



**NOTICE TO CONTRACTORS,  
PROPOSAL,  
AGREEMENT, &  
SPECIAL PROVISIONS**

FOR CONSTRUCTION ON  
**Project No: 23-049**  
**Senior Center Window Replacements**

IN STANISLAUS COUNTY,  
TURLOCK, CALIFORNIA.

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Public Works Department/ Engineering Division

Contact Person: Charlotte Calvario  
Phone: 209-668-6029  
Email: ccalvario@turlock.ca.us

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**William D. Morris, RCE 55910**  
City Engineer

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Proposals shall be delivered to Turlock, California  
at or before 2:00 PM on Tuesday, December 19, 2023  
at the office of the City Engineer,  
Public Works: Engineering Division  
156 S. Broadway, Suite 150  
Turlock, CA 95380

## LICENSEES RESPONSIBLE FOR SPECIFICATIONS

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Contract documents prepared by or under the direction of the following registered persons:

City Engineer (Front End Specifications)

William D. Morris

Public Works Department

Engineering Division

156 S. Broadway Suite 150

Turlock, CA 95380



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# **CITY OF TURLOCK, CALIFORNIA**

## **NOTICE TO CONTRACTORS**

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Sealed proposals will be received by the City Engineer of the City of Turlock, Public Works/Engineering Division, 156 S. Broadway, Suite 150, Turlock, California 95380, until 2:00 PM on Tuesday, December 19th, 2023, for:

### **City Project No. 23-049**

#### **Senior Center Window Replacements**

In accordance with and as described and provided in the plans, specifications and the proposed form of contract therefore, all of which are on file in the office of the City Engineer, and to which special reference is hereby made.

No verbal, telegraphic, electronic mail, facsimile, or telephone Proposals shall be considered.

Proposals are required to be complete and for the entire work, materials and improvements unless the contrary is indicated in the specifications.

An optional pre-bid meeting will be held on Thursday, December 14<sup>th</sup>, 2023 at 10:30 AM in the Turlock Senior Citizens Center located at 1191 Cahill St, Turlock, CA 95380.

In accordance with the provisions of California Business and professions Code, Section 7028, Contractor shall possess one of the following Contractor license(s) at the time of bid and for the duration of the contract:

1. C-17 Glazing Contractor

Failure to possess a specified license shall render the Bid as non-responsive, shall act as a bar to award of the contract to any Bidder not possessing said license(s) at the time of Bid opening and shall result in the forfeiture of the security of said Bidder. Furthermore, any Bidder or Contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractor's License Board.

Each proposal must be accompanied by cash, cashier's check, or check certified by a responsible bank, or by a bid bond, the proposed form of which is on file in the office of the City Engineer of said City and to which special reference is hereby made in a sum not less than ten percent (10%) of the total amount bid, payable to the City of Turlock as liquidated damages in the case the bidder is awarded the contract and fails within ten (10) days after the date of mailing to him by the City Engineer of a notice of award of the contract and that the contract is ready for signature to execute the above-mentioned written contract and file with the City Engineer satisfactory insurance certificates as required by the terms of said contract and satisfactory bonds as required by law for the faithful performance of said contract and for the protection of material, men and laborers. Special reference is hereby made to Sections 5100, et.

seq., of the Public Contracts Code of the State of California and to the proposed forms for said bonds now on file in the office of the said City Engineer for further particulars regarding bonds.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county Stanislaus in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at 156 S. Broadway St, Turlock, CA 95380 and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/DLSR/PWD>.

Bidders' attention is directed to the insurance requirements in the contract. It is highly recommended that bidders confer with their respective insurance carriers or brokers to determine in advance of bid submission the availability of insurance certificates and endorsements prescribed and provided herein. If an apparent low bidder fails to comply strictly with the insurance requirements, that bidder may be disqualified from award of the contract.

No proposal will be considered unless made on forms furnished by the City Engineer of said City at his office of said City. Each proposal must be sealed, and the envelope containing the same must be addressed to the City Engineer of the City of Turlock and must be plainly marked. Each proposal shall clearly identify the bidders name and address on the sealed envelope.

Each bid shall separately state in figures the price offered for the approximate quantity of each item set forth and shall also state in words and figures the total contract price. Quantities set forth in the proposal form and in the specifications are approximate only, being given as a basis for comparison of bids, and the City of Turlock does not expressly or implied agree that the actual amount of work or materials will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work or materials as may be deemed necessary by the City Engineer.

Proposals may not be withdrawn for a period of sixty (60) days after the time fixed for opening of proposals. The City Council of the City of Turlock reserves the right to reject any and all proposals or any part thereof and to waive any errors or informalities in any proposals and to set and act as sole judge of the merit and qualifications of the equipment, supplies or services offered.

At the request and expense of Contractor, pursuant to Division 2, Part 5, Section 22300, et. seq., of the Public Contracts Code, securities equivalent to any funds withheld as retention from progress payments made under this contract may be deposited with the City of Turlock or with a State or Federally chartered bank as escrow agent, who shall pay such moneys to Contractor upon completion of the contract.

Copies of the Contract Documents, including Instructions to Bidders, Bid Proposal Forms, Plans and Specifications, may be downloaded from the engineering division's web site or purchased for a non-refundable fee of **Twenty Five dollars (\$25)** at the Office of the City Engineer, 156 S. Broadway, Ste. 150, Turlock, CA 95380, Phone (209) 668-5520. For additional information, go to <http://www.cityofturlock.org/capitalprojects>

The U.S. Department of Transportation (DOT) provides a toll-free "hotline" service to report bid rigging activities. Bid rigging activities can be reported Mondays through Fridays, between 8:00 a.m.

and 5:00 p.m., Eastern Time, Telephone No. 1-800-424-9071. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report these activities. The “hotline” is part of the DOT’s continuing effort to identify and investigate highway construction contract fraud and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.


No contractor or subcontractor may be listed on a bid proposal for a public works unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. No contractor or subcontractor may be awarded a contract for public work on a public works unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner.

The contractor shall post job site notices prescribed by regulation. (*See* 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU.)

DATED: 12/6/2023

CITY OF TURLOCK

By:   
William D. Morris  
City Engineer

# PROPOSAL

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Project No. 23-049

## Senior Center Window Replacements

City of Turlock, California

DATED: \_\_\_\_\_

To: The Honorable City Council of the City of Turlock, California:

NAME OF BIDDER: \_\_\_\_\_

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

PLACE OF RESIDENCE: \_\_\_\_\_

Bids are to be submitted for the entire work. The amount of the bid for comparison purposes will be the total of all items. The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose.

In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item. In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail except as provided in (a) or (b), as follows:

(a) If the amount set forth as unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount as the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;

(b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage wise the unit price or item total in the Department's Final Estimate of cost.



## PROPOSAL SUBMITTAL CHECKLIST

The bidder shall provide a complete proposal in a sealed envelope before 2:00 PM on Tuesday, December 19, 2023 at the address shown on the cover sheet of these specifications. FAILURE TO PROVIDE ALL THE REQUIRED DOCUMENTS LISTED IN THE TABLE BELOW MAY CAUSE THE PROPOSAL TO BE CONSIDERED NON-RESPONSIVE.

### Complete Proposal

### Page No.

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<input type="checkbox"/> AFFIDAVIT .....	7
<input type="checkbox"/> INFORMATION REQUIRED OF BIDDER .....	8-9
<input type="checkbox"/> BIDDER'S BOND .....	10-11
<input type="checkbox"/> LIST OF SUBCONTRACTORS.....	12

\* Signing the bid form constitutes acceptance and certification

### Special Note Regarding Escrow Bid Documents:

The apparent low bidder shall submit one copy of all documentary information generated in preparation of Bid prices for this Project within one week after the bid opening. This material is hereinafter referred to as "Escrow Bid Documents." The Escrow Bid Documents of the low bidder will be held in escrow for the duration of the contract. See Special Provisions Section "Escrow Bid Documents."

In accordance with the annexed Notice to Contractors, the undersigned, as bidder, declares that he has carefully examined the location of the proposed work, the plans, specifications and technical requirements therefore, and the proposed forms of contract and bonds mentioned or referred to in said Notice and on file in the office of the City Engineer of the City of Turlock, together with the prevailing rate of per diem wages for each craft or type of workmen needed to execute said contract; and he proposes and agrees that if this proposal is accepted, he will furnish all labor, materials, equipment, plant transportation, service, sales taxes, permit fees and other costs necessary to complete the construction in strict conformity to the plans and specifications and he will enter into a written contract with the City of Turlock in the form of contract on file in the Office of the City Engineer for such purposes, and that he will execute and/or provide all bonds and insurance certificates required by law and/or by said contract and/or mentioned in said Notice to Contractors all in accordance with and subject to all applicable laws, and that he will take in full payment therefore the following unit prices, to wit:

## BIDDER'S FORM

**PROJECT TITLE:** Senior Center Window Replacements

**PROJECT NUMBER:** 23-049

**OPENING DATE:** December 19, 2023

**OPENING TIME:** 10:30 AM

Item No.	Item Description	Unit of Measure	Estimated Quantity	Unit Price	Total
1	Window Replacements - Demolition	LS	1		
2	Window Replacements - Installation	LS	1		
3	Window Replacements - Clean Up	LS	1		
<b>Subtotal</b>					

Bidder has examined and carefully studied the Bidding documents and other related data identified in the Bidding Documents and the following Addenda, receipt of which is hereby acknowledged

### ADDENDA

No. \_\_\_\_\_ Date \_\_\_\_\_ Signed \_\_\_\_\_

No. \_\_\_\_\_ Date \_\_\_\_\_ Signed \_\_\_\_\_

No. \_\_\_\_\_ Date \_\_\_\_\_ Signed \_\_\_\_\_

No. \_\_\_\_\_ Date \_\_\_\_\_ Signed \_\_\_\_\_

No. \_\_\_\_\_ Date \_\_\_\_\_ Signed \_\_\_\_\_

**TOTAL BID WRITTEN IN FIGURES:** \$ \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ . \_\_\_\_\_

**TOTAL BID WRITTEN IN WORDS:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

## AFFIDAVIT

The undersigned bidder, being first duly sworn, deposes and says that he/she are the party making the foregoing proposal or bid, that this bid is genuine and not collusive or sham, that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any other person or bidder, to put in a sham bid, or that said other person shall refrain from bidding, and has not in any manner sought by collusion to secure any advantage against the said City or any person interested in said improvement, for him/herself or any other person.

X \_\_\_\_\_  
Signature of Bidder

Jurat (Government Code Section 8202)

State of California

County of \_\_\_\_\_

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.

(AFFIX SEAL)

\_\_\_\_\_  
NOTARY PUBLIC SIGNATURE

\_\_\_\_\_  
NOTARY PUBLIC PRINTED NAME

## INFORMATION REQUIRED OF BIDDER

The bidder is required to provide the following information. Additional sheets may be attached if necessary.

Contractor's mailing address:\_\_\_\_\_

Contractor's telephone number:\_\_\_\_\_

Number of years experience as a contractor in construction work or installation work similar to that required in these specifications:

\_\_\_\_\_

Name of person who inspected the site of the proposed work for your firm:

\_\_\_\_\_

Date of Inspection:\_\_\_\_\_

List at least four projects completed as of recent date:

Project No. and Title: \_\_\_\_\_

Class and Type of Work: \_\_\_\_\_

Name, Address, and Phone No. of Owner \_\_\_\_\_

Registered Engineer in Charge of Project: \_\_\_\_\_

Total Contract amount: \_\_\_\_\_

Contract amount you performed: \_\_\_\_\_

Name of Prime Contractor if you were Sub: \_\_\_\_\_

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

Liquidated Damages Assessed: \_\_\_\_\_

Project No. and Title: \_\_\_\_\_

Class and Type of Work: \_\_\_\_\_

Name, Address, and Phone No. of Owner \_\_\_\_\_

Registered Engineer in Charge of Project: \_\_\_\_\_

Total Contract amount: \_\_\_\_\_  
Contract amount you performed: \_\_\_\_\_  
Name of Prime Contractor if you were Sub: \_\_\_\_\_  
Date Completed: \_\_\_\_\_  
Liquidated Damages Assessed: \_\_\_\_\_

Project No. and Title: \_\_\_\_\_  
Class and Type of Work: \_\_\_\_\_  
Name, Address, and Phone No. of Owner \_\_\_\_\_  
Registered Engineer in Charge of Project: \_\_\_\_\_  
Total Contract amount: \_\_\_\_\_  
Contract amount you performed: \_\_\_\_\_  
Name of Prime Contractor if you were Sub : \_\_\_\_\_  
Date Completed: \_\_\_\_\_  
Liquidated Damages Assessed: \_\_\_\_\_

Project No. and Title: \_\_\_\_\_  
Class and Type of Work: \_\_\_\_\_  
Name, Address, and Phone No. of Owner \_\_\_\_\_  
Registered Engineer in Charge of Project: \_\_\_\_\_  
Total Contract amount: \_\_\_\_\_  
Contract amount you performed: \_\_\_\_\_  
Name of Prime Contractor if you were Sub : \_\_\_\_\_  
Date Completed: \_\_\_\_\_  
Liquidated Damages Assessed: \_\_\_\_\_

## BIDDER'S BOND

KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_ as  
BIDDER, and \_\_\_\_\_ as  
SURETY a corporation duly organized under the laws of the State of \_\_\_\_\_  
and duly licensed to become sole Surety on bonds required and authorized by the State of California, as  
SURETY, are held and firmly bound unto the City of Turlock, hereinafter called the City, in the penal  
sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the Bidder above named,  
submitted by said Bidder to the City, for the work described below, for the payment of which sum in  
lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors,  
administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability  
of the Surety hereunder exceed the sum \_\_\_\_\_  
\_\_\_\_\_  
Dollars ( \$ \_\_\_\_\_ ).

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, whereas the bidder has submitted the  
above-mentioned bid to the City for certain construction specifically described as follows for which bids  
are to be opened at Engineering Division, Public Works Department, City Hall, 156 S. Broadway Suite  
150, Turlock, California, on

\_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, at\_\_\_\_\_.  
(day) (date) (time)

for **Project No. 23-049, "Senior Center Window Replacements ."**

NOW, THEREFORE, if the aforesaid Bidder is awarded the contract and, within the time manner  
required under the specifications after the prescribed forms are presented to him for signature, enters  
into a written contract in the prescribed form in accordance with the bid, and files the two bonds with  
the City, one to guarantee faithful performance and the other to guarantee payment for labor and  
materials as required by law, then obligation shall be null and void; otherwise, it shall be and remain in  
full force and virtue.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall  
pay all costs incurred by the Obligee in such a suit, including a reasonable attorney's fee to be fixed by  
the court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BIDDER

\_\_\_\_\_(SEAL)  
(Bidder's Name and Corporate Seal)

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

\_\_\_\_\_  
(Print Name and Title)

**(ATTACH ACKNOWLEDGMENT OF BIDDER)**

SURETY

\_\_\_\_\_(SEAL)  
(Surety's Name and Corporate Seal)

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

\_\_\_\_\_  
(Print Name and Title)

**(ATTACH ACKNOWLEDGMENT OF SURETY'S  
ATTORNEY-IN-FACT)**

**NOTE: ATTACH CERTIFIED COPY OF POWER OF ATTORNEY**

**SUBCONTRACTORS**  
**City Project No. 23-049**  
**Senior Center Window Replacements**

Prime Contractor: \_\_\_\_\_ DIR NUMBER: \_\_\_\_\_

Pursuant to California Public Contract Code §4100, the Bidder shall list each subcontractor who will perform Work or Labor or who will render service to the Prime Contractor in or about the construction of the Work or improvement, or a subcontractor duly licensed who, under subcontract to the Prime Contractor, specially fabricates and installs a portion of the Work or improvement according to detailed Drawings contained in the Contract Documents, in an amount in excess of 1/2 of 1 percent of the Prime Contractor's Total Bid or, in the case of Bids or offers for the construction of streets or highways, including bridges, in excess of 1/2 of 1 percent of the prime Contractor's total Bid or \$10,000 whichever is greater. After the opening of Bids, no changes or substitutions will be allowed except as otherwise provided by law. The listing of more than one subcontractor for each item of Work to be performed with the words "and/or" will not be permitted.

IF NO SUBCONTRACTORS WILL FURNISH WORK, THEN WRITE "NONE" BELOW IN THE SPACE PROVIDED.

NAME	LICENSE NUMBER	DIR NUMBER	ADDRESS	WORK ITEMS TO BE PERFORMED AND % OF ITEM





## AGREEMENT

---

### FOR PUBLIC IMPROVEMENT

**Project No. 23-049**

#### **Senior Center Window Replacements**

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

#### **RECITALS**

- A. City seeks a duly qualified and licensed firm experienced in the construction of \_\_\_\_\_ (the “Project”).
- B. The Project involves the expenditure of funds in excess of \$5,000 and constitutes a “public project” pursuant to Public Contract Code section 20161.
- C. Contractor has made a proposal to City to provide construction services, a copy of which is attached and incorporated hereto as **Exhibit A** (the “Services”).
- D. City has determined it is necessary and desirable to employ the services of Contractor to perform construction work on the Project.
- E. City has taken appropriate proceedings to authorize construction of the Project and execution of this contract pursuant to Public Contract Code section 20160 et seq.; specifically, on \_\_\_\_\_, 20\_\_\_\_, at a duly noticed meeting of the City Council of the City of Turlock, this contract for the construction of the improvements hereinafter described was awarded to Contractor as the lowest responsive and responsible bidder for said improvements.

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

## **AGREEMENT**

**1. Contract Documents:** This Agreement, together with the following documents, are collectively referred to herein as the “Contract Documents”:

- i. Notice to Bidders;
- ii. Contractor’s Bid or Proposal accepted by City;
- iii. General Conditions, Supplementary Conditions, and Special Provisions of the City of Turlock for Senior Center Window Replacements ;
- iv. Plans and detailed drawings prepared for this Project and approved by City (“Project Plans”);
- v. All bonds and insurance required by the Contract Documents;
- vi. Any and all supplemental agreements amending, decreasing, or extending the work contemplated or which may be required to complete the work in a substantial and acceptable manner; and
- vii. The current edition of the City of Turlock Standard Specifications and Drawings.

All of the Contract Documents are intended to incorporate the terms of the others so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract will hereinafter be referred to as the “Contract.” In case of any dispute regarding the terms of the Contract, the decision of the City Engineer shall be final.

**2. Term.** The Contract shall be effective as of the Effective Date first stated above. Contractor shall not commence work on the Project until it has been given notice by City (“Notice to Proceed”). The Contract shall terminate one (1) year(s) after City accepts Contractor’s performance of the Services by recording a Notice of Completion with the County of Stanislaus Clerk Recorder (the “Term”), unless the Parties mutually agree in writing to terminate the Contract earlier or extend the Term in an agreed writing executed by both Parties.

**3. Scope of Work.**

(a) *Services.* Contractor shall perform the Services described in Exhibit A, subject to all terms and conditions in the Contract. Contractor shall not receive additional compensation for the performance of any Services not described therein.

(b) *Modification.* City, at any time, by written order, may make changes within the general scope of the work under this Agreement or issue additional instructions, require additional work or direct deletion of work. Contractor shall not proceed with any change involving an increase or decrease in the Contract Price, as defined in Section 4 of this Agreement, without prior written authorization from City. Contractor shall not be entitled to compensation for the performance of any such unauthorized work. Contractor further waives any and all right or remedy by way of restitution or quantum meruit for any and all extra or changed work performed without express and prior written authorization of City.

Notwithstanding the foregoing, Contractor shall promptly commence and diligently complete any change to the work subject to City's written authorization issued pursuant to this Section ; Contractor shall not be relieved or excused from its prompt commencement of diligent completion of any change subject to City's written authorization by virtue of the absence or inability of Contractor and City to agree upon the extent of any adjustment to the completion schedule or Contract Price on account of such change. The issuance of a change order pursuant to this Section 3 in connection with any change authorized by City shall not be deemed a condition precedent to Contractor's obligation to promptly commence and diligently complete any such change authorized by City hereunder. City's right to make changes shall not invalidate the Contract nor relieve Contractor of any liability or other obligations under the Contract. Any requirement of notice of changes in the scope of work to Contractor's surety shall be the responsibility of Contractor.

(c) *Specific Materials & Performance of Work.* Contractor shall furnish all tools, equipment, facilities, labor, and materials necessary to perform and complete, in good workmanlike manner, the work of general construction as called for and in the manner designated in, and in strict conformity with, the plans and specifications for said work entitled, **“General Conditions and Special Provisions for Senior Center Window Replacements .”** The equipment, apparatus, facilities, labor, and material shall be furnished, and said work performed and completed as required by the Contract under the direction and supervision, and subject to the approval, of the City Engineer or City Engineer's designated agent.

(d) *Exhibits.* All “Exhibits” referred to below or attached hereto are, by this reference, incorporated into the Contract.

	<u>Exhibit Designation</u>	<u>Exhibit Title</u>
1.	Exhibit A	Scope of Services
2.	Exhibit B	Payment by Force Account
3.	Exhibit C	Workers' Compensation Insurance Certification
4.	Exhibit D	Performance Bond
5.	Exhibit E	Payment Bond

**4. Contract Price.** City shall pay, and Contractor shall accept in full payment for the work set forth above in Section 3, Scope of Work, an amount not to exceed \_\_\_\_\_ **Dollars (\$ \_\_\_\_\_ .00)** (the “Contract Price”). Said amount shall be paid pursuant to Section 8 of this Agreement. The Contract Price may only be changed by a contract change order. The value of any work covered by a contract change order for an adjustment in the Contract Price will be determined in the sole discretion of City as follows:

(a) If the work performed is on the basis of unit prices contained in the Contract Documents, the change order will be determined in accordance with the provisions in Section 4-1.05, “Changes and Extra Work”, of the Caltrans Standard Specifications, as applicable; or

(b) If the work performed is not included on the engineer's estimate associated with a unit price, the change order will be by a mutually agreed lump sum; or

(c) If the change order is not determined as described above in either subdivision (a) or (b), the change order will be determined on the basis of force account in accordance with the provisions set forth in **Exhibit B**, "Payment by Force Account," attached hereto and incorporated herein by reference.

**5. Time for Performance.** The time fixed for the commencement of work under the Contract is within ten (10) working days after the Notice to Proceed has been issued. The work on this project, including all punch list items, shall be completed on or before the expiration of **Fifteen (15)** working days (the "Completion Date") beginning on the first day of work or no later than the tenth day after the Notice to Proceed has been issued.

(a) *Right of City to Increase Working Days:* If Contractor fails to complete the Services by the Completion Date, the City Engineer shall have the right to increase the number of working days in the amount the City Engineer may determine will best serve the interests of City, and if the City Engineer desires to increase said number of working days, the City Engineer shall have the further right to charge Contractor and deduct from the final payment for the work the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to Contractor, and which accrue during the period of such extension, except that the cost of the final service and preparation of the final estimates shall not be included in such charges. No extension of time for completion of Services under the Contract shall be considered unless requested by Contractor at least twenty (20) calendar days prior to the Completion Date, in writing, to the City Engineer.

The Completion Date may only be changed by a contract change order. The value of any work covered by a contract change order for an adjustment in the Completion Date will be determined as follows:

- i. Additional working days will be awarded where the amount of time is mutually agreed upon by Contractor and the City Engineer; or
- ii. Additional working days will be awarded where Contractor is prevented from completing any part of the work identified on the critical path and:
  1. where the delay is caused by acts of public enemy, fire, floods, tsunamis, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargos, provided that Contractor shall notify Engineer in writing of the causes of delay within fifteen (15) days from the beginning of that delay; or
  2. where the delay is caused by actions beyond the control of Contractor; or
  3. where the delay is caused by actions or failure to act by the City Engineer.

Contractor shall not be entitled to an adjustment in the Completion Date for delays within the control of Contractor. Delays resulting from and within the control of a subcontractor or supplier of Contractor shall be deemed to be delays within the control of Contractor.

(b) *Excusable Delays.* Contractor shall not be in breach of the Contract in the event that performance of Services is temporarily interrupted or discontinued due to a "Force Majeure" event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, or explosions; natural disasters, such as floods, earthquakes, landslides, and fires; strikes, lockouts, and other labor disturbances; or other catastrophic events, which are beyond the reasonable control of Contractor. Force Majeure does not

include Contractor's financial inability to perform, Contractor's failure to obtain any necessary permits or licenses from other governmental agencies, or Contractor's failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Contractor. If Contractor's performance of the Services is delayed by an excusable delay, the Completion Date shall be extended for such reasonable time as determined by the City Engineer. Extensions in time must be requested by Contractor within fifteen (15) calendar days of the excusable delay in order to receive consideration.

(c) *Emergency - Additional Time for Performance - Procurement of Materials.* If, because of war or other declared national emergency, the federal or state government restricts, regulates, or controls the procurement and allocation of labor or materials, or both, and if solely because of said restrictions, regulations or controls, Contractor is, through no fault of Contractor, unable to perform the Services, or the work is thereby suspended or delayed, any of the following steps may be taken:

- i. City may, pursuant to resolution of the City Council, grant Contractor additional time for the performance of the Contract, sufficient to compensate in time, for delay or suspension.

To qualify for such extension in time, Contractor within ten (10) days of Contractor's discovering such inability to perform, shall notify the City Engineer in writing thereof, and give specific reasons therefore; the City Engineer shall thereupon have sixty (60) days within which to procure such needed materials or labor as is specified in this agreement, or permit substitution, or provide for changes in the work in accordance with subdivision (b) of this Section.

Substituted materials, or changes in the work, or both, shall be ordered in writing by the City Engineer, and the concurrence of the City Council shall not be necessary. All reasonable expenses of such procurement incurred by the City Engineer shall be defrayed by the Contractor; or

- ii. If such materials or labor cannot be procured through legitimate channels within sixty (60) days after the filing of the aforesaid notice, either Party may, upon thirty (30) days' written notice to the other, terminate this agreement. In such event, Contractor shall be compensated for all work executed upon a unit basis in proportion to the amount of the work completed, or upon a cost-plus-ten-percent (10%) basis, whichever is the lesser. Materials on the ground, in process of fabrication or in route upon the date of notice of termination specially ordered for the Project and which cannot be utilized by Contractor, shall be compensated for by City at cost, including freight, provided Contractor shall take all steps possible to minimize this obligation; or
- iii. The City Council, by resolution, may suspend the Contract until the cause of inability to perform is removed for a period of not to exceed sixty (60) days.

If the Contract is not canceled, and the inability of Contractor to perform continues without fault on Contractor's part, beyond the time during which the Contract may have been suspended, as herein above provided, the City Council may further suspend the Contract, or either Party hereto may, without incurring any liability,

elect to declare the Contract terminated upon the ground of impossibility of performance. In the event City declares this agreement terminated, such declaration shall be authorized by the City Council by resolution, and Contractor shall be notified in writing thereof within five (5) days after the adoption of such resolution. Upon such termination, Contractor shall be entitled to proportionate compensation at the Contract Price for such portion of the Contract as may have been performed; or

- iv. City may terminate the Contract, in which case Contractor shall be entitled to proportionate compensation at the agreed rate for such portion of the Contract as may have been performed. Such termination shall be authorized by resolution of the City Council. Notice thereof shall be forthwith given in writing to Contractor, and the Contract shall be terminated upon receipt by Contractor of such notice.

In the event of the termination provided in this sub-paragraph (iv), none of the covenants, conditions or provisions hereof shall apply to the Services not performed, and City shall be liable to Contractor for the proportionate compensation last herein mentioned.

(d) *Delay Damages.* In the event Contractor, for any reason, fails to perform the Services to the satisfaction of the City Engineer by the Completion Date, City may, in accordance with Section 7203 of the Public Contract Code, in lieu of any other of its rights authorized by Section 6 of this agreement, deduct from payments or credits due Contractor after such breach a sum equal to **Six Hundred and no/100ths Dollars (\$600.00)** for each calendar day beyond the Completion Date. This deduction shall not be considered a penalty but shall be considered as delay damages. The aforementioned rate of deduction is an amount agreed to by the Parties as reasonably representing additional construction engineering costs incurred by City if Contractor fails to complete the Services by the Completion Date. However, any deduction assessed as delay damages shall not relieve Contractor from liability for any damages or costs resulting from delays to other contractors on the project or other projects caused by a failure of the assessed Contractor to complete the Services by the Completion Date. Due account shall be taken of any time extensions granted to Contractor by City. Permitting Contractor to continue work beyond the Completion Date shall not operate as a waiver on the part of City of any of its rights under the Contract nor shall it relieve Contractor from liability for any damages or costs resulting from delays to other contractors on the project or other projects caused by a failure of the assessed Contractor to complete the Services by the Completion Date.

## **6. Termination.**

(a) *Option of City to Terminate Contract for Failure to Complete Services.* If a Party should fail to perform any of its obligations hereunder within the time and in the manner herein provided, or otherwise violates any of the terms of the Contract (the "Defaulting Party"), the other Party shall give notice to the Defaulting Party and allow the Defaulting Party ten (10) days to correct such deficiency. If the Defaulting Party does not correct such deficiency, the other Party may immediately terminate the Contract by giving written notice of such termination, stating the reason for such termination. In such event, Contractor shall be entitled to receive payment for all Services satisfactorily rendered until such termination, provided, however, there shall be deducted from such amount the amount of damage, if any, sustained by virtue of any breach of the Contract by Contractor, including Delay Damages. If payment under the Contract is based upon a lump sum in total or by individual task, payment for

Services satisfactorily rendered shall be an amount which bears the same ratio to the total fees specified in this Agreement as the Services satisfactorily rendered hereunder by Contractor to the total services otherwise required to be performed for such total fee, provided, however, that there shall be deducted from such amount the amount of damage, if any sustained by City by virtue of any breach of the Contract by Contractor. Upon termination, Contractor shall deliver copies of all Work Product, as defined in Section 19 of this Agreement, to City. If District terminates the Contract before Contractor commences any Services hereunder, City shall not be obligated to make any payment to Contractor.

(b) If Contractor should be adjudged bankrupt or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it or any of its subcontractors should violate any of the provisions of the Contract, City may serve written notice upon it and its surety of its intention to terminate the Contract. Such notice shall contain the reasons for City's intention to terminate the Contract, and unless such violations shall cease within five (5) calendar days after serving of such notice, the Contract shall cease and terminate upon the expiration of said five (5) calendar days. In the event of any such termination, City shall immediately serve written notice thereof upon the surety and Contractor, and the surety shall have the right to take over and perform the Contract; provided however, that, if the surety does not give City written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty (30) calendar days from the date of the service of such notice, City may take over the work and prosecute the same to completion by contract or any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be jointly liable to City for any excess cost occasioned City thereby, and in such event City may, without liability for so doing, take possession of and utilize in completing the work, such materials, appliances, and other property belonging to Contractor as may be on the Project site and necessary thereof.

**7. Liability for Breach:** Neither Party waives the right to recover direct damages against the other for breach of the Contract, including any amount necessary to compensate City for all detriment proximately caused by Contractor's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. City reserves the right to offset such damages against any payments owed to Contractor. City shall not, in any manner, be liable for special or consequential damages, including but not limited to Contractor's actual or projected lost profits had Contractor completed the Services required by the Contract. In the event of termination by either Party, copies of all finished or unfinished Work Product, as defined in Section 19 of this Agreement, shall become the property of City. Notwithstanding the foregoing, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with the Contract or the Services performed in connection with the Contract.

**8. Compensation:** City shall make payments to Contractor in accordance with the provisions of Section 9 of the General Conditions in legally executed and regularly issued warrants of City, drawn on the appropriate fund or funds as required by law and order of the City Council thereof. Contractor shall be administered a progress payment approximately every thirty (30) calendar days from the time work begins according to the payment schedule furnished by the City Engineer at the time work begins. Contractor shall provide access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Contractor's charges to City under this Contract.

Monthly progress payments in the amount of 95 percent (95%) of the value of the work will be made to Contractor based on the Contractor's estimate and the schedule of prices contained in the accepted bid. The remaining 5 percent (5%) will be retained by City as partial security for the fulfillment of the Contract except that at any time after 50 percent (50%) of the work has been completed, if the City Engineer finds that satisfactory progress is being made and the Project's critical path of work are on schedule, City may discontinue any further retention. Such discontinuance will only be made upon the written request of Contractor. City may, at any time the City Engineer finds that satisfactory progress is not being made, again institute retention of 5 percent (5%) as specified above. Payment will be made as soon as possible after the preparation of the Contractor's estimate. City shall pay the remaining 5 percent (5%) of the value of the Services completed under this Contract, if unencumbered by retentions for claims, not sooner than the expiration of thirty-five (35) calendar days from the date of recordation of the Notice of Completion, pursuant to Section 2 of this agreement, and not later than sixty (60) days from the "completion" of the Services as said term is defined in Public Contract Code section 7107(c).

No estimate or payment shall be made if, in the judgment of the City Engineer, the work is not proceeding in accordance with the provisions of the Contract, or when, in his judgment, the total value of the work done since the last estimate amounts to less than \$1,000. No progress payments will be made if the time allotted for the job is thirty (30) working days or less. Payment of any progress payment, or the acceptance thereof by Contractor, shall not constitute acceptance of the work performed under this Contractor, or any portion thereof, and shall in no way reduce the liability of Contractor to replace unsatisfactory work or materials, though the unsatisfactory character of such work or materials may not have been apparent or detected at the time such payment was made.

Additionally, as a precondition to City's progress payments hereunder, Contractor shall provide to City, prior to payment, unconditional waivers and releases of stop notices pursuant to Civil Code section 8128 et seq. from each subcontractor and materials supplier. The form of said waivers and releases shall be as set forth in Civil Code section 3262(d)(2).

Pursuant to Public Contract Code section 22300 et seq., Contractor may request the right to substitute securities for any moneys withheld by City to ensure the performance required of Contractor under the Contract, or that City make payment of retentions earned directly into an escrow account established at the expense of Contractor.

**9. Disputes Pertaining to Payment for Work:** Should any dispute arise respecting the true value of any work performed, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of the Contract, such dispute shall be decided by the City Engineer, and the decision of the latter shall be final and conclusive. The Parties agree to comply with the claims resolution procedures set forth in Public Contract Code section 9204 when applicable.

(a) *Claims Processing.* Any submission of a claim by Contractor must comply with the requirements of Public Contract Code section 9204. Upon receipt of a claim pursuant to this section, City shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the Parties may, by mutual agreement, extend the time period provided in this subdivision. Contractor shall furnish reasonable documentation to support the claim. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after City issues its written statement. If Contractor disputes City's written response, or if City



fails to respond to a claim issued pursuant to this section within the time prescribed, Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute.

(b) *Meet-and-Confer Conference.* Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, City shall schedule a meet-and-confer conference within thirty (30) days for settlement of the dispute. Within ten (10) business days following the conclusion of the meet-and-confer conference, if the claim or any portion of the claim remains in dispute, City shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the City issues its written statement.

(c) *Nonbinding Mediation.* Any disputed portion of the claim, as identified by Contractor in writing, shall be submitted to nonbinding mediation, with the Parties sharing the associated costs equally. The Parties shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the Parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject judicial review pursuant to Section 23 of this Agreement.

Notwithstanding any claim, dispute, or other disagreement between the Parties regarding performance under the Contract, the scope of work hereunder, or any other matter arising out of or related to, in any manner, the Contract, Contractor shall proceed diligently with performance of the Services in accordance with City's written direction, pending any final determination or decision regarding any such claim, dispute, or disagreement.

**10. Permits and Care of Work:** Contractor shall, at Contractor's expense, obtain all necessary permits and licenses for the construction of each improvement, give all necessary notices and pay all fees and taxes required by law, except those City fees set forth in Section 1 of the Special Provisions. Contractor has examined the Project site and is familiar with its topography and condition, location of property lines, easements, building lines, and other physical factors and limitations affecting the performance of the Contract. Contractor, at Contractor's expense, shall obtain any permission necessary for any operations conducted off the property owned or controlled by City. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.

**11. Public Works and Payment of Prevailing Wage:**

(a) *Monitoring and Enforcement.* In accordance with the provisions of Sections 1725.5, 1771.1, 1771.3, and 1771.4 of the Labor Code, all work performed under the Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations (“DIR”). All work performed by Contractor or its subcontractors under the Contract is subject to the requirements of Labor Code section 1720 et seq. 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 of the Labor Code at the time the contract is awarded. Contractor and its subcontractors shall

furnish the records specified in Section 1776 of the Labor Code directly to the Labor Commissioner, at least monthly, in the format prescribed by the Labor Commissioner.

In accordance with the provisions of Section 1773.3 of the Labor Code, City shall provide notice to DIR of the award of this Contract within thirty (30) working days of the award. The notice shall be transmitted electronically in a format specified by DIR and shall include the name of Contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, Project location, and any additional information DIR specifies that aids in the administration and enforcement of Section 1720 et seq. of the Labor Code.

(b) *Wages & Hours of Employment:* In the performance of the Services under the Contract, eight (8) hours shall be the maximum hours of labor on any calendar day, and the minimum wages of compensation of persons performing labor in the execution of this agreement shall be the current prevailing scale of wages determined by DIR for the community. Contractor shall forfeit as penalty Twenty-five and no/100ths Dollars (\$25.00) to be paid to City for each workman employed in the execution of the Contract by Contractor or its subcontractor(s), for each calendar day during which any workman is required or permitted to labor more than eight (8) hours, in violation of provisions of Labor Code section 1810 et seq. Contractor shall post prevailing wage rates at the Project no later than the first day Contractor commences performance of the Services under the Contract.

**12. Superintendence by Contractor:** Contractor shall give personal superintendence to the work on the Project or have a competent foreman or superintendent satisfactory to the City Engineer on the Project at all times during construction and performance of work under the Contract, with authority to act for Contractor.

**13. Inspection and Testing by City:** Contractor shall at all times maintain proper facilities and provide safe access for inspection by City to all parts of the work performed on the Project and to the shops wherein the work is in preparation. Contractor shall notify City with sufficient time in advance of the manufacture of production materials to be supplied by Contractor under the Contract in order for City to arrange for mill or factory inspection and testing of same. Any materials shipped by Contractor from factory prior to having satisfactorily passed such testing and inspection by City's representative or prior to the receipt of notice from such representative that such testing and inspection will not be required shall not be incorporated on the Project. Contractor shall also furnish to City, in triplicate, certified copies of all factory and mill test reports upon request.

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

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

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

**15. Other Contracts:** City may award other contracts for additional work on the Project, and Contractor shall fully cooperate with such other contractors and carefully fit Contractor's own work to that provided under other contracts as may be directed by the City Engineer. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

**16. Bonds:** Concurrently with the execution hereof, Contractor shall furnish, on the forms provided herein as **Exhibits D and E**, respectively, corporate surety bonds to the benefit of City, issued by a surety company acceptable to City and authorized and admitted to do business in the state of California, as follows:

(a) *Faithful Performance Bond.* In an amount equal to at least one hundred percent (100%) of the Contract Price as security for the faithful performance of the Contract. The bond shall contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the Civil Code.

(b) *Payment Bond.* In an amount equal to at least one hundred percent (100%) of the Contract Price as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. The bond shall be in accordance with the provisions of Sections 3225, 3226, and 3247 through 3252, inclusive, of the Civil Code and Section 13020 of the Unemployment Insurance Code of California. Said bond shall also contain a provision that the surety thereon waives the provisions of Sections 2819 and 2845 of the Civil Code.

The surety companies shall familiarize themselves with all provisions and conditions of the Contract. It is understood and agreed that the surety or sureties waive the right of special notification of any modification or alterations, omissions or reductions, extra or additional work, extensions of time, or any other act or acts by City or its authorized agents under the terms of this Contract and failure to so notify the surety or sureties of such changes shall in no way relieve the surety or sureties of their obligations under the Contract.

**17. Indemnification:**

(a) *Indemnity for Professional Liability.* When the law establishes a professional standard of care for Contractor's Services, to the fullest extent permitted by law, Contractor shall indemnify, protect, defend, and hold harmless City and any and all of its elective and appointive boards, officers, officials, agents, employees or volunteers ("City's Agents") from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent Contractor or its subcontractors are responsible for such damages, liabilities and costs on a comparative basis of fault between Contractor or its subcontractors and City in the performance of professional services under the

Contract. Contractor shall not be obligated to defend or indemnify City for City's own negligence or for the negligence of others.

(b) *Indemnity for other than Professional Liability.* Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and any and City's Agents from and against any liability, including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of the Contract by Contractor or by any individual or agency for which Contractor is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of Contractor.

**18. Contractor's Insurance:** Concurrently with the execution hereof, Contractor shall furnish City with satisfactory proof of carriage of the insurance required under this section, and that Contractor shall give City at least sixty (60) days prior notice of the cancellation of any policy during the Term of this contract. Contractor shall not commence work under this Agreement until Contractor has obtained City's approval regarding all insurance requirements, forms, endorsements, amounts, and carrier ratings, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor shall have been so obtained and approved. Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by Contractor, its agents, representatives, employees or subcontractors. Failure to maintain or renew coverage or to provide evidence of renewal may constitute a material breach of the Contract. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to City.

(a) *General Liability Insurance.* Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence, Four Million Dollars (\$4,000,000.00) general aggregate, for bodily injury, personal injury, and property damage, including, without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property damage hazards. Contractor's general liability policies shall be primary and not seek contribution from City's coverages and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required. The policy shall contain, or be endorsed to contain, the following provisions:

- (1) City, its elective and appointive boards, officers, agents, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work or operations, which coverage shall be maintained in effect for at least three (3) years following the completion of the work specified in the Contract. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as CG 20 10 for ongoing operations and CG 20 37 for products/completed operations), or as a separate Owners and Contractors

Protective Liability policy providing both ongoing operations and completed operations coverage.

- (2) For any claims related to the Project, Contractor's insurance coverage shall be primary insurance as respects City and any insurance or self-insurance maintained by City shall be excess of Contractor's insurance and shall not contribute with it.
- (3) In the event of cancellation, non-renewal, or material change that reduces or restricts the insurance coverage afforded to City under the Contract, the insurer, broker/producer, or Contractor shall provide City with thirty (30) days' prior written notice of such cancellation, non-renewal, or material change.
- (4) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(b) *Workers' Compensation Insurance.* Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least One Million Dollars (\$1,000,000.00). Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

(c) *Auto Insurance.* Contractor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than Two Million Dollars (\$2,000,000.00) per accident. If Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

(d) *Builder's Risk Insurance.* Upon commencement of construction and with approval of City, Contractor shall obtain and maintain Builder's Risk/Course of Construction insurance. The policy shall be provided for replacement value on an "all-risk" basis. City shall be named as Loss Payee on the policy and there shall be no coinsurance penalty provision in any such policy. The policy must include: (1) coverage for removal of debris and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures, and all other properties constituting a part of the project; (2) coverage with limits sufficient to insure the full replacement value of any property or equipment stored either on or off the project site, whether provided from within a Builder's Risk policy or through the addition of an Installation Floater. Such insurance shall be on a form acceptable to City to ensure adequacy of terms and limits. Contractor shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to City.

(e) *Contractors Pollution Insurance.* Pollution Coverage shall be provided on a Contractors Pollution Liability form, or other form acceptable to City, providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than Two Million Dollars (\$2,000,000.00) per claim. All activities contemplated in the Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

(f) *Professional Liability Insurance.* [Intentionally Omitted.]

(g) *Umbrella or Excess Policy.* Service Provider may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required. The Umbrella or Excess policies shall be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability and automobile Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Professional’s primary and excess liability policies are exhausted.

(h) *Deductibles and Self-Insured Retentions.* Upon request of City, any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City and City’s Agents; or (2) Contractor shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(i) *Acceptability of Insurers.* Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A-:VII or with an insurer to which City has provided prior approval.

(j) *Verification of Coverage.* Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Section 18. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor’s obligation to provide them. City reserves the right, at any time, to require complete, certified copies of all required insurance policies and endorsements.

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

(l) *Subcontractors.* Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**19. Ownership of Work Product:** Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes, professional or technical information or data, photographs, notes, letters, emails, or any original works of authorship created by contractor or its subcontractors or subcontractors in connection with Services performed under the Contract (“Work Product”) shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of City. In the event that it is ever determined that any Work Product created by Contractor or its subcontractors or subcontractors under the Contract are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such Work Product to City. With the prior written approval

of the City Engineer, Contractor may retain and use copies of such Work Product for reference and as documentation of its experience and capabilities.

All Work Product shall become the property of City irrespective of where located or stored and Contractor agrees to deliver all such documents and information to City, without charge and in whatever form it exists, upon the Completion Date, as may be extended. Contractor shall have no ownership interest in such Work Product.

All Work Product of Contractor under the Contract, including written information which City will cause to be distributed for either internal or public circulation, including both preliminary and final drafts, shall be delivered to City in both printed and electronic form, or as may be specific in Exhibit A.

When the Contract is terminated, Contractor agrees to return to City all documents, drawings, photographs, and other written or graphic material, however produced, that it received from City or City's Agents, in connection with the performance of its Services under the Contract. All materials shall be returned in the same condition as received.

**20. Taxes:** Payment of any taxes, including California sales and use taxes, levied upon the Contract, the transaction, or the Services or goods delivered pursuant hereto, shall be the obligation of Contractor. Contractor shall cooperate with City to the full extent possible to maximize the local allocation of California sales and use tax to City. Such cooperation shall include, but not be limited to:

(a) *Use Tax Direct Payment Permits.* Contractor shall apply for, obtain, and utilize, to the maximum extent reasonable, a California Use Tax Direct Payment Permit.

(b) *Purchases of \$500,000 or More.* Contractor shall require vendors and suppliers located outside California from whom Contractor makes purchases of \$500,000 or more to allocate the use tax to City.

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

**22. Contractor Not Agent:** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to the Contract to bind City to any obligation whatsoever.

**23. Arbitration of Disputes:** All claims, disputes, and other matters in question between City and Contractor arising out of, or relating to, this Contract or the breach thereof, including claims of Contractor for extra compensation of Services related to the project, shall be decided by arbitration before a single arbitrator in accordance with the provisions of Sections 1281 through 1284.2 of the Code of Civil Procedure (the "Arbitration Laws") unless the Parties mutually agree otherwise. The provisions of Section 1283.05 of the Arbitration Laws apply to any arbitration proceeding except as

otherwise provided in the Contract. The arbitrator shall have authority to decide all issues between the Parties including, but not limited to, claims for extras, delay, and liquidated damages, if any, provided for the Contract, matters involving defects in the Services performed by Contractor or its subcontractors, rights to payment, and whether the necessary procedures for arbitration have been followed. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having competent jurisdiction thereof.

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

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

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

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

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

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

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

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

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

All administrative remedies required under Section 9 of this Agreement or pursuant to Public Contract Code section 9204, or required by any other law, shall be exhausted prior to commencement of any arbitration under this Section 23.

**24. Provisions Cumulative:** The provisions of the Contract are cumulative, and in addition to and not in limitation of, any other rights or remedies available to City.

**25. Notices:** All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid. Any Party hereto may at any time, by giving ten (10) days' written notice to the other



Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below.

If to City:

**City of Turlock  
Attn: City Engineer  
156 S. Broadway, Suite 150  
Turlock, CA 95380-5461**

With courtesy copies to:

**Petrulakis Law & Advocacy, APC  
Attn: George A. Petrulakis, City Attorney  
P.O. Box 92  
Modesto, CA 95353**

If to Contractor:

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

If to Contractor's Sureties:

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

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

\_\_\_\_\_  
City of Turlock Engineering Division  
156 S. Broadway, Suite 150  
Turlock, California 95380-5461  
Telephone: (209) 668-\_\_\_\_\_  
E-mail: \_\_\_\_\_@turlock.ca.us

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

**28. Antitrust Claims:** Contractor or its subcontractors offer and agree to assign to City all rights, title, and interest to any causes of action under Section Four of the Clayton Act and the Cartwright Act concerning antitrust claims.

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

**30. No Conflict of Interest:** Contractor represents that no conflict of interest will be created under state or federal law by entering into or in carrying out the Contract.

**31. Confidentiality:** Contractor understands and agrees that, in the performance of Services under the Contract, or in the contemplation thereof, Contractor may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City ("Confidential Information"). Contractor shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Contractor written authorization to make any such disclosure, Contractor shall do so only within the limits and to the extent of that authorization. Contractor may be directed or advised by the City Attorney on various matters relating to the performance of Services on the Project or on other matters pertaining to the Project, and in such event, Contractor agrees that it will treat all communications between itself, its employees, and its subcontracts as being communications which are within the attorney-client privilege.

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

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

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

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

**36. Governing Law:** The Contract shall be governed and construed in accordance with the laws of the state of California.

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

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

**39. Mandatory and Permissive:** “Shall” and “will” and “agrees” are mandatory. “May” and “can” are permissive.

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

**41. Attorney’s Fees and Costs:** Except as expressly provided for in Section 23 of this Agreement, if any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret the provisions of the Contract, the prevailing Party shall be entitled to reasonable attorney’s fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

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

**43. Recitals:** The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Section 1 through 43 of this Agreement, Sections 1 through 43 shall prevail.

***[Signatures on Following Page]***

**IN WITNESS WHEREOF**, two identical counterparts of this agreement, consisting of a total of \_\_\_\_ pages, each of which counterparts shall for all purposes be deemed an original of said agreement, have been duly executed by the parties hereinabove named, on the day and year first herein above written.

**CONTRACTOR**

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

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

Federal Tax ID or Social Security No:  
\_\_\_\_\_

DIR Registration Number:  
\_\_\_\_\_

Affix Contractor's Seal Here

**CITY OF TURLOCK, a municipal corporation**

By: \_\_\_\_\_  
Reagan M. Wilson, City Manager

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

**APPROVED AS TO SUFFICIENCY:**

By: \_\_\_\_\_  
William D. Morris, RCE, PLS, City Engineer

By: \_\_\_\_\_  
Erik Schulze, Public Works Director

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
George A. Petrulakis, City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Julie Christel, City Clerk

**EXHIBIT A**  
**CONTRACTOR'S PROPOSAL FOR SERVICES**

## **EXHIBIT B**

### **PAYMENT BY FORCE ACCOUNT**

For work paid by force account, the City Engineer compares City's records to Contractor's daily force account work report. When the City Engineer and Contractor agree on the contents of the daily force account work reports, the City Engineer accepts the report and City pays for the work. If the records differ, City pays for the work based only on the information shown on City's records. If a subcontractor performs work at force account, work paid at force account will be accepted at an additional 2 percent (2%) markup to the total cost of that work, including markups, as reimbursement for additional administrative costs. The markups specified in labor, materials, and equipment includes compensation for all delay costs, overhead costs, and profit. If an item's unit price is adjusted for work-character changes, City excludes Contractor's cost of determining the adjustment. Payment for owner-operated labor and equipment is made at the market-priced invoice submitted.

**A. Labor.** Labor payment is full compensation for the cost of labor used in the direct performance of the work plus a fifteen percent (15%) markup, as set forth below, and consistent with California Labor Code section 1770 et seq. Force account labor payment consists of:

1. Employer payment to the worker for:
  - 1.1 Basic hourly wage
  - 1.2 Health and welfare
  - 1.3 Pension
  - 1.4 Vacation
  - 1.5 Training
  - 1.6 Other State and federal recognized fringe benefit payments
2. Labor surcharge percentage in *Labor Surcharge and Equipment Rental Rates* current during the work paid at force account for:
  - 2.1 Workers' compensation insurance
  - 2.2 Social security
  - 2.3 Medicare
  - 2.4 Federal unemployment insurance
  - 2.5 State unemployment insurance
  - 2.6 State training taxes
3. Subsistence and travel allowances paid to the workers
4. Employer payment to supervisors, if authorized

The fifteen percent (15%) markup consists of payment for all overhead costs related to labor but not designated as costs of labor used in the direct performance of the work including:

- (a) Home office overhead
- (b) Field office overhead
- (c) Bond costs
- (d) Profit
- (e) Labor liability insurance

- (f) Other fixed or administrative costs that are not costs of labor used in the direct performance of the work

**B. Materials.** Material payment is full compensation for materials the Contractor furnishes and uses in the work. The City Engineer determines the cost based on the material purchase price, including delivery charges, except:

1. A fifteen percent (15%) markup is added;
2. Supplier discounts are subtracted whether the Contractor takes them or not;
3. If the City Engineer believes the material purchase prices are excessive, City pays the lowest current wholesale price for a similar material quantity;
4. If Contractor procured the materials from a source Contractor wholly or partially own, the determined cost is based on the lower of the:
  - 4.1 Price paid by the purchaser for similar materials from that source on Contract items; and
  - 4.2 Current wholesale price for those materials;
5. If Contractor does not submit a material cost record within thirty (30) days of billing, the determined cost is based on the lowest wholesale price:
  - 5.1 During that period
  - 5.2 In the quantities used

**C. Equipment Rental.** Equipment rental payment is full compensation for:

1. Rental equipment costs, including moving rental equipment to and from the change order work site using its own power.
2. Transport equipment costs for rental equipment that cannot be transported economically using its own power. No payment is made during transport for the transported equipment.
3. Fifteen percent (15%) percent markup.

If Contractor wants to return the equipment to a location other than its original location, the payment to move the equipment must not exceed the cost of returning the equipment to its original location. If Contractor uses the equipment for work other than work paid by force account, the transportation cost is included in the other work.

Before moving or loading the equipment, Contractor must obtain authorization for the equipment rental's original location.

The City Engineer determines rental costs:

1. Using rates in *Labor Surcharge and Equipment Rental Rates*:

- 1.1. By classifying equipment using manufacturer's ratings and manufacturer-approved changes.
- 1.2. Current during the work paid by force account.
- 1.3. Regardless of equipment ownership but City uses the rental document rates or minimum rental cost terms if:
  - 1.3.1. Rented from equipment business Contractor does not own.
  - 1.3.2. The Labor Surcharge and Equipment Rental Rates hourly rate is \$10.00 per hour or less.
2. Using rates established by the City Engineer for equipment not listed in *Labor Surcharge and Equipment Rental Rates*. Contractor may submit cost information that helps the City Engineer establish the rental rate but City uses the rental document rates or minimum rental cost terms if:
  - 2.1. Rented from equipment business Contractor does not own.
  - 2.2. The City Engineer establishes a rate of \$10.00 per hour or less.
3. Using rates for transport equipment not exceeding the hourly rates charged by established haulers.

Equipment rental rates include the cost of:

- |   |                            |
|---|----------------------------|
| 1. Fuel                                     | 7. Repairs and maintenance |
| 2. Oil                                      | 8. Depreciation            |
| 3. Lubrication                              | 9. Storage                 |
| 4. Supplies                                 | 10. Insurance              |
| 5. Small tools that are not consumed by use | 11. Incidentals            |
| 6. Necessary attachments                    |                            |

City pays for small tools consumed by use. The City Engineer determines payment for small tools consumed by use based on Contractor-submitted invoices.

The City Engineer may authorize rates in excess of those in the *Labor Surcharge and Equipment Rental Rates* if:

1. Contractor submits a request to use rented equipment
2. Equipment is not available from Contractor's normal sources or from one of Contractor's subcontractors
3. Rented equipment is from an independent rental company
4. Proposed equipment rental rate is reasonable
5. The City Engineer authorizes the equipment source and the rental rate before Contractor uses the equipment

**D. Equipment on the Job Site.** For equipment on the job site at the time required to perform work paid by force account, the time paid is the time:

1. To move the equipment to the location of work paid by force account plus an equal amount of time to move the equipment to another location on the job site when the work paid by force account is completed



2. To load and unload equipment
3. Equipment is operated to perform work paid by force account and:
  - 3.1. Hourly rates are paid in 1/2-hour increments
  - 3.2. Daily rates are paid in 1/2-day increments

**E. Equipment Not on the Job Site Required for Original-Contract Work.** For equipment not on the job site at the time required to perform work paid by force account and required for original-Contract work, the time paid is the time the equipment is operated to perform work paid by force account and the time to move the equipment to a location on the job site when the work paid by force account is completed.

The minimum total time paid is:

1. 1 day if daily rates are paid
2. 8 hours if hourly rates are paid

If daily rates are recorded, equipment:

1. Idled is paid as 1/2 day
2. Operated four (4) hours or less is paid as 1/2 day
3. Operated four (4) hours or more is paid as one (1) day

If the minimum total time exceeds eight (8) hours and if hourly rates are listed, City rounds up hours operated to the nearest 1/2-hour increment and pays based on the hours shown in the following table. The table does not apply when equipment is not operated due to breakdowns, in which case rental hours are the hours the equipment was operated.

**Equipment Rental Hours**

Hours operated	Hours paid
0.0	4.00
0.5	4.25
1.0	4.50
1.5	4.75
2.0	5.00
2.5	5.25
3.0	5.50
3.5	5.75
4.0	6.00
4.5	6.25
5.0	6.50
5.5	6.75
6.0	7.00
6.5	7.25
7.0	7.5
7.5	7.75
≥8.0	hours used

**F. Equipment Not on the Job Site Not Required for Original-Contract Work.** For equipment not on the job site at the time required to perform work paid by force account and not required for original-Contract work, the time paid is the time:

1. To move the equipment to the location of work paid by force account plus an equal amount of time to return the equipment to its source when the work paid by force account is completed
2. To load and unload equipment
3. Equipment is operated to perform work paid by force account

**G. Non-Owner-Operated Dump Truck Rental.** Contractor shall submit the rental rate for non-owner-operated dump truck rental to City. The City Engineer shall determine the payment rate. Payment for non-owner-operated dump truck rental is for the cost of renting a dump truck, including its driver. For the purpose of markup payment only, the non-owner-operated dump truck is rental equipment and the owner is a subcontractor.

The above markups shall constitute full compensation for all home office overhead, field office overhead, bond costs, profit, labor liability insurance, and other fixed or administrative costs that are not costs specifically designated as cost or equipment rental as stated above. The total payment made as provided above shall be deemed to be the actual cost of the work and shall constitute full compensation therefor.

When extra work to be paid for on a force account basis is performed by a subcontractor, an additional markup of 2 percent (2%) will be added to the total cost of that extra work including all markups specified in this Section. The additional 2 percent (2%) markup shall reimburse Contractor for additional administrative costs, and no other additional payment will be made by reason of performance of the extra work by a subcontractor.

## WORKERS' COMPENSATION INSURANCE CERTIFICATION

Pursuant to Section 18(b) of the Agreement, Contractor certifies as follows:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Signed: \_\_\_\_\_

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

\_\_\_\_\_  
(Typed or Printed Name)

Business Address (Street Address, City, State & Zip Code):

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

Business Phone: (     ) \_\_\_\_\_

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the **City of Turlock**, State of California, has awarded to \_\_\_\_\_, hereinafter designated as the "Principal," a contract for **Project No. 23-049, "Senior Center Window Replacements"**; and,

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract.

NOW, THEREFORE, we the Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto the City of Turlock in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, or Principal's heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in said contract and any alteration thereof made as therein provided, on the Principal's part, to be kept and performed at the time and in the manner therein specified and in all respects according to their true intent and meaning; and shall defend, indemnify and save harmless the City of Turlock, its officers and agents as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

And the Surety, for value received hereby stipulates and agrees that, in accordance with the Plans, Standard Specifications, Special Provisions, and other contract documents, no change, extension of time, alteration, or addition to the terms of the contract, or to the work to be performed hereunder, or to the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration of additions to the terms of the Contract to the work, or to the specifications.

The City of Turlock reserves the right to refuse use of any Contractor assigned by any surety to complete the work.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

**Principal** \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

(Attach Notarial Acknowledgment)

(Corporate Seal)

**Surety** \_\_\_\_\_

Address \_\_\_\_\_

Phone No.: (    ) \_\_\_\_\_ Fax No.: (    ) \_\_\_\_\_

By \_\_\_\_\_

Attorneys-in-Fact

Title \_\_\_\_\_

(Attach Notarial Acknowledgment)

**NOTE TO SURETY COMPANY:** There must be submitted a certified copy of unrevoked resolution of authority for the attorneys-in-fact.

(Seal)

**Witness** \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Risk Manager

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the **City of Turlock**, a municipal corporation, has awarded to \_\_\_\_\_, hereinafter designated as the “Principal”, a contract for **Project No. 23-049, “Senior Center Window Replacements ”**; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract, to secure payment of claims of laborers, mechanics, or materialmen employed on work under said contract, as provided by law.

NOW, THEREFORE, we the undersigned Principal and Surety are held and firmly bound unto the City of Turlock in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), said sum being equal to the estimated amount payable by said City of Turlock under the terms of the contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if said Principal, or Principal’s heirs, executors, administrators, successors, or assigns, or subcontractors shall fail to pay for any material, provisions, provender, or other supplies, implements, or machinery used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from these wages of employees of the Contractor and Contractor’s subcontractors pursuant to the Revenue and Taxation Code, with respect to such work and labor, the Surety or Sureties hereon will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, said Surety will pay a reasonable attorney’s fee to be fixed by the court.

This bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Section 3138 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

Said Surety, for value received, hereby stipulates and agrees that, in accordance with the Plans, Standard Specifications, Special Provisions, and other Contract Documents, no change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed there under, or to the specifications accompanying the same, shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the specifications.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

**Principal** \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

(Attach Notarial Acknowledgment)

(Corporate Seal)

**Surety** \_\_\_\_\_

Address \_\_\_\_\_

Phone No.: (    ) \_\_\_\_\_ Fax No.: (    ) \_\_\_\_\_

By \_\_\_\_\_

Attorneys-in-Fact

Title \_\_\_\_\_

(Attach Notarial Acknowledgment)

**NOTE TO SURETY COMPANY: There must be submitted a certified copy of unrevoked resolution of authority for the attorneys-in-fact.**

(Seal)

**Witness** \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Risk Manager



## **SPECIAL PROVISIONS**

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**City Project No: 23-049**

### **Senior Center Window Replacements**

#### **SECTION 1 SPECIFICATIONS AND PLANS**

##### **SPECIAL NOTES:**

1. Official bid documents including plans and specifications are available online at <http://www.cityofturlock.org/capitalprojects>. All bids submitted for this project must conform to the requirements of the official bid documents, including plans and specifications.
2. An optional pre-bid meeting will be held on Thursday, December 14<sup>th</sup>, 2023 at 10:30 AM in the Turlock Senior Citizens Center located at 1191 Cahill St, Turlock, CA 95380.
3. See “Work Restrictions” in Section 4 for special requirements while working within the Senior Center.

##### **1.01 CONTRACT DOCUMENTS:**

The work described herein shall be done in accordance with the current City of Turlock Standard Specifications and the current edition of the State of California, Department of Transportation Standard Specifications and Standard Plans and in accordance with the following Special Provisions.

The Contract Documents are complementary; what is required by one is as binding as if required by all.

It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to City.

Clarifications and interpretations of the Contract Documents shall be issued by Engineer.

In case of conflict or discrepancy between any of the Contract Documents, the order of documents listed below shall be the order of precedence, with the first item listed having the highest precedence.



1. Contract Change Order (Modifications or changes last in time are first in precedence).
2. Addenda to Contract Agreement
3. Contract Agreement
4. Permits
5. Special Provisions
6. Notice Inviting Bids and Instructions to Bidders
7. Project Drawings
8. City of Turlock Standard Specifications
9. City of Turlock Standard Drawings
10. Caltrans Standard Specifications
11. Caltrans Standard Plans

With regards to discrepancies or conflicts between written dimensions given on drawings and the scaled measurements, the written dimensions shall govern.

With regards to discrepancies or conflicts between large-scale drawings and small-scale drawings, the larger scale shall govern.

With regards to discrepancies or conflicts between detailed drawings and referenced standard drawings or plans, the detailed drawings shall govern.

In the event where provisions of codes, safety orders, contract documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive and higher quality shall govern.

Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in these specifications, the special provisions, or the plans, the Contractor shall apply to the Engineer in writing for such further explanations as may be necessary and shall conform to them as part of the contract. All responses from the Engineer shall also be in writing. In the event of any doubt or question arising respecting the true meaning of these specifications, the special provisions or the plans, reference shall be made to the Engineer, whose decision thereon shall be final.

#### **1.02 CONTRACTOR'S RESPONSIBILITY:**

The Contractor shall examine carefully the site of the work and the plans and specifications therefore. The Contractor shall investigate to their satisfaction as to conditions to be encountered, the character, quality and quantity of surface, subsurface materials or obstacles to be encountered, the work to be performed, materials to be furnished, and as to the requirements of the bid, plans and specifications of the contract.

#### **1.03 COMPLETENESS AND ACCURACY OF PLANS AND SPECIFICATIONS:**

Pursuant to the California Public Contract Code, the bidder is required to review architectural or engineering plans and specifications prior to submission of a bid, and report any errors and omissions noted by Contractor to the architect, engineer or owner five days prior to the bid opening date.

## **SECTION 2 PROPOSAL REQUIREMENTS AND CONDITIONS**

## **2.01 GENERAL:**

The Contractor's attention is directed to the "Notice to Contractor" for the date, time and location of the mandatory Pre-Bid meeting, if applicable.

The bidder's attention is directed to the provisions in Proposal for this bid for the requirements and conditions which the bidder must observe in the preparation of and the submission of the bid.

The bidder's bond shall conform to the bond form in the Bid book for the project and shall be properly filled out and executed. The bidder's bond form included in that book must be used.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Bid book. Signing the Bid book shall also constitute signature of the Noncollusion Affidavit.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR (Code of Federal Regulations) part 26 in the award and administration of US DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.

Failure of the bidder to fulfill the requirements of the Special Provisions for submittals required to be furnished after bid opening, including but not limited to escrowed bid documents, where applicable, may subject the bidder to a determination of the bidder's responsibility in the event it is the apparent low bidder on a future public works contracts.

## **SECTION 3 AWARD AND EXECUTION OF CONTRACT**

### **3.01 GENERAL:**

The Contractor's attention is directed to the provisions in the Contract for the requirements and conditions concerning award and execution of contract.

The contract shall be executed by the successful bidder and shall be returned, together with the contract bonds and insurance, to the City so that it is received within 10 working days after the bidder has received the contract for execution. Failure to do so shall be just cause for forfeiture of the proposal guaranty. The executed contract documents shall be delivered to the following address:

Attention: Gloria Aguilar  
City of Turlock, Engineering Division  
156 S Broadway, Suite 150  
Turlock, CA 95380

Bid protests are due in writing by the fifth calendar day after the bid opening and are to be delivered to the following address:

Stephen Fremming, PE  
156 S Broadway Suite 150  
Turlock, CA 95380

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose bid complies with all the requirements prescribed.

## **SECTION 4 BEGINNING OF WORK, TIME OF COMPLETION AND DELAY DAMAGES**

### **4.01 NOTICE TO PROCEED:**

The Notice to Proceed is defined as a letter issued by the City to the Contractor indicating that the Work may begin at the designated site and outlines the anticipated construction start and end dates. The Notice to Proceed is issued after award of the Contract by the City Council and after the Contractor has provided all bonds, insurance documentation, and any other information required by the project specifications prior to beginning the Work. At no time shall construction begin prior to the issuance of the Notice to Proceed. Any work performed prior to issuance of the Notice to Proceed shall be done at the Contractor's own risk.

Attention is directed to Section 5 "Time For Performance" of the **AGREEMENT**.

Attention is directed to Section 5(c) "Delay Damages" of the **AGREEMENT**.

### **4.02 PRE-CONSTRUCTION MEETING:**

A pre-construction meeting will be held between Contractor and City prior to the beginning of construction. The exact time and place of this conference will be determined by City after award of the construction contract. Contractor's superintendent, Contractor's project manager(s), City's project manager, City's public works inspector, major subcontractors and others involved in performance of the Work, are required to be present.

The purpose of the meeting is to establish a working understanding between parties and to discuss the construction schedule, review the process for the review of submittals, RFIs, Change Order Requests, applications for payment, and other subjects pertinent to execution of the Work.

### **4.03 COPIES OF CONTRACT DOCUMENTS:**

At the request of the Contractor, City shall furnish up to five (5) hard copies of the project plans and specifications. Contractor may produce additional copies as needed at Contractor's expense.

### **4.04 WORK RESTRICTIONS:**

Construction activities within the Senior Center, including demolition, shall not commence until contractor has taken delivery of all required materials and shall diligently pursue the work until project completion.

## **SECTION 5 GENERAL**

### **5.01 INTERNET BASED CONSTRUCTION MANAGEMENT SYSTEM:**

The Engineer and Contractor shall utilize Virtual Project Manager (VPM; [www.new.virtual-pm.com](http://www.new.virtual-pm.com)), for submission of all construction documents for the duration of the construction contract and shall utilize VPM for project correspondence to the maximum extent possible. VPM is an online electronic project

management system used to create, share, and review construction management documentation. The joint use of this system is to facilitate electronic exchange of information, automation of key processes, electronic notification of project activity, and overall management of contract documentation between City and Contractor. VPM shall be the primary means of project document submission and management.

VPM access is provided to the Contractor at no cost to the Contractor. The Contractor shall use computer hardware and software that meets the requirements of the VPM system. Upgrading of the Contractor's computer systems will not be justification for a cost or time modification to the Contract. The Contractor shall ensure its own connectivity to VPM by providing their own internet service and provide staff knowledgeable in the use of computers.

The Engineer will establish the Contractor's access to VPM by enabling access and assigning user profiles to Contractor's personnel. Contractor may request that access be granted to subcontractors, suppliers, or consultants, though access to these groups will be limited to read-only permissions. All communication to the Engineer shall be made directly through the Contractor. All authorized personnel shall have an individual user profile; no joint-use or shared user profiles will be allowed. Each user profile shall be assigned to a user group and have specific permission settings and privileges based on the user's need within VPM. The Contractor shall be responsible for the validity of the information entered by the Contractor into VPM.

Contractor will submit attachments within VPM in formats acceptable to the Engineer, such as PDF files, Microsoft Office files, and picture files (JPG, TIFF, BMP, JPEG, etc.). PDF documents shall be created through electronic conversion prior to uploading, rather than optically scanned, whenever possible.

Contractor shall upload relevant documents for review and approval under the corresponding module within VPM (submittal, RFI, etc.). Each document submittal shall have a unique title and description that references the item and the section number from the specifications.

Engineer shall provide training to the Contractor in the basic use of the VPM system, as requested by the Contractor.

The Contractor shall create a RFI upon recognition of any event or question of fact arising from the contract work. The Engineer will respond to a RFI submitted by the Contractor within seven (7) calendar days, not including legal holidays.

Inspector's daily logs shall be used by the City to document the activities of the work, any correspondence or direction given in the field, safety concerns and general comments about the project. The weekly statement of working days report (WSWD) will be generated by VPM and approved by the City. The WSWD shows the working days and non-working days charged for the reporting week, any time adjustments, a work completion date with the remaining working days left in the contract and the controlling activities for the week. The Contractor will be allowed 15 days to protest in writing the correctness of the statement.

## **5.02 PROGRESS SCHEDULE:**

Contractor shall furnish City with a Critical Path Method progress schedule. The progress schedule shall show the construction activities extending for the duration of the working days. Any deviation from the

outline must be approved by Engineer. Contractor shall not be allowed to start construction activities until the progress schedule is accepted by Engineer.

### **5.03 BUSINESS LICENSE:**

Contractor shall obtain a City of Turlock business license prior to issuance of the Notice to Proceed. The cost of the business license is a up-front fee of eighty four dollars (\$84) plus fifty cents per thousand dollars in revenue received for work performed on the project, made payable on a semi-annual basis. Business Licenses are obtained through the Finance Division at Turlock City Hall, 156 S. Broadway, Suite 114. Additional information can be found on the City's website at <http://ci.turlock.ca.us/doingbusinessinturlock/businesslicenses/newbusinesslicense.asp>.

Full compensation for obtaining a business license as specified above shall be considered as included in the prices paid for the various contract bid items and no additional compensation will be allowed therefore.

### **5.04 PERMITS:**

Contractor is required to obtain the following permits.

<b>Permit:</b>	<b>Agency / Division:</b>	<b>Required for:</b>	<b>Fee:</b>	<b>Notes:</b>
Building Permit	Turlock Building Division	Window replacements	\$0 to the Contractor, permit fee paid through interdepartmental transfer	Contractor shall submit building application

### **5.05 SUBMITTALS:**

#### **General**

Before making submittals, Contractor shall ensure that products and materials will be available in the quantities and in the time required by the Contract and the approved outline of construction activity. Each submittal shall clearly identify, by highlighting, arrows or other defined and permanent mark, the products and materials proposed for use.

All Submittals shall be made to Engineer by Contractor, including those generated by subcontractors and suppliers. Contractor shall carefully review all subcontractor and supplier submittals before submitting to Engineer for review. Submittals received from sources other than Contractor's office shall be returned without action. If a submittal contains extraneous information, unmarked options or is incomplete, it will be returned to Contractor for correction and require re-submittal.

#### **Submission**

Submittals shall be made electronically in accordance with the Section "Internet Based Construction Management System," of these special provisions.

Each submittal shall contain, at a minimum, the following information:

1. Title page including the following information:

Capital Project No.

Name of Contractor

Name of subcontractor (if applicable)

Description of item

Item Number on Bid Schedule

Contractor's initials and date indicating approval of item for submittal to Engineer

2. The brochure, product data sheet or catalog cut sheet. For all Product Data and Manufacturer's Instructions, excise or cross out non-applicable information and clearly mark applicable information with citations to and terminology consistent with Contract Documents.

3. Submittals that involve engineering computations or original design work shall show the name, the California State registration number, seal, and signature of the Professional Engineer certifying that such computations or design work are correct and in conformance with applicable standards, codes and accepted engineering practices.

4. For product samples, Contractor shall submit two (2) representative samples, one of which may be retained for the duration of the project or indefinitely at the discretion of Engineer. Although a reasonable attempt will be made to maintain the samples in good condition, neither City nor its representative will be responsible for the condition of the samples if returned to Contractor.

5. For material samples, unless a specific quantity is called for in the contract documents, Contractor shall submit a representative sample of the material, which may be retained for the duration of the project or indefinitely at the discretion of Engineer.

6. Certificates of compliance shall be submitted by Contractor to Engineer for those materials and products for which no sample and test results are specified. Certificates of compliance shall include the following information:

- Statement that the product complies with the respective contract specifications.
- Producer's name and address, product trade name and catalog number (if applicable), place of product origin, quantity of product to be furnished, and related contract plans and specification section numbers.
- A certified copy of test results pertaining to the product from a certified independent testing laboratory. At the option of Engineer certified test results shall be signed and sealed by a Professional Engineer licensed to practice in the state of California.

- Material Safety Data Sheets (MSDS) for all materials used or stored on the site that possess a MSDS, including materials used by Contractor for maintenance of equipment.

## **Review**

Submittals will be processed by Engineer within fourteen (14) calendar days after receipt, not including legal holidays. When a submittal cannot be returned within that period, the Engineer will, within a reasonable time after receipt of the submittal, give notice of the date by which that submittal will be returned. Submittal shall receive one of four review actions:

1. No Exceptions Taken – The submittal is approved without comments.
2. Supply as Noted / Make Corrections Noted – The submittal is approved, provided that the Contractor addresses the included comments.
3. Resubmit – The information provided with the submittal does not meet project requirements, however, Engineer has commented on some missing items that, if provided, may meet project requirements. Contractor shall resubmit the same product and provide additional information per the Engineer's comments.
4. Rejected – The submitted product cannot meet project requirements and is rejected. Contractor shall provide a separate product that meets project requirements as a resubmittal.

Engineer will review submittals for general conformance with the Contract Documents. The work shall be in accordance with approved submittals except that the Contractor shall not be relieved of the responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal as part of a cover letter to the submittal itself, and as a written communication separate from the submittal cover letter, and (1) the Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Engineer's approval thereof. The Engineer's review does not extend to accuracy of dimensions, quantities, or performance of equipment and systems designed by the Contractor, or means, methods, techniques, sequences, or procedures. Unless specifically authorized to do so by Engineer, Contractor shall not procure, manufacture, or fabricate any part of the contract work until submittals related to said contract work have been favorably reviewed by Engineer.

## **"Or Equal" Items**

Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item or no substitution is permitted, other items of material or equipment or

material or equipment of other Suppliers may be submitted to for review under the circumstances described below.

1. "Or Equal" Items: If in the Engineer's discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may be accomplished. A proposed item of material or equipment will be considered functionally equal to a named item if:

- a. In the exercise of reasonable judgment Engineer determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function of the named item, and;
- b. Contractor certifies that: (i) there is no increase in cost to the City; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

#### **5.06 CHANGE ORDER PROCEDURES:**

The contract price and contract time may only be changed by an executed Contract Change Order. A Contract Change Order is a written instrument prepared by the Owner, authorized by the City, stating agreement of the following:

1. The change in the Work;
2. The amount of the adjustment, if any, in the Contract Price; and
3. The extent of the adjustment, if any, in the Contract Time.

When a change in the work is contemplated by the Engineer, a Construction Change Directive may be issued by the Engineer. A Construction Change Directive is a written order prepared by the Engineer directing a change in the Work prior to agreement on adjustment in the Contract Price or Contract Time, or both, in a Contract Change Order. The Engineer may, by Construction Change Directive and without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Price and Contract Time being adjusted accordingly thereafter according to the terms of the Agreement.

A Change Order Request is a document created by the Contractor which notifies the Engineer of changes in scope, changed conditions, errors, omissions, or inconsistencies in the contract documents which may or may not require an adjustment in the Contract Price and/or Contract Time.

Upon issuance of either a Construction Change Directive by the Engineer or a Change Order Request by the Contractor, the Contractor shall promptly prepare documentation proposing a contract cost and/or time adjustment for review by the Engineer for the purposes of arriving at a mutually agreeable lump sum. Contractor shall submit backup information for costs of labor, equipment, material, and agreeable markups. Backup information shall contain sufficient detail to allow a thorough review. The Engineer will review backup documentation and issue a response to the Contractor as to agreement or disagreement with proposed adjustments to contract price and/or time. Contractor shall not proceed with the change in the Work involved until the proposed cost and time adjustment is acceptable to the Engineer. If



attempts to arrive at a mutually agreeable lump sum amount fail, the Engineer may direct that the work proceeds on the basis of force account in accordance with the terms of the Agreement.

When the Engineer and Contractor agree with the adjustments in the Contract Price and/or Contract Time, the Engineer will prepare the change order. The City Engineer or the Director of Public Works may approve change orders up to 50% of the approved contingency for the project. The City Manager may approve change orders up to 100% of the approved contingency for the project. Change orders exceeding the contingency balance must be approved by the City Council.

#### **5.07 NOTICE OF POTENTIAL CLAIM:**

Attention is directed to Section 5-1.43 "Potential Claims and Dispute Resolution," of the Caltrans Standard Specifications.

#### **5.08 LABOR NONDISCRIMINATION:**

Attention is directed to the following Notice that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

#### **NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM (GOV. CODE, SECTION 12990)**

Your attention is called to the "Nondiscrimination Clause", set forth in Section 7 1.01A(4), "Labor Nondiscrimination," of the Caltrans Standard Specifications, which is applicable to all nonexempt state contracts and subcontracts, and to the "Standard California Nondiscrimination Construction Contract Specifications" set forth therein. The Specifications are applicable to all nonexempt state construction contracts and subcontracts of \$5,000 or more.

#### **5.09 PREVAILING WAGE:**

Attention is directed to Section 7-1.02K "Labor Code," of the Caltrans Standard Specifications, however certified payroll is not submitted to Caltrans for this project. Contractor shall submit certified payroll records both to the DIR and to the Engineer on a weekly basis. Contractor may submit certified payroll records to the Engineer via mail, email, or uploaded to VPM.

#### **State Prevailing Wage Rates**

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county Stanislaus in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at 156 S. Broadway St, Turlock, CA 95380 and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/DLSR/PWD>. Changes, if any, to the general prevailing wage rates, will be available at the same location. Future effective general prevailing wage rates, that have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

#### **5.10 SUBCONTRACTING:**

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the City may exercise the remedies provided under Pub Cont Code § 4110. The City may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

At the pre-construction meeting, prior to starting work, Contractor shall submit a complete listing of subcontractors and the value of the work each subcontractor will perform. This list shall contain all information identified on Exhibit 12-G of the Local Assistance Procedures Manual.

Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations' Web site.

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

#### **5.11 PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS:**

A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

#### **5.12 PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS:**

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within seven (7) days for construction contracts and fifteen (15) days for consultant contracts after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code for construction contracts, and Section 3321 of the California Civil Code for consultant contracts. This requirement shall not be

construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **5.13 PAYMENTS:**

Attention is directed to Section 8, "Compensation," of the **AGREEMENT**.

At the end of each month the Contractor shall submit a proposed progress invoice. The invoice shall delineate each bid item, the amount of work performed for the invoice period (previous month) and the total amount of work performed to date. A sample invoice with all of the required items will be given to the Contractor at the pre-construction meeting.

The Engineer will review the progress invoice and after any changes the Engineer makes, will issue an official invoice for the Contractor to sign. The Contractor shall sign the official invoice and return to the Engineer. After the Engineer receives the signed, official invoice, the progress payment will be processed.

Retention in the amount of 5% of the progress payment amount shall be held from all progress payments. Retention will be released 35 days after the Notice of Completion has been filed, insofar as no stop notices were filed.

### **5.14 GUARANTY:**

Attention is directed to Section 9-4, "Guaranty," of the City of Turlock Standard Specifications.

### **5.15 WORKING HOURS:**

Contractor's working hours shall be between 7:00 a.m. and 5:00 p.m., Monday through Friday, excluding legal holidays.

Contractor shall notify Engineer 48 hours prior to beginning work.

Contractor shall not work outside the above-mentioned working hours without prior written consent of Engineer.

Designated legal holidays are: January 1st, the third Monday in January, the third Monday in February, the last Monday in May, June 19<sup>th</sup>, July 4<sup>th</sup>, the first Monday in September, November 11<sup>th</sup>, Thanksgiving Day, the day after Thanksgiving, and December 25<sup>th</sup>. When a designated legal holiday falls on a Sunday, the following Monday shall be a designated legal holiday. When a designated legal holiday falls on a Saturday, the preceding Friday shall be a designated legal holiday.

Should the Contractor desire to work on a Saturday, Sunday or Legal Holiday, the Contractor shall request approval of the Engineer. The Engineer may reject the request with or without cause. Should approval be granted, the Contractor shall reimburse the City of Turlock the premium portion of cost of engineering, inspection, testing, superintendent, and/or other overhead expenses due to overtime which are directly chargeable to the contract. Should such work be undertaken at the request of the City, reimbursement will not be required.

## **5.16 PUBLIC SAFETY:**

In addition to any other measures taken by Contractor pursuant to the provisions of the Standard Specifications and the General Conditions, Contractor shall install temporary precast concrete barrier rail between any lane carrying public traffic and any excavation, obstacle or storage area when the following conditions exist:

Excavations: Any excavation, the near edge of which is 12 feet or less from the edge of the lane, except;

- (a) Excavations covered with sheet steel or concrete covers of adequate thickness to prevent accidental entry by traffic or the public.
- (b) Excavations less than one foot deep.
- (c) Trenches less than one foot wide for irrigation pipe or electrical conduit or excavations less than one foot in diameter.
- (d) Excavations parallel to the lane for the purpose of pavement widening or reconstruction.
- (e) Excavations in side slopes where the slope is steeper than 4:1.
- (f) Excavations protected by existing barrier or railing.

At the end of each working day, if a difference of 0.50 feet exists between the elevation of the existing pavement and the elevation of any excavation within 2 feet of the traveled way, material shall be placed and compacted against the vertical cuts adjacent to the traveled way. During excavation operations, native material may be used for this purpose, however, once the placing of the structural section commences, structural material shall be used. The material shall be placed to the level of the elevation of the top of the existing pavement and tapered at a slope of 4:1 or flatter to the bottom of the excavation. Treated base shall not be used for the taper. Full compensation for placing the material on a 4:1 slope, regardless of the number of times it is required, and subsequent removing or reshaping of the material to the lines and grades shown on the plans shall be considered as included in the cost for other contract items of work and no additional compensation will be allowed therefore.

Personal vehicles of Contractor's employees shall not be parked on the traveled way or shoulders, including any section closed to public traffic. Whenever vehicles or equipment are parked on the shoulder within 6 feet of a traffic lane, the shoulder area shall be closed with traffic cones or portable delineators placed on a taper in advance of the parked vehicles or equipment and along the edge of the pavement at 25-foot intervals to a point not less than 25 feet past the last vehicle or piece of equipment.

A minimum of one paved traffic lane, not less than 12 feet wide, shall be open for use by public traffic in each direction of travel. The full width of the traveled way shall be open for use by public traffic on Saturdays, Sundays and designated legal holidays, after 4:00 p.m. on Fridays and the day preceding designated legal holidays and when construction operations are not actively in progress.

#### **5.17 REMOVAL OF ASBESTOS AND HAZARDOUS SUBSTANCES:**

The contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing, of any:

1. Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

Upon notification of any of the above, the City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work, a change order shall be issued to modify the contract scope.

In the event that a dispute arises between the City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and the Contractor encounters materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe. The Contractor shall immediately cease work in the affected area and report the condition to the Engineer in writing.

In conformance with Section 25914.1 of the Health and Safety Code, removal of asbestos or hazardous substances including exploratory work to identify and determine the extent of the asbestos or hazardous substance will be performed by separate contract.

If delay of work in the area delays the current controlling operation, the delay will be considered a right of way delay and the Contractor will be compensated for the delay in conformance with the provisions in Section 8 1.07, "Delays," of the Caltrans Standard Specifications.

#### **5.18 PRESERVATION OF PROPERTY:**

The work performed in connection with various existing facilities shall be in accordance with Section 7-8, "Preservation of Property," of the City of Turlock Standard Specifications and these special provisions.

Due care shall be exercised to avoid injury or damage to existing improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs and other plants that are to remain in place.

Roadside trees, shrubs and other plants that are not to be removed and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, sprinkler systems above or below ground, all roadway facilities, and any other improvements or facilities within or adjacent to the right-of-way shall be protected from injury or damage, and if ordered by Engineer, Contractor shall provide and install suitable safeguards, approved by Engineer, to protect such objects from injury or damage. If such objects are injured or damaged by reason of Contractor's operations they shall be replaced or restored at Contractor's expense. The facilities shall be replaced or restored to a condition as good or better as when Contractor entered upon the work, or as good as required by the specifications accompanying the contract, if any such objects are a part of the work being performed under the contract. Engineer may make or cause to be made such temporary repairs as necessary to restore to service any damaged facility. The cost of such repairs shall be borne by Contractor and may be deducted from any moneys due or to become due to Contractor under the contract.

The fact that any underground facility is not shown upon the plans shall not relieve Contractor of his responsibility under the Section "Existing Utilities and Facilities", of these provisions. It shall be Contractor's responsibility, pursuant thereto, to ascertain the location of such underground improvements or facilities that may be subject to damage by reason of construction operations.

Full compensation for furnishing all labor materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property as specified above, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

## **SECTION 6 WORK RESTRICTIONS (BLANK)**

## **SECTION 7 (BLANK)**

## **SECTION 8 MATERIALS (BLANK)**

## **SECTION 9 DESCRIPTION OF WORK**

The work consists, in general of: Remove and replace all windows at the Senior Center. and other associated work.

The work includes all necessary labor, materials, tools, equipment and any incidentals needed to perform the improvements as shown on the contract plans.

## **SECTION 10 CONSTRUCTION DETAILS**

### **10.01 WINDOW REPLACEMENTS – INSTALLATION**

1. Complete glass replacement around the shell of the building. Contractor is to supply materials for installation of new glass windows.
2. Remove all existing window exterior wood stops and existing glass.
3. Clean and prep openings for new glass. Caulk around all openings with a black polyurethane bead.
4. Fabricate and install new 1" overall insulated glass for the shell of the building (except kitchen window) as follows: Windows to be commercial grade 1/4" LO-E/TPS/1/4" clear as manufactured by Cardinal Glass Industries LO-E 272 or approved equal with visible light transmittance between 70 – 80% and Solar Heat Gain Coefficient of 0.41 or lower.
5. Kitchen window on the West side of the facility to be a horizontal sliding, bronze-anodized thermally broken aluminum frame 1/8" LO-E/TPS/1/8" clear as manufactured by Cardinal Glass Industries LO-E 272 or approved equal.
6. Contractor to provide a glass sample for each window type during the submittal stage of the project for review.
7. Insulated glass unit manufacturer's written warranty of 25-years.
8. Upper windows shall be annealed glass. Lower windows shall be tempered glass. All tempered glass shall be identified at the bottom of the glass unit by a manufacturer's designation, which shall be of a type that once applied, cannot be removed without being destroyed per Section 2406.3 of the 2022 California Building Code.
9. Fabricate and install new primed redwood window stops on all exterior window stops.
10. Cut and prep wood stops to fit the openings. Exterior wood stops shall be rough-sawn 1" x 1 1/2" or as needed to cover existing paint line.
11. Place wood stop on the top and bottom to run through openings and side cut in to fit.
12. Set in a bead of caulking and nail in around with countersunk flush #10 x 2". 8D galvanized nails every 24" on center and 6" from every corner.
13. Window to be completely sealed with black polyurethane.
14. Remove all labels from insulated units and ensure all windows are cleaned. Remove all debris from the job site.

#### **10.02 WINDOW REPLACEMENTS – FINAL CLEANUP:**

Upon completion of the work, the Contractor shall remove all equipment, debris, and shall leave the site in a neat clean condition to the satisfaction of the Engineer. The Contractor shall clean the area of all construction related materials and sweep the entire project area including sidewalk and gutter thoroughly. All construction signs, cones, barricades, and conflicting markings shall be removed. At the request of the Contractor, a final punchlist will be provided. After all items of the punchlist have been completed to the satisfaction of the Engineer, the Engineer will issue substantial completion. The accrual of working days will cease after substantial completion has been issued.

### **SECTION 11 SIGNALS, LIGHTING, AND ELECTRICAL SYSTEM (BLANK)**

### **SECTION 12 WORK ZONE MOBILITY (BLANK)**

### **SECTION 13 BLANK**