
Preliminary audit work prior to the closing of the accounts may commence after the award of the contract.	May 20, 2021
Deliver to Accounting Manager a camera ready copy of the CAFR and Single Audit Report by the due date.	Nov 10, 2021
Deliver to Accounting Manager a final draft of the Report to the Audit Committee by the due date	Dec 1, 2021

**2.9 CITY RESPONSIBILITIES**

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**2.9.1 Administrative Services Department and Professional and Clerical Assistance**

The Administrative Services Department staff will be available during the audit to assist the firm by providing information, documentation and explanations. The City will prepare first drafts of the City's CAFR from the City's general ledger for review by the audit firm. The audit firm selected under this RFP shall be responsible to prepare all other first draft of financial statements (e.g. Measure W, Measure M, Measures A & B, Core Revenues, GANN Limit). The City will assemble and print the City's CAFR with the Independent Auditor's Report.

**2.9.2 Information Technology (IT) Assistance**

Through a process mutually agreed to by both parties, IT personnel will be available to provide systems documentation and explanations. The proponent will be provided access to the computer for viewing purposes.

**2.9.3 Statements and Schedules to be Prepared by Consultant and Staff of the City of Stockton**

City staff will prepare the statements and schedules necessary to support the individual fund statements. Additional statements and schedules will be prepared by the City upon mutual consent of the City and the proponent. The date the final trial balance will be available will be mutually agreed upon between Accounting and the proponents during the audit pre-planning meeting.

**2.9.4 Work Area, Telephone, Photocopying and Scanning Machines**

The City of Stockton will provide the proponent with reasonable workspace, desks and chairs with access to internet, telephone lines, and photocopy/scanning machines.

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**3.0 PROPOSAL GUIDELINES, CONTENT AND FORMAT**

The City of Stockton uses a qualifications-based selection process in obtaining these services. In order for the City to properly evaluate the Proponents' qualification to perform this work, the proposals shall include, as a minimum, the following information:

- A. Evidence of the Proponent's ability to be responsive to this project in regard to timeliness and expertise, including availability of staff proposed to be assigned.
- B. The Proponents are encouraged to expand on the Scope of Work to demonstrate their expertise. Evaluation of the proposals will be based on qualifications, the experience of staff proposed to be assigned to the project, references and thoroughness of the proponent's response to the Scope of Services.
- C. Such additional information that the Proponent may feel would be pertinent to assist the City of Stockton in making its final decision.
- D. Please submit one (1) original and FIVE (5) copies of your proposal/qualifications. Additionally, submit one (1) USB with an electronic version of the proposal. The original should be unbound to allow us to reproduce your proposal, as needed.

**3.0.1 Cover Letter**

Submit a letter on your company letterhead addressing the proposal and format. The letter should be signed by an officer of the firm authorized to bind the firm to all comments made in the proposal, and shall include the name, address, phone number and e-mail address of the person(s) to contact who will be authorized to represent your firm.

**3.0.1.1 Independence**

The proponent should provide an affirmative statement that it is independent of the City of Stockton and the Stockton Public Financing Authority as defined by GAS.

**3.0.2 Experience and Qualifications Summary**

The proposal should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis.

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If the proponent is a joint venture, qualifications of each firm comprising the joint venture should be separately identified and the firm that is to serve as the principal proponent should be noted, if applicable.

If the proponent will be subcontracting any portion of the audit to another individual or firm, the proposal must include a list of all subcontractors to be used. No substitutions of subcontractors may be made without prior written consent of the City of Stockton.

The proponent is also required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.

The proponent shall also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the proponent shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm, or any firm principal, during the past five (5) years with state regulatory bodies or professional organizations.

**3.0.3 Prior Engagements with the City of Stockton**

The proponent should list separately all engagements within the last five (5) years, ranked on the basis of total staff hours, for the City of Stockton by type of engagement (i.e., audit, management advisory services, other). For each engagement, the proponent should indicate the scope of work, date, engagement partners, total hours, location of proponent's office from which engagement was performed, and the name of the principal client contact.

**3.0.4 Similar Engagements with Other Government Entities**

For the firm's office that will be assigned responsibility for the audit, list significant engagements (maximum of 7) performed in the last five years that are most similar to the engagement described in this request for proposal. These engagements should be ranked on the basis of total staff hours.

Indicate the scope of work, date, engagement partners, total hours, and the name, telephone number and e-mail address of the principal client contact.

**3.0.5 Audit Approach, Techniques and Schedules to be Used**

The proposal should set forth a work plan and proposed audit timing, including an explanation of the audit methodology to be followed, to perform the services required in Section II of this request for proposal.

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Proponents will be required to provide the following information on their audit approach:

- Proposed major segmentation of the engagement,
- Level of staff and number of hours to be assigned to each proposed major segment of the engagement,
- Sampling methodology and the extent to which statistical sampling is to be used in the engagement,
- Extent of use of electronic audit software in the engagement,
- Type and extent of analytical procedures to be used in the engagement,
- Approach to be taken to gain and document an understanding of the City of Stockton's internal control structure,
- Use of City's information technology resources in terms of computer time, operator time and programmer time,
- Approach to be taken in determining laws and regulations that will be subject to audit test work, and
- Approach to be taken in drawing audit samples for purposes of tests of compliance.

**3.0.6 Management/Method of Operation**

Define and describe the scope of services to be provided, in terms of the matters discussed in the following:

The examination will be made in accordance with generally accepted auditing standards. Generally accepted auditing standards are included in Statements on Auditing Standards published by the AICPA and in GAS issued by GAO. The primary purpose of the examination is to express an opinion on the financial statements and that such an examination is subject to the inherent risk that errors or irregularities may not be detected.

If conditions are discovered which lead to the belief that material error, defalcations or other irregularities may exist, or if any other circumstances are encountered that require extended services, the proponent will promptly advise the City Management and Chief Financial Officer.

**3.0.7 Financial Statement**

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The proponent must be able to demonstrate a good record of performance and have sufficient financial resources to ensure that they can satisfactorily provide the services required herein.

Proponent shall submit a full and detailed presentation of the true condition of the proponent's assets, liabilities and net worth. The report should include a balance sheet and income statement. If the proponent is a new partnership or joint venture, individual financial statements must be submitted for each general partner or joint venture thereof. If firm is a publicly held corporation, the most current annual report should be submitted.

Any proponent who, at the time of submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the proponent under federal bankruptcy law or any state insolvency, may be declared non-responsive.

**3.0.8 Corporate Structure, Organization**

Describe how your firm is organized, noting major divisions and any parent/holding companies, as well as brief history of the firm and all personnel potentially to be involved in the project including all sub-consultants. Designate the Principal in Charge and other key personnel. Include résumés. Also provide a description of the experience your firm has had with similar processes.

**3.0.9 Proposal Fee (Under Separate Cover)**

Provide detailed basic fee structure and break-down of any other charges related to your firm's proposal. Finalist's fee structure may be subject to negotiation.

**3.0.10** The proposal must be submitted, typewritten on 8½" X 11" white paper and must be bound in a secure manner.

**3.0.11** Material and data not specifically requested for consideration, but which the proponent wishes to submit must not appear with the Proposal, but may appear only in an "Additional Data" section. This has specific reference to the following types of data:

Generalized narrative of supplementary information; and  
Supplementary graphic material

**3.0.12** All proposals must be signed with the full name of the proponent, if an individual; by an authorized general partner, if a partnership; or by an authorized officer, if a corporation.

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- 3.0.13** When proposals are signed by an agent other than an officer of a corporation or a member of a general partnership, a power of attorney authorizing the signature must be submitted with the proposal.
- 3.0.14** If the proposal is submitted by a partnership or joint venture, the Statement of Personal History attached to the Proposal must be completed by each general partner or joint venture thereof. If the proposal is submitted by a corporation, the Statement must be completed by each principal officer of said corporation.
- 3.0.15** The original proposal must have wet ink signatures. Modification to a proposal after the proposal submittal deadline will not be accepted by the City.

**3.1 EVALUATION PROCEDURE AND CRITERIA**

The City is interested in selecting a qualified firm with the ability to provide an EXTERNAL AUDIT. A key component for the successful firm will be the ability to meet the City's performance desires while minimizing the cost.

The Evaluation Panel will consist of City of Stockton staff and any other person(s) designated by the City. Following review of the proposals, the Panel may invite one or more proponents to make an oral presentation. During these presentations, the proponent will be allowed to present such information as may be appropriate in order that the Panel can effectively and objectively analyze all materials and documentation submitted as part of the proposals.

Each firm must be represented by an individual who will be the prime contact person to the City and any other individuals whom the firm may select. The highest-rated proposal(s) will then be further scrutinized through financial analysis and reference checks.

To that end, the Panel will evaluate the proposals based on, but not limited to, the following criteria:

1. Proponent's ability to provide all services as outlined in the Scope of Services;
2. Related experience with similar projects, company background and personnel qualifications;
3. Proponent's Fee Schedule: completed and signed (under separate sealed cover);
4. Proponent's Agreement;
5. Non-Collusion Affidavit;
6. References;



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7. Any other criteria as best suits the City of Stockton.

**3.1.1 EVALUATION DIMENSIONS & WEIGHTS**

- Qualifications: 20%
- Professional Experience: 25%
- Industry Expertise: 20%
- Capacity: 15%
- Interview: 15%
- Price: 5%

**3.2 PROPOSED DEVELOPMENT COSTS**

The cost of preparing and submitting a proposal is the sole responsibility of the proponent and shall not be chargeable in any manner to the City.

**3.3 PROPONENT CONTACT**

Proponent shall provide the name, address, e-mail address and telephone number of an individual in their organization to whom notices and inquiries by the City should be directed as part of this proposal.

**3.4 CITY'S USE OF PROPOSAL MATERIAL**

All material submitted in or with the proposal shall become the property of the City, unless it is clearly marked as proprietary information. The City reserves the right to use any ideas presented in the proposals, without compensation paid to the Firm. Selection or rejection of the proposal shall not affect this right.

**3.5 REJECTION OF PROPOSAL**

The City reserves the right to reject any and all proposals submitted and to request additional information from the Proponent. The award will be made to the firm which, in the opinion of the City, is best qualified.

# PROPOSAL DOCUMENTS

A) RFP – EXTERNAL AUDIT

B) PUR 20-034

C) DECEMBER 10, 2020

COMPANY NAME: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

EMAIL: \_\_\_\_\_

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**PROPONENT'S COVENANT**

In submitting this proposal, as herein described, the proponent agrees that:

1. They have carefully examined the Scope of Work and all other provisions of this document and understand the meaning, intent and requirements of same.
2. They will enter into contract negotiations and furnish the services specified.
3. They have signed and notarized the attached Non-Collusion Affidavit form, whether individual, corporate or partnership. Must be 'A Jurat' notarization.
4. They have reviewed all clarifications/questions/answers on the City's website at [www.stocktonca.gov/adminbid](http://www.stocktonca.gov/adminbid) .
5. Confidentiality: Successful Proponent hereby acknowledges that information provided by the City is personal and confidential and shall not be used for any purpose other than the original intent outlined in the Request for Proposal. Breach of confidentiality shall be just cause for immediate termination of contract agreement.

\_\_\_\_\_  
FIRM

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SIGNED BY

\_\_\_\_\_  
TITLE OR AGENCY

\_\_\_\_\_  
TELEPHONE NO./FAX NO.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
E-MAIL ADDRESS

**NON-COLLUSION**

**No. 1 AFFIDAVIT FOR INDIVIDUAL PROPONENT**

**STATE OF CALIFORNIA,** \_\_\_\_\_ )ss.

**County of** \_\_\_\_\_ )  
(insert)

\_\_\_\_\_ being first duly sworn, deposes and says: That on behalf of any person not named herein; that said Proponent has not colluded, conspired, connived or agreed, directly or indirectly with, or induced or solicited any other bid or person, firm or corporation to put in a sham bid, or that such other person, firm or corporation shall or should refrain from bidding; and has not in any manner sought by collusion to secure to themselves any advantage over or against the City, or any person interested in said improvement, or over any other Proponent.

\_\_\_\_\_  
(Signature Individual Proponent)

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
by \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal \_\_\_\_\_

Signature \_\_\_\_\_

**No. 2 AFFIDAVIT FOR CORPORATION PROPONENT**

**STATE OF CALIFORNIA,** \_\_\_\_\_ )ss.

**County of** \_\_\_\_\_ )  
(insert)

\_\_\_\_\_ being first duly sworn, deposes and says: That they are the \_\_\_\_\_ of \_\_\_\_\_ a corporation, which corporation is the party making the foregoing bid, that such bid is genuine and not sham or collusive, or made in the interest or behalf of any person not named herein; that said Proponent has not colluded, conspired, connived or agreed, directly or indirectly with, or induced or solicited any other bid or person, firm or corporation to put in a sham bid, or that such other person, firm or corporation shall or should refrain from bidding; and has not in any manner sought by collusion to secure to themselves any advantage over or against the City, or any person interested in said improvement, or over any other Proponent.

\_\_\_\_\_  
(Signature Corporation Proponent)

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
by \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal \_\_\_\_\_

Signature \_\_\_\_\_

**No. 3 AFFIDAVIT FOR FIRM, ASSOCIATION, OR CO-PARTNERSHIP**

**STATE OF CALIFORNIA,** \_\_\_\_\_ )ss.

**County of** \_\_\_\_\_ )  
(insert)

\_\_\_\_\_,  
each being first duly sworn, depose and say: That they are a member of the firm, association or co-partnership,  
designated as \_\_\_\_\_ who is the party making the foregoing bid; that the other partner, or partners, are \_\_\_\_\_ that such bid is genuine and not sham or collusive, or made in the interest or behalf of any person not named herein; that said Proponent has not colluded, conspired, connived or agreed, directly or indirectly with, or induced or solicited any other bid or person, firm or corporation shall or should refrain from proposing; and has not in any manner sought by collusion to secure to themselves any advantage over or against the City, or any person interested in said improvement, or over any other Proponent.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
by \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal \_\_\_\_\_

Signature \_\_\_\_\_

## EXHIBIT 'A' – INSURANCE REQUIREMENTS

**NOTE: The City of Stockton is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s).**

### **Exhibit A: Insurance Requirements for Professional Services**

Contractor 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 Contractor, its agents, representatives, or employees.

#### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

- 1. Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- 2. Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- 3. Workers' Compensation** insurance 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.  
*(Not required if Contractor provides written verification it has no employees)*
- 4. 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. (If Claims-made, see below.)

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater. No

representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

### **Limits of Insurance**

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

### **Other Insurance Provisions**

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

#### ***Additional Insured Status***

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

#### ***Primary Coverage***

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

#### ***Notice of Cancellation***

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton.**

#### ***Waiver of Subrogation***

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor 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 City of Stockton has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

### ***Self-Insured Retentions***

All Self-insured retentions must be disclosed to Risk Management for approval and shall not reduce the limits of liability. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.

### ***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 Stockton.

### ***Claims Made Policies (note – applicable only to professional liability)***

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Date*** prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of contract work.

### ***Verification of Coverage***

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

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies.

### ***Subcontractors***

Contractors shall require and verify that all subcontractors, or other parties hired for this work, purchase and maintain coverage for indemnity and insurance requirements as least as broad as specified in this agreement to the extent they apply to the scope of the subcontractor's work with the same certificate of insurance requirements and naming as additional insureds all parties to this contract. Contractor shall include the following language in their agreement with Subcontractors: *"Subcontractors hired by Contractor agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the contract documents and provide a valid certificate of insurance and the required endorsements included in the agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the owner contract document indemnity and insurance provisions will be furnished to the subcontractor upon request."* Contractor shall provide proof of such compliance and verification to the City upon request.

### ***Special Risks or Circumstances***

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

### ***Certificate Holder Address***

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton Attn: City Risk Services  
400 E Main Street, 3<sup>rd</sup> Floor – HR  
Stockton, CA 95202



# EXHIBIT 'B' - SAMPLE CONTRACT

CITY OF STOCKTON  
STANDARD AGREEMENT

Agreement Number:

1. This Agreement is entered into between the City of Stockton ("City") and \_\_\_\_\_ ("Contractor") to provide \_\_\_\_\_ as set forth in Exhibit A to this Agreement.

2. The term of this Agreement is as follows, unless amended as described in Exhibit A and Exhibit C section 8: Commences on: \_\_\_\_\_ Terminates on: \_\_\_\_\_

3. The maximum not to exceed amount to be paid to Contractor for the term of this Agreement, including if authorized, reimbursement of expenses, is: \$ \_\_\_\_\_

4. The complete Agreement consists of all the following Agreement documents which by reference are incorporated and made a part of this Agreement. The parties agree to comply with the terms and conditions of this Agreement.

- (a) Exhibit A – Statement of Work
- (b) Exhibit B – Insurance
- (c) Exhibit C – General Terms & Conditions
- (d) Exhibit D – Professional Services Special Terms & Conditions
- (e) Exhibit E – Compensation Schedule
- (f) Exhibit F – Timeline
- (g) Exhibit G - Special Funding Terms & Conditions FEMA (If applicable check "Yes")

**IN WITNESS WHEREOF, the authorized parties have executed this Agreement.**

## CONTRACTOR

Contractor's Name (if other than an individual, state whether a corporation, partnership, etc.): \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Printed Name and Title of Person Signing \_\_\_\_\_

Address \_\_\_\_\_

## CITY OF STOCKTON

Harry Black, City Manager \_\_\_\_\_

Date \_\_\_\_\_

**ATTEST:**

Eliza R. Garza CMC, City Clerk \_\_\_\_\_

**APPROVED AS TO FORM:**

John M. Luebberke, City Attorney BY: \_\_\_\_\_

**EXHIBIT A**  
**STATEMENT OF WORK**

**1. Project Objectives**

1.1 (Type the Project objectives)

**2. Project Scope**

2.1 (Type the Project Scope in detail including location of Work, resources, equipment and facilities needed.)

**3. Specifications**

3.1 (If applicable and the project has specifications, insert the specifications into this section.)

**4. Major Deliverables**

4.1 (Type the major deliverables in detail)

**5. Tasks That Support the Deliverables**

5.1 (In detail, describe the Tasks that support the deliverables and which party will complete them.)

**6. Internal and External Standards and Guidelines**

6.1 (If applicable and the project has internal and/or external standards or guidelines, insert them into this section.)

**7. Criteria of Acceptance for Deliverables**

7.1 (Type criteria used to determine whether deliverables are acceptable, how they will be accepted, and who will accept them.)

**8. Notices**

Pursuant to Exhibit C – General Terms and Conditions, Paragraph 15 – Notices, the mailing address for all required notices is as follows:

**Contractor:** \_\_\_\_\_  
\_\_\_\_\_

**City:** City of Stockton  
Attn: City Manager

\_\_\_\_\_  
\_\_\_\_\_

425 N. El Dorado Street  
Stockton, CA 95202

**9. Key Personnel**

(If applicable, type the name and contact information Key Personnel working on the Project.)

**10. Option to Renew.**

(If an option to renew is applicable, keep this clause and type the specifics as to how many renewal terms e.g. two one-year renewals, etc.)

The term of the Agreement may be extended up to \_\_\_\_\_ by a written amendment executed by both parties. However, the total term of the Agreement including the extended term shall not exceed \_\_\_ years.

SAMPLE

**EXHIBIT B  
INSURANCE**

**(RESERVED FOR CITY'S INSURANCE PROVISIONS APPROVED BY RISK)**

SAMPLE

## EXHIBIT C

### GENERAL TERMS AND CONDITIONS

1. **Goods, Equipment and Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A of the Agreement. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A of the Agreement.

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in Exhibit A, Contractor shall, at its sole cost and expense, furnish and maintain all facilities and equipment that may be required for furnishing services pursuant to this Agreement. If applicable, City shall furnish to Contractor only the facilities and equipment listed in Exhibit A to the Agreement.

3. **Compensation.** City shall pay Contractor for services rendered pursuant to this Agreement as described more particularly in Exhibit A and Exhibit E to the Agreement.

3.1 Invoices submitted by Contractor to City must contain a brief description of work performed, time spent and City reference number. Within thirty (30) days of receipt of Contractor's invoice, City will review invoice, and if acceptable make payment on approved invoice.

3.2 Upon completion of work and acceptance by City, Contractor shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Contractor fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

4. **Sufficiency of Contractor's Work.** All Contractor services, work, and deliverables shall be performed in a good and workmanlike manner with due diligence in accordance with the degree of skill normally exercised by similar contractors supplying services and work of a similar nature, and in conformance with applicable laws, codes and professional standards. Contractor's work shall be adequate and sufficient to meet the purposes of this Agreement.

5. **Ownership of Work.** All reports, work product, all other documents completed or partially completed by Contractor or its approved subcontractors, in performance of this Agreement, and if applicable, drawings, designs, and plan review comments shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor and its approved subcontractors agree to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before

final delivery to the City, the Contractor shall replace them at its own expense. Contractor and its approved subcontractors shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

6. **Timeliness.** Time is of the essence in this Agreement. Further, Contractor acknowledges that the failure of Contractor to comply with the time limits described in Exhibit A and Exhibit F may result in economic or other losses to the City.

7. **Changes.** Both parties to this Agreement understand that it may become desirable or necessary during the term of this Agreement for City to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work. Until the amendment is so executed, City will not be responsible to pay any charges Contractor may incur in performing such additional services, and Contractor shall not be required to perform any such additional services.

8. **Amendment.** No variation of the terms of this Agreement shall be valid unless an amendment is made in writing and signed by both parties.

9. **Contractor's Status.**

9.1 In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City. Contractor by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer or employee of the City is to be considered an employee of the Contractor. It is understood by both Contractor and City that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

9.2 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

9.3 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

9.4 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

## **10. Subcontractor.**

10.1 Subcontractors shall not be recognized as having any direct or contractual relationship with City. Contractor shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Agreement. Subcontractors will be provided with a copy of the Agreement and be bound by its terms. Contractor is responsible to City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

10.2 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Contractor.

10.3 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's personnel.

## **11. Termination.**

11.1 Termination for Convenience of City. The City may terminate this Agreement at any time by mailing a notice in writing to Contractor. The Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for the work actually completed at the time the notice of termination is received.

11.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

11.3 Funding- Non-Appropriation. It is mutually understood between the Parties that payment to the Contractor for performance shall be dependent upon the availability of appropriations by the City Council for the purposes of this Agreement. No legal liability on the part of the City for any payment may arise under this Agreement until funds are made available and until the Contractor has received funding availability, which will be confirmed in writing. If funding for any fiscal year is reduced or deleted, or if the City loses

funding for any reason, the City, in its sole discretion, shall have the option to either (a) cause this Agreement to be canceled or terminated pursuant to applicable provisions of the Agreement; or (b) offer to amend the Agreement to reflect the reduced funding for this Agreement.

12. **Non-Assignability.** The Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Contractor shall be solely responsible for reimbursing subcontractors.

13. **Indemnity and Hold Harmless.** To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

14. **Insurance.** During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit B to this Agreement and shall otherwise comply with the other provisions of Exhibit B to this Agreement.

15. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed in Exhibit A to this Agreement.

16. **Conformance to Applicable Laws.** Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

17. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement. Such licenses, certificates and permits shall be maintained in full force and effect during the term of this Agreement.

18. **Records and Audits.**

Contractor shall maintain all records regarding this Agreement and the services performed for a period of three (3) years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City



to inspect and audit. To the extent Contractor renders services on a time and materials basis, Contractor shall maintain complete and accurate accounting records, in a form prescribed by City or, if not prescribed by City, in accordance with generally accepted accounting principles, such records to include, but not be limited to, payroll records, attendance cards, time sheets, and job summaries.

19. **Confidentiality**. Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

20. **Conflicts of Interest**. Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Contractor's services under this Agreement. If such an interest arises, Contractor shall immediately notify the City.

21. **Waiver**. In the event either City or Contractor at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation. No payment, partial payment, acceptance, or partial acceptance by City shall operate as a waiver on the part of City of any of its rights under this Agreement.

22. **Governing Law**. California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the Federal District Court of California, Eastern District, Sacramento Division.

23. **No Personal Liability**. No official or employee of City shall be personally liable to Contractor in the event of any default or breach by the City or for any amount due Contractor.

24. **Severability**. If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or city statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

25. **Non-Discrimination**. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state, or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation, family and medical care leave, pregnancy leave, or

disability leave. Contractor and its officers, employees, agents, representative or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the City's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12990 (et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulation or Code of Federal Regulations. Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d). <http://www.dol.gov/oasam/regs/statutes/titlevi.htm>. The City requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

**26. Force Majeure.** Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

**27. Taxes and Charges.** Contractor shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of the Contractor's business.

**28. Cumulative Rights.** Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative of all other rights and remedies to which may be legally entitled.

**29. Advice of Attorney.** Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

**30. Heading Not Controlling.** Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

**31. Entire Agreement, Integration, and Modification.**

31.1 This Agreement represents the entire integrated agreement between Contractor and the City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by a written Amendment signed by the Contractor and City Manager.

31.2 All Exhibits to this Agreement and this Agreement are intended to be construed as a single document.

32. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

33. **Authority.** The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

SAMPLE

## EXHIBIT D

### PROFESSIONAL SERVICES SPECIAL TERMS AND CONDITIONS

1. **Definitions.** The following words and phrases have the following meanings for purposes of this Agreement:

1.1 "Services" means, collectively, the services, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

1.2 "Deliverable" means quantifiable goods or services that will be provided upon completion of a project. A deliverable is any tangible material, work or thing delivered by one party to the other, including associated technical documentation. A deliverable can be tangible or intangible parts of the development process, and often are specified functions or characteristics of the project.

2. **General.** The following terms and conditions are applicable for the Professional Services only. The special conditions shall be read in conjunction with the Standard Agreement, General Terms and Conditions ("GTC") Exhibit C, and all other Exhibits identified in the Standard Agreement.

2.1 Where any portion of the GTC is in conflict to or at variance with any provisions of the Special Conditions of the Agreement, then unless a different intention stated, the provision(s) of the Special Conditions of the Agreement shall be deemed to override the provision(s) of GTC only to the extent that such conflict or variations in the Special Conditions of the Agreement are not possible of being reconciled with the provisions of the GTC.

2.2 In the case of modification of a part or provision of the GTC, the unaltered part or provision, or both shall remain in effect. The Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the GTC.

3. **Time for Performance.**

3.1 Contractor shall perform the services according to the schedule contained in Exhibit F.

3.2 Timeliness of Performance i) Contractor shall provide the Services, and Deliverables within the term and within the time limits required under this Agreement, pursuant to the provisions of Exhibit A and Exhibit F. ii) Neither Contractor nor Contractor's agents, employees nor subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other

losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

#### **4. Standard of Performance**

In addition to Exhibit C, Section 4 and 17, Contractor agrees as follows:

4.1 Contractor's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Contractor shall comply with the profession's standard of performance, applicable laws, regulations, and industry standards. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Agreement.

4.2 Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. Contractor shall assure that all services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Using Agency and delivered in a timely manner consistent with the requirements of this Agreement.

4.3 If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Contractor either under this Agreement, at law or in equity.

#### **5. Compensation**

5.1 In addition to Section 3 Compensation in Exhibit C – GTC, the Contractor shall be compensated for the services provided under this Agreement as follows:

5.1.1 Contractor shall be compensated for services rendered and accepted under this Agreement and shall be paid monthly, in arrears on a not to exceed

basis, based upon the rates set forth in Exhibit E attached hereto and made a part of this Agreement. Contractor may vary the compensation for each task in Exhibit E provided that the total project compensation listed in Exhibit E and the Standard Agreement is not exceeded.

## **6. Personnel**

6.1 None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this Agreement. Contractor shall provide subcontractor a copy of this fully executed Agreement.

6.2 Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement. The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

6.3 Key Personnel: Because of the special skills required to satisfy the requirements of this Agreement, Contractor shall not reassign or replace key personnel without the written consent of the City, which consent the City will not unreasonably withhold. "key personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Agreement. The City may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor shall immediately suspend the services of the key person or persons and must replace him or them in accordance with the terms of this Agreement. A list of key personnel is found in Exhibit A, Scope of Services.

## **7. Reports and Information**

Contractor shall at such times and in such forms as the City may require furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters are covered by this Agreement as specified in Exhibit A and Exhibit E.

## **8. Findings Confidential**

All of the reports, information, data, et cetera, prepared or assembled by the Contractor under this Agreement are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is required by applicable law or by proper legal or governmental authority, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by Contractor outside the scope of this Agreement or is rightfully obtained from third parties. Contractor shall give City prompt notice of any such legal or governmental demand and reasonably cooperate with City in any effort to seek a protective order or otherwise to contest such required disclosure.

## **9. Copyright**

No materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, shall be available to Contractor for copyright purposes. Any such materials produced as a result of this Agreement that might be subject to copyright shall be the property of the City and all such rights shall belong to the City, and the City shall be sole and exclusive entity who may exercise such rights.

## **10. Deliverables**

Contractor shall prepare or provide to the City various Deliverables. "Deliverables" include work product, such as written reviews, recommendations, reports and analyses, produced by Contractor for the City. The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Contractor has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure, or if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Contractor of its commitments under this Agreement.

**EXHIBIT E**  
**COMPENSATION SCHEDULE**

The Contractor shall be compensated for the services identified in Exhibit A, Exhibit C, and Exhibit D to this Agreement as follows:

**1. Project Price**

1.1 The maximum the Contractor shall be paid on this Agreement is \$\_\_\_\_\_ (hereafter the “not to exceed” amount). The “not to exceed” amount includes all payments to be made pursuant to this Agreement, including City approved reimbursable expenses, if any. Nothing in this Agreement requires the City to pay for work that does not meet the Standard of Performance identified in Exhibit D section 4 or other requirements of this Agreement.

1.2 Standard Reimbursable Items: Only the reimbursable items identified in Exhibit A, C, and D (Compensation), shall be compensated to the Contractor. Reimbursable expenses will be reimbursed without markup. Fees plus reimbursable expenses shall not exceed the amount set forth in section 1.1 of this Exhibit and a copy of the original invoice for the items listed in i, ii or iii below shall be attached to the invoice submitted to the City for reimbursement. Payments shall be based upon work documents submitted by the Contractor to the City and accepted by the City as being satisfactory to City’s needs. The City shall not pay a markup on any of the items listed in i, ii or iii. Additionally, items such a telephone, fax, postage or freight are already included in the billable hourly rate. Contractor shall be reimbursed the direct expenses, which are the actual cost of the following items that are reasonable, necessary and actually incurred, by the Contractor in connection with the services:

- i. Expenses, fees or charges for printing, reproduction or binding of documents at actual costs with no markup added to the actual cost.
- ii. Any filing fees, permit fees, or other fees paid or advanced by the Contractor at actual costs with no markup added to the actual cost.
- iii. Travel expenses shall be reimbursed in accordance with the City’s travel policy, which is incorporated herein by reference. Reimbursement shall be made at actual costs with no markup added to the actual cost.

1.3 The Contractor shall be entitled to receive payments for its work performed pursuant to the Agreement. The City will pay Contractor based on invoices for acceptable work performed and approved until the “not to exceed” amount is reached. Thereafter, Contractor must complete services based on the Agreement without additional compensation unless there is a material change to the Statement of Work and Scope by a written Amendment.



1.4 If work is completed before the “not to exceed” amount is reached, the Contractor’s compensation will be based on the Contractor’s invoices previously submitted for acceptable work performed and approved.

1.5 Subcontractor Costs: Compensation for subcontractors shall be limited to the same restrictions imposed on the Contractor. Maximum markup Contractor may apply to subcontractor fees, minus reimbursable expenses, shall not exceed \_\_\_\_\_%.

2. **Task Price.** Below is the price for the services and reimbursable expenses as described in Exhibit A of this Agreement.

Task	Description	Task Price
1		\$
2		\$
3		\$
<b>TOTAL PRICE</b>		<b>\$</b>

3. **Hourly Rates.** The following is a list of hourly billable rates that Contractor shall apply for additional services requested of the Contractor. Contractor shall be compensated based on the hourly rates set forth below, on a time and material basis for those services that are within the general scope of services of this Agreement, but beyond the description of services required under Exhibit A, and all services are reasonably necessary to complete the standards of performance required by this Agreement. Any changes and related fees shall be mutually agreed upon between the parties by a written amendment to this Agreement.

**Hourly Billable Rate Schedule**

Title	Role on Project	Hourly Billable Rates
		\$
		\$
		\$
		\$
		\$
		\$
		\$

4. **Additional Fees.** Should an amendment to the Agreement be issued for additional services that require the following items, the unit prices are as follows:

Title	Unit Price
	\$

**5. Invoice to Address.** Each invoice submitted shall identify the specific task(s) listed in Exhibit A and this Exhibit, and the completed work product/deliverable for the agreed upon price listed in this Exhibit. Invoices shall be submitted to the below address:

City of Stockton \_\_\_\_\_ Department  
Attention: \_\_\_\_\_  
425 N. El Dorado Street  
Stockton, CA 95202

SAMPLE

**EXHIBIT F**  
**TIMELINE**

1. Consultant shall complete the requested services identified in Exhibit A as follows:

1.1 **TIMELINE FOR COMPLETION OF WORK**

1.1.1 (insert deliverable title) (insert duration i.e. 1 week)

1.1.2 (insert deliverable title) (insert duration i.e. 1 day)

1.1.3 (insert deliverable title) (insert duration i.e. 3 weeks)

SAMPLE

## EXHIBIT G

### SPECIAL FUNDING TERMS AND CONDITIONS

#### FEDERAL FUNDS

Federal regulations (2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II) require the City to include certain contract clauses in this agreement.

The US Department of Homeland Security (DHS) – Federal Emergency Management Agency (FEMA) recommends other certain contract clauses be included.

Based on the table below, any clause identified with a check mark (☑) next to it is hereby incorporated into this contract agreement. The full language of each clause can be found in this EXHIBIT G.

#### CONTRACT TYPES

**1. Construction Contracts**

- 1.1 Equal Employment Opportunity
- 1.2 Davis Bacon Act
- 1.3 Copeland “Anti-Kickback” Act

**2. All Contracts**

- 2.1 Contract Work Hours and Safety Standards Act
- 2.2 Clean Air Act and Federal Water Pollution Control Act
- 2.3 Debarment and Suspension
- 2.4 Byrd Anti-Lobbying Amendment
- 2.5 Procurement of Recovered Materials
- 2.6 Access to Records
- 2.7 DHS Seal, Logo, and Flags
- 2.8 Compliance with Federal Law, Regulations and Executive Orders
- 2.9 No Obligation by Federal Government
- 2.10 Program Fraud and False or Fraudulent Statements or Related Acts

Check (☑) Applicable Clauses	
<b>Construction</b>	
1.1	<input type="checkbox"/>
1.2	<input type="checkbox"/>
1.3	<input type="checkbox"/>
<b>All Contracts</b>	
2.1	<input type="checkbox"/>
2.2	<input type="checkbox"/>
2.3	<input type="checkbox"/>
2.4	<input type="checkbox"/>
2.5	<input type="checkbox"/>
2.6	<input type="checkbox"/>
2.7	<input type="checkbox"/>
2.8	<input type="checkbox"/>
2.9	<input type="checkbox"/>
2.10	<input type="checkbox"/>

**Checked provisions are hereby incorporated into the contract agreement.**

**Following are the FEMA requirement or recommendation clauses listed above for contract incorporation.**

## **1.1 Equal Employment Opportunity**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order

11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor

debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

### **1.2 Compliance with Davis-Bacon Act**

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

### **1.3 Compliance with the Copeland “Anti-Kickback” Act**

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

### **2.1 Compliance with Contract Work Hours and Safety Standards Act**

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or

mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

## **2.2 Clean Air Act and the Federal Water Pollution Control Act**

### Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the (name of the applicant entering into



the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the (name of the applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **2.3 Debarment and Suspension**

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further

agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **2.4 Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.

Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification found at APPENDIX A, 44 C.F.R. PART 18:

#### **APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

##### **Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

\_\_\_\_\_  
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap.38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date:

### **2.5 Procurement of Recovered Materials**

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

### **2.6 Access to Records**

The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide the City of Stockton, [insert name of recipient], the FEMA Administrator, the Comptroller General of the United States, or any of their

authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City of Stockton and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

### **2.7 DHS Seal, Logo and Flags**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval

### **2.8 Compliance with Federal Law, Regulations, and Executive Orders**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

### **2.9 No Obligation by Federal Government**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

### **2.10 Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.