

CITY OF STOCKTON



**REQUEST FOR PROPOSALS (RFP)
Marina Lease - 4911 Buckley Cove Way
FOR THE CITY OF STOCKTON, CALIFORNIA
(PUR 20-045)**

**PROPOSALS WILL BE RECEIVED UNTIL THE HOUR OF
2:00 O'CLOCK P.M., THURSDAY, March 18, 2021,
IN THE OFFICE OF THE CITY CLERK,
FIRST FLOOR, CITY HALL, 425 NORTH EL DORADO STREET,
STOCKTON, CALIFORNIA 95202-1997**

REQUEST FOR PROPOSALS (RFP)
Marina Lease - 4911 Buckley Cove Way
PROJECT # 20-045

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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 LEASE AND OPERATION OF PROPERTY AT **.4911 BUCKLEY COVE WAY (Locally know as Ladd's Marina) (PUR 20-045)** in strict accordance with the specifications.

The City of Stockton ("City") invites proposals from experienced Marina Operators ("Respondents") that are interested in leasing and managing the property known as Ladd's Marina ("Marina"). Marina Operators are those that have docking facilities and will maintain and operate the rental of slips and may also provide other goods and services associated with water recreation. The City will award the lease to one entity, though subleasing is permissible with approval by City and in accordance with the terms of the executed lease. The intent of the RFP is to identify qualified companies with the experience to lease the property for the purpose of operating and managing a Marina at this location.

For purposes of this RFP, "Respondents" means the companies or individuals that submit proposals to this RFP. The documents submitted will be referred to as "Proposals."

Proposal forms and specifications are available on the City's website at www.stocktonca.gov/eddbid 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, March 18, 2021, at 2:00 p.m.

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

Information on Process/Clarification

Jeff Molloy

(209) 937-8352

e-mail: stocktonbids@stocktonca.gov

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

Dated: 02/11/2021

ELIZA GARZA
CITY CLERK OF THE CITY OF STOCKTON

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PROPONENT'S CHECKLIST

Did You:

- * Complete the following proposal documents (FROM THIS PACKET ONLY SUBMIT PAGES 18 to 20 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 signoree.**
 - * Include your proposal, as outlined in these specifications.
 - * Include your \$ **-0.00** proponent's security, proponents bond, certified or cashier's check. The City will **NOT** accept company or personal checks for proposal security.
 - * Include self-addressed, unstamped envelope (#10, 4- 1/8 x 9- 1/2) with proponent's security. **Please DO NOT seal your security, proponent's bond, certified or cashier's check in this envelope.** It is for returning the security to the proponent AFTER project award.
 - * Submit one (1) ORIGINAL and six (6) 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/eddbid .
 - * Deliver sealed proposal to City Hall, City Clerk's Office (1st floor), 425 North El Dorado Street, Stockton, CA 95202, before **March 18, 2021, 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 – MARINA LEASE 4911 BUCKLEY COVE WAY ”**
- B) **PUR 20-045**
- C) **THURSDAY MARCH 18. 2021**

CONTACT INFORMATION:

Information on Process/Clarification
Jeff Molloy, Procurement Division (209) 937-8352 e-mail: stocktonbids@stocktonca.gov

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

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

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 enter into a MARINA LEASE - 4911 BUCKLEY COVE WAY and operate the Marina property (PUR 20-045) 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, MARCH 18, 2021, in the office of:

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

One (1) original and SIX (6) 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, "MARINA LEASE - 4911 BUCKLEY COVE WAY for the City of Stockton (PUR 20-045)." 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:

Not Applicable

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

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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

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.

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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/eddbid. Failure of any proponent to not have received such 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: Jeff Molloy
PROCUREMENT DIVISION
400 E MAIN, 3RD FLOOR

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STOCKTON, CA 95202
stocktonbids@stocktonca.gov

Such request for clarifications/questions/answers shall be delivered to the City by March 1, 2021. Any City response to a request for clarifications/questions/answers will be posted on the City's website at www.stocktonca.gov/eddbid by March 8, 2021, and will become a part of the RFP. The proponent should await responses to inquiries prior to submitting a proposal.

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.

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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.

1.14 LICENSING REQUIREMENTS

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

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.*

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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 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.

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1.20 TERM

TWENTY FIVE (25) YEAR LEASE AGREEMENT with the possibility of an additional Twenty Five (25) year extension or other mutually agreed upon term, not to exceed 50 years cumulative.

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 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

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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 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.

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1.28 AWARD

Upon conclusion of the RFP process, a contract/lease may be awarded for the property known as Marina Lease - 4911 Buckley Cove Way 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 _____ allotted for this project.

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.

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1.33 MANDATORY PRE-PROPOSAL CONFERENCE

A mandatory job walk will be held on FEBRUARY 25, 2021 at 2:00 p.m. promptly at 4911 Buckley Cove Way, Stockton CA. Interested Proponents arriving at 2:01 p.m. or later will not be admitted. Failure to attend will result in your proposal being rejected.

1.34 PREVAILING WAGES & CONTRACTOR/SUBCONTRACTOR REGISTRATION REQUIREMENTS

Not Applicable

Prevailing wage rates are required for this project according to State and Federal Labor laws. Prevailing wage rates can be found by logging on to <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

Pursuant to Labor Code Section 1771.1(a): A Contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

Department of Industrial Relations- Contractor Registration information and web link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>

In compliance with Senate Bill 854 and the California Labor Code, all Bidders shall include with their Bid proof of registration from the Department of Industrial Relations (DIR) that includes the contractor's Legal Name, Registration Number, License Type/Number, Registration Date and Expiration Date, for every contractor and subcontractor, regardless of tier.

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This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractors must submit their certified payroll records directly to the Division of Labor Standards Enforcement Compliance Monitoring Unit, as well as the City of Stockton.

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 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.

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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 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.

2.0 BACKGROUND/GENERAL NATURE OF SERVICE

The City of Stockton ("**City**") invites proposals from experienced Marina Operators ("**Respondents**") that are interested in leasing and managing the property located at 4911 Buckley Cove Way, locally known as Ladd's Marina ("**Marina**"). Marina Operators are those that have docking facilities and will maintain and operate the rental of slips and may also provide other goods and services associated with water recreation. The City will award the lease to one entity, though subleasing is permissible with approval by City and in accordance with the terms of the executed lease. The intent of the RFP is to identify qualified companies with the experience to lease the property for the purpose of operating and managing a Marina at this location.

For purposes of this RFP, "Respondents" means the companies or individuals that submit proposals to this RFP. The documents submitted will be referred to as "Proposals."



Aerial photo of Ladd's Marina in Stockton, CA

MARINA LOCATION

Ladd's Marina is geographically located west of downtown Stockton in California, and adjacent to Buckley Cove Park, the Stockton Sailing Club, Buckley Cove Public Boat Launch, Riverpoint Landing Marina Resort, and the Brookside neighborhood. The Marina can be easily accessed through the San Joaquin River located in the San Joaquin Delta. Ladd's Marina offers 110 boat slips in a well-protected cove including 80 covered berths that are available from 18 to 22 feet in length. The City is offering a unique long-term commitment accompanied by a potential multi-year extension. The selected marine management firm shall provide "best practice" management services for this City-owned asset as well as capital investment in the property. Photos of the parcel are included as Attachment A. Surveyed parcel is included as Attachment B.

MARINA DESCRIPTION

Marina Summary

The Marina includes use of the following City-owned property and equipment:

- “Marina”:
 - A Gangway Dock
 - Access to Water
 - Access to Electricity – paid by Marina Operator
 - Access to Potable Water at Shoreline Connection
 - Potential Limited Outdoor Land Storage
 - Parking

- “Buildings”:
 - Store/office/service shop building (with separate spaces for maintenance, utilities, bathroom/showers, storage and office/retail).

- “Business Name”
 - THE CITY DOES NOT POSSESS AN OWNERSHIP INTEREST IN THE BUSINESS KNOWN AS LADD’S MARINA OR A TRADEMARK INTEREST IN ITS NAME. THEREFORE, CITY CANNOT AND DOES NOT GRANT PERMISSION TO USE THE BUSINESS NAME OF LADD’S MARINA OR ANY INFERRED OR DERIVED USE OF THE SAME OR LIKE NAME.

Transportation/Access

The Marina is accessible via car off West March Lane and close to Interstate 5. Boat launching access is available through the City-owned and operated Buckley Cove Boat Launch facility immediately adjacent to the Marina’s western border; standard fees will apply for launch use.

Utilities

Water and electric public utilities are available at the Marina. The Marina operator will be expected to provide lighting on the docks and other measures as necessary to operate the marina in a safe manner for the public. Costs to operate and maintain utilities will be the sole responsibility of Marina Operator.

PROJECT GOALS

The City of Stockton invites Respondents to submit Proposals that meet the following primary Project Goals, among others:

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Attract an experienced company with demonstrated success in Marine activities or other effective business endeavors, independent of any financial assistance from the City, that can adhere to the Scope of Services, as well as efficiently market, operate and maintain the Marina; provide excellent customer experiences for boaters; and successfully maintain the property and equipment.

Lease Structure

It is intended that the selected Marina Operator will begin its operation of the Marina upon execution of an agreement (“Contract”) for a period of up to twenty-five (25) years with the potential for extension options at the mutual discretion of City and Operator. Under no circumstances shall the original lease term, combined with any extension options, surpass fifty (50) years. The Contract is expected to be fully executed in time for the Summer 2021 boating season.

While the structure of the legal agreement will be a lease of property, whereby the leasee will be solely responsible and liable for business activities within the property; the City has an interest in the quality of service, care and maintenance of the subject property and operating facilities and therefore will require detailed explanation of planned services, property improvements, operational proforma, and business plan in Respondent’s proposal.

Additionally, the property is being leased in an “AS IS” condition. Substantial capital investment is required for improvements including but not limited to dredging, seawall repair, dock repair, stormwater system, etc. **The leasee will be responsible for such investment and repairs.** Anticipated length of the lease term has been estimated with consideration to the capital investment required to improve the property.

Tenants- The Marina currently has approximately 75 vessels moored in the property docks and may have 5-10 vessels dry docked on stilts undergoing repairs. All mooring and storage contracts will be turned over to the lease upon execution of a lease with the City. It is the right of the new lease to notice current vessel owners of terms and conditions of new operational management. There are no independent agreements between the City and any vessel owner. The City would expect fair noticing practices be employed with existing vessels regarding any change to their previous mooring arrangement. The use of lien services with vessel owners who will not comply with new Marina regulations, will be a right of the leasee.

TIMELINE

The City anticipates the time schedule listed below. The schedule is tentative in nature and is provided to outline the target dates set by the City. The City reserves

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the right to change the timeline at any point. Each proposer under consideration by the City will be informed of any changes made to the dates stated below:

TENTATIVE SCHEDULE	
Request for Proposals Released	February 11, 2021
Mandatory Job Walk	February 25, 2021
Request for Clarifications/Questions	March 1, 2021
Responses to Questions by City	March 8, 2021
Proposals Due	March 18, 2021 by 2 p.m.
Proposal Reviewed	Week of March 22, 2021
Council Award	May - June 2021

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2.1 SCOPE OF SERVICES

The Designated Operator will assume sole responsibility for the daily operation of the Marina and at a minimum be responsible for the following tasks:

2.2 Marina Operations Management

Develop a comprehensive plan for managing, marketing, operating, and maintaining the Marina. The plan must also ensure a clean, safe and enjoyable recreational facility for boaters at a competitive price point.

The Designated Operator shall implement best practices and follow guidelines including those from, but not limited to: CA Division of Boating and Waterways, Boating Clean and Green and Hazardous Waste; the California Coastal Commission; CA Department of Parks; Cal OSHA; and all federal, state, and county marine-related regulations.

The plan should include regularly scheduled hours of operation and how the marina will be accessible to the public/customers.

Provide and maintain necessary equipment to perform Marina operations including, but not limited to, transporting vessels service/repair and/or summer slip rentals, floating docks, and general Marina maintenance as outlined herein.

The Designated Operator will be responsible for providing all staff, equipment, vehicles and materials for the use and maintenance of all docks, gangways and associated parts of the dock system.

The Designated Operator shall be responsible for maintaining current licenses and registrations for all equipment and ensuring all personnel who operate such equipment that requires for licensure/certification, qualification, or competency as required by federal, state, and local laws, meet those requirements.

The Designated Operator shall submit verification and copies of all up-to-date licenses and certifications as requested by the City/County/State and other regulatory agencies, as required.

Maintain all records and reports that pertain to the management and operation of the Marina including, but not limited to:

- Wet slip tenants

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- Vessel storage tenants
- Launch/Retrieval operations
- Security activities
- Financial and management/operational issues
- Maintenance records
- Transient slips and interim rentals
- Collection of rents, deposits, and any other related fees
- Environmental and regulatory fees and permits

Such records and reports shall be made available to the City upon request at any time during the term of the Contract and shall be provided promptly to the City in the event of the termination of the Contract.

Maintain copies of, or have ready access to, the latest federal, state, and local laws and/or regulations applicable to Marina and boating activities. The Designated Operator shall ensure compliance with all such laws and regulations, including, but not limited to required permits.

Ensure all vessels, vehicles, and equipment berthed and/or stored within the Marina are always properly maintained and in a clean and safe condition. All vehicles, vessels, and equipment that do not meet the above criteria, shall be promptly removed from the premises. The Designated Operator shall request copies of each vessel's current registration and proof of insurance when preparing new and/or renewed moorage contracts. Such records shall be maintained by the Designated Operator and available for review by the City, annually or upon request.

Develop, establish, administer, and ensure compliance with mooring contracts to be entered into by the Designated Operator with each Marina tenant.

Prepare a set of Marina rules and regulations and prepare a copy for the City subject to the City's review within thirty (30) days of execution of this Contract. Such rules and regulations shall be visibly displayed at the Marina's entrance and distributed to all Marina tenants. These rules shall be modified or amended to remain in compliance with state and local laws and regulations.

The Designated Operator shall be responsible for all of its employees' and agents' wages, benefits, insurance, and taxes in accordance with state policies and procedures.

The Designated Operator shall be responsible for the cost of training and licensing staff, required to conduct Marina operations. Under no circumstance shall Operator's employees, implied or otherwise, become employees of the City.

The Designated Operator shall be responsible for all office furniture, operational supplies,

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materials, equipment, and services utilized in the operation and management of the Marina.

The Designated Operator shall allow City and its agents to enter the property in case of emergency and to examine the leased premises at reasonable times and further provide necessary keys or required access as may be required.

2.3 Environmental Operational Requirements

The Designated Operator shall adhere to all applicable federal, state, local environmental and safety laws, rules, regulations, policies, and requirements.

Establish and communicate an environmental policy for Marina operations and boater activity, including allowable and prohibited boater maintenance, to all Marina customers.

Ensure that an area is designated for used oil, used oil filters, and used bilge pad. The Designated Operator shall maintain on Marina premises, sufficient quantities of absorbent materials for use in case of chemical or oil spills. In the event of any actual or suspected spill of any chemical, petroleum product, or waste water, the Designated Operator shall immediately notify regions' designated protocol, as well as the City, and immediately take all measures necessary to control the spread of the spilled material, and to clean it up.

This area shall be maintained by the Designated Operator, and all waste materials must be disposed of properly and in accordance with City, State and Federal requirements.

The Designated Operator shall have environmental services on-call in the event an environmental hazard greater than an event the Designated Operator is prepared for. The City can direct the Designated Operator to organizations that can assist with this matter.

The Designated Operator shall provide the City with the record of any and all environmental hazards within a 24 hour period and by the following business day after weekends and/or holidays.

The Designated Operator must establish a recycling program for paper, plastics, glass, zinc and other metal anodes, used oil, and any other recycling materials, per state and county regulations.

The Designated Operator shall not permit the storage of any hazardous substances or materials, including, but not limited to illuminating oils, oil lamps, turpentine, benzene, or other similar substances or explosives of any kind, or any substance or

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thing prohibited by the standard policies of fire insurance companies in California.

The use of fireworks, firework displays, or any pyrotechnics shall not be permitted on the Premises.

2.4 Maintenance and Repair of Facilities and Equipment

The Designated Operator shall be responsible to provide any and all tools, fixtures, furnishings, equipment and other appurtenances necessary to successfully operate the Marina in accordance with the terms set forth in this Contract. The property may come with boat lifts to remove vessels from the water for service. Such lifts, while the property of the City, shall be available for use by the operator during the term of the lease, in "as is" condition. Operator will be responsible for any maintenance, repair and certification required for use of the equipment.

Provide an annual inspection and maintenance schedule to prevent deterioration of facilities and equipment.

Maintain Marina facilities and equipment including, but not limited to the following:

- All docks/fingers and gangways
- Interior/exterior of all buildings and improvements
- Visitor restrooms and showers
- Utility services
- Storage area(s)
- Fencing, gates, and locks
- Lighting systems
- Parking and access road areas
- Dry storage areas

Groom and maintain the Marina landscape and water areas, including, but not limited to:

- Marina parking lots, access roads, shoreline, and property border
- Ensure that waters are kept free of debris and obstructions.
- Hyacinth removal from slips

Provide custodial/janitorial services to all Marina facilities. The Designated Operator shall ensure facilities are always maintained in a clean and sanitary condition. This includes coordination for maintenance and cleanup of all temporary bathroom facilities.

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Repair, replace, rebuild, and paint all or any part of the premises as needed.

The Designated Operator shall submit a written request to the City for any proposed modification to the interior, exterior, or any surrounding areas on the Premises. Any required permits will be the responsibility of the Designated Operator.

Repair all damage to the Premises resulting from vandalism or other destructive acts.

2.5 Vessel Monitoring/Inspection

Maintain records of all vessels berthed in the Marina and ensure that no vessel is in such a condition that it may list, capsize, sink, or release fuel, motor oil, or any other hazardous material or pollutant into the water.

Maintain a comprehensive list of slip occupant tenants that includes vessel information and slip assignments.

Perform visual inspections of all vessels upon initial and all subsequent slip assignments, and at appropriate frequencies thereafter, the Designated Operator is also required to ensure the vessel is registered, documented, and insured, as well as in compliance with berthing requirements as set forth in the mooring contracts.

Terminate mooring agreements as necessary and ensure vessels leave marina, using lien-sale remedies if/when necessary.

Remove and dispose of all abandoned or derelict vessels. Measures should be in place to prevent vessels from being abandoned and/or derelict. Any vessel that presents a safety or environmental hazard must be addressed in a timely manner.

2.6 Security

Provide all necessary security measures to protect patrons, guests, employees, and all other individuals from any disturbance or other occurrence that may be attributable to the Marina operations.

If property is secured, copies of all pass codes and keys will be supplied to the City .

2.7 Utilities, Trash and Debris

The Designated Operator shall be responsible for all utility costs including, but not limited to, electricity, sewer and water, as required by Marina operations.

The Designated Operator shall be responsible for the cost of storage, removal and disposal of all refuse and garbage generated from the Marina operations. Disposal of

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all refuse left by patrons on the premises is the sole responsibility of the Designated Operator.

2.8 Signage

The City reserves the right to erect, remove, or change signs at the exterior of the Premises as it deems necessary and desirable for the convenience of the public. No exterior signs shall be erected, removed, or changed by the Designated Operator without prior written approval of the City.

2.9 PROPOSAL REQUIREMENTS

Respondent Description: A description of the corporation tenant entity that is submitting the Proposal including, but not limited to:

- The intended form and structure of the owner or tenant entity and any proposed partnership or joint venture must be clearly explained.
- A chart/diagram of the owner or tenant entity, showing structure (percentages) of ownership and investment must be included.
- If a corporation, provide a copy of the Articles of Incorporation.
- The Respondent must be able to demonstrate a good record of performance and have sufficient financial resources to ensure that they can satisfactorily enter the lease and provide the services required to operate a successful marina.
- Respondent shall submit a full and detailed presentation of the true condition of the Respondent's assets, liabilities and net worth. The report should include a balance sheet and income statement. If the Respondent 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.
- In a separate sealed envelope include your last two (2) annual CPA audited financial statements. Include a copy on your company's letterhead. The Respondent's financial statements will be kept confidential to the extent permitted by law except as may be required to defend the City against any legal action pertaining to this RFP or arising out of or related to the subject agreement.
- Name, address, phone number and email of each member of the owner or tenant entity. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact

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person.

- Resumes of key management team members.
- Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a business venture during the past five years.
- Description of background and experience in Marina management and operations at a facility of comparable scale and scope.

2.10 PROJECT DESCRIPTION: The Project description should include a detailed narrative describing all relevant aspects of the Project. The description should address:

- A narrative detailing the proposed vision for the Marina, which shall include the Respondent's approach to operations, safety, and maintenance of the Marina.
- Specific plans for Marina operation including planned services, property improvements, operational proforma, and business plan.
- All planned modifications to the Marina's slip layout or capacity, if any.
- Plans for how existing Proponent resources, including marina-related resources and services, may be leveraged in order to improve operational efficiency of the Marina.

2.11 FINANCIAL OFFER:

Summary of financial consideration to be provided by the Designated Operator. This should include:

- A monthly lease offer, presented as monthly flat fee with an escalation schedule, and/or a percentage of revenue/profit from all receipts and sources, payable to the City .
- Description of proposed capital investment in property improvements and timeline for such investment.
- Proposed term of contract/extension.

2.12 CITY RESPONSIBILITIES

- City will provide access to City maps, conceptual drawings, records, studies, plans and other documents relating to the property, as available.

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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 Marina, 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 six (6) copies of your proposal/qualifications. Additionally, submit one (1) USB with an electronic version of the proposal.

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.

3.0.2 Minimum Experience Qualifications Summary

A statement of professional experience and ability.

3.0.3 Management/Method of Operation

Provide detailed description outlining your firm's approach to assuming the services of the Marina. Highlight innovative ideas your firm may have to provide to the City and describe in detail your procedures and plans for Marina operation.

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3.0.4 References

Provide a list of references with current contact person, e-mail address and phone number who may be contacted regarding firm performance.

3.0.5 Financial Statement

The proponent must be able to demonstrate a good record of performance and have sufficient financial resources to ensure that they can satisfactorily enter a Marina lease and provide 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.

3.0.6 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 marina leases and/or operations.

3.0.7 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.

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

3.0.9 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:

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Generalized narrative of supplementary information; marketing materials;
and/or supplementary graphic material

- 3.0.10** 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.
- 3.0.11** 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.
- 3.0.12** 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.
- 3.0.13** 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 enter into a MARINA LEASE - 4911 BUCKLEY COVE WAY and operate said Marina.

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 to allow the Panel to 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;

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3. Proponent’s Fee Schedule: completed and signed (under separate sealed cover);
4. Proponent’s Agreement;
5. Non-Collusion Affidavit;
6. References;
7. Any other criteria as best suits the City of Stockton.

Proposals will be reviewed by representatives from the City. Selection of the Designated Operator shall be based on a determination of the best value to the City and the negotiated agreement will be presented to the City Council for approval. When evaluating proposals, the following criteria will be considered in order of priority:

Financial Offer	Provision of competitive terms for the lease and operation of the Marina, including lease payments, capital investments, revenue-sharing arrangements, and any other financial considerations provided. The successful respondent must provide a performance bond for the initial term of the Contract and the first five (5) years are to be guaranteed.	60%
Proposed Business Plan	Overall quality of proposed services and approach to the Marina operations and maintenance.	20%
Team Qualifications	Experience, skills, and resources necessary to manage and invest in a successful business. The background and experience of the respondent team in operating Marinas will be among the elements to be considered.	20%

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.

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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 – PROJECT NAME
- B) PUR XX-XXX
- C) Bid Opening Date

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/eddbid .
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). Please see attached flyer regarding PINS Advantage.

Insurance Requirements for Lessees **(Not for Daily or Short Term Rentals)**

Lessee 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 Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

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. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. (for lessees with employees).
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

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 Lessee 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 Lessee 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 Lessee's insurance (at least as broad as ISO Form CG 20 10.) 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 Lessee'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 Lessee's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

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

Waiver of Subrogation

Lessee hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Lessee may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Lessee 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 Lessee, 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 Lessee 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.

Verification of Coverage

Lessee 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 Lessee'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.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements at any time, 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
400 E Main Street, 3rd Floor – HR
Attn: City Risk Services
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 CARES (If applicable check box) 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

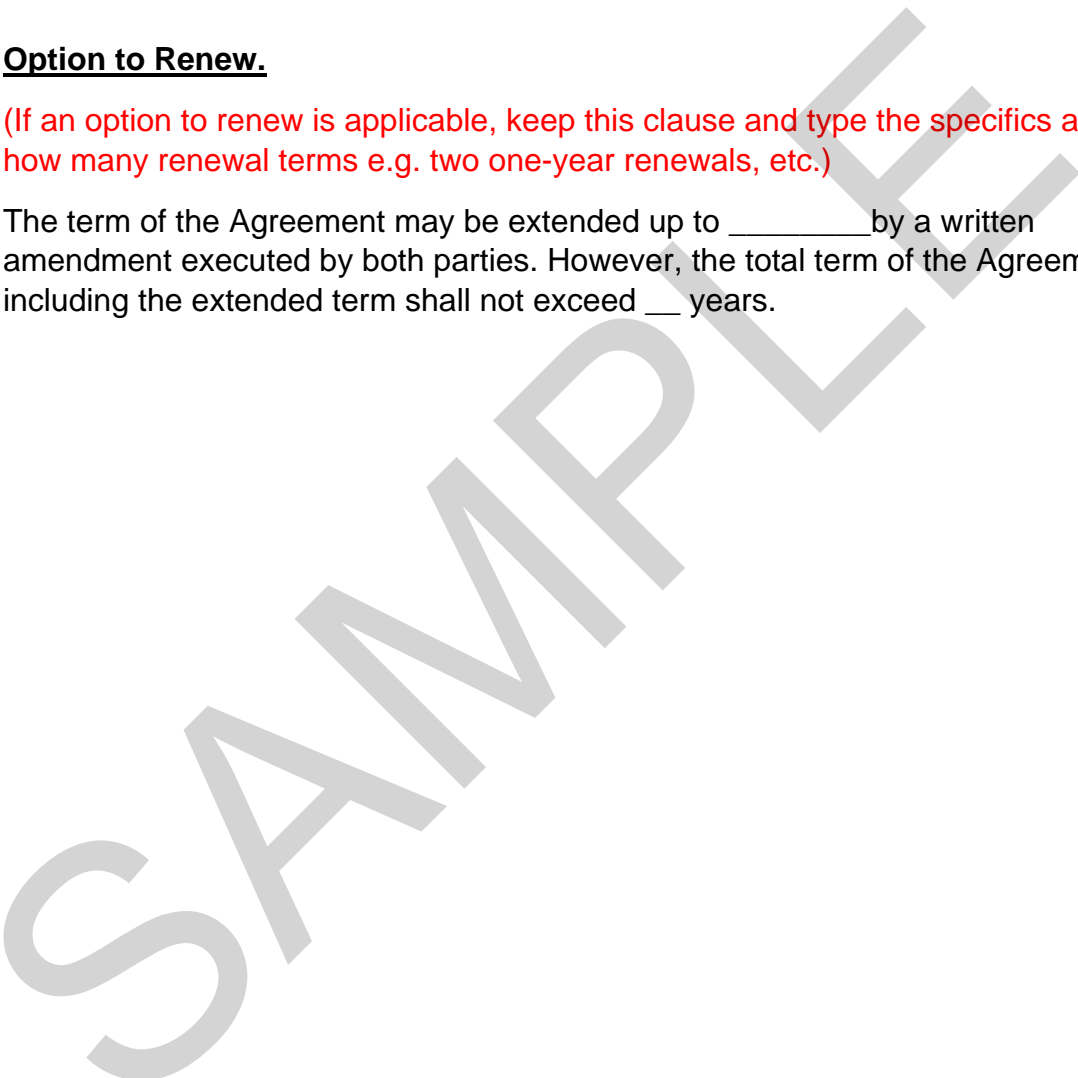
9. Key Personnel

(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.



**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, gender identity, gender expression, 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 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
CARES Act
Special Funding Terms and Conditions

The City has entered into this Agreement using funds governed by the Coronavirus Relief Fund. The funding available is governed under section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act established the Coronavirus Relieve Fund (the "Fund"). Under the CARES Act, the Fund is to be used for payments for specified uses to certain local governments.

The following terms and conditions are applicable for the funds governed by the CARES ACT only. These 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.

Where any portion of the GTC is in conflict to or at variance with any provisions of the CARES Act Special Funding Terms and Conditions of the Agreement, then unless a different intention stated, the provision(s) of the CARES Act Special Funding Terms and 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 CARES Act Special Funding Terms and Conditions of the Agreement are not possible of being reconciled with the provisions of the GTC.

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 CARES Act Special Funding Terms and Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the GTC. In consideration of the mutual promises contained in this Agreement, the City and Contractor agree as follows:

1. SURVIVAL OF PROMISES. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Agreement expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or state statutes of limitation.
2. SEPARATE ACCOUNTING. Contractor shall establish a separate account for all funds specified in this Agreement and shall use the funds to purchase necessary supplies, defray travel, and will employ the necessary personnel to perform the Work specified in this Agreement. Contractor shall also establish and maintain, if applicable, such accounting and documentation of matching expenditures of the Contractor to satisfy the requirements of the project.
3. AUDIT. The City, and any other appropriate government agencies authorized by law, or their duly authorized representatives shall, until five (5) years after final payment under this Agreement, have access to any of the Contractor's records related to this Agreement, at the Contractor's regular place of business, for the purpose of conducting audits. The period of access for records relating to a) appeals under a dispute, b) litigation or settlement of claims arising from the performance of this Agreement, or c) costs and expenses of this Agreement to which exception has been taken shall continue until such appeals, litigation, claims, or exceptions are disposed of.
4. AUTHORIZED USE OF FUNDS. The Contractor shall use or expend the funds provided by this Agreement only for the purposes for which they were appropriated. Further, the funds provided by the City shall be used by the Contractor only for the purpose and activities specified in the Agreement, including associated attachments and exhibits which are attached hereto and incorporated herein by reference as if fully set forth herein.
5. COMPLIANCE WITH COST PRINCIPLES AND RELATED REGULATIONS. The Contractor shall not be reimbursed for expenditures under this Agreement that do not comply with the CARES Act and Related Regulations that are incorporated.

6. PUBLICATIONS. The Contractor shall be free to publish results of the Work provided that the terms of the project are met and the review copies of materials intended for publication are submitted to the City's project Director at least 15 days prior to publication.
7. DELAYS. Contractor shall notify the City promptly of any expected delay in performance of services. However, Contractor shall not be liable for delays in performance beyond reasonable control.

SAMPLE