

CITY of CALIFORNIA CITY

REQUEST FOR PROPOSAL

to provide Asbestos and Lead Based Paint Testing services.

DUE: September 5, 2018

TIME: Before 5:00 p.m.

CITY of CALIFORNIA CITY

Request for Proposal to Provide (“RFP”): Asbestos and Lead Based Paint Testing Services

The City of California City (“City”) is seeking a qualified contractor, or Proposer, to test for any and all Asbestos and Lead Based Paint materials in/on structures on different parcel lots located inside of the city limits of California City, California. The proposer would test between ten to twenty structures on parcels in a one year period. The proposer will give the City an average price per structure with the understanding the proposer would test at least ten structures in one year.

Proposers are not allowed to use any California City Logos without the written permission of the City Council. Proposers are specifically directed not to contact any City personnel other than the contact person indicated below, for any purpose related to this RFP. **Unauthorized contact of any City personnel may be cause for rejection of a vendor’s proposal.**

All inquiries concerning this RFP should be directed to the following contact person:

Joe Barragan
Deputy Building Official
City of California City
Attn: Denise Hilliker City Clerk
21000 Hacienda Blvd
California City, CA 93505
(760) 373-7162

Envelopes/packages containing the proposals are to be marked:

PROPOSAL: “Lakeview Homes Testing” and **delivered to:**
City of California City Building Department
21000 Hacienda Blvd
California City, CA 93505
(760) 373-7162

Projected Timetable

The following dates are set forth for information and planning purposes only. These dates may be changed by the City upon notice to prospective proposers:

Issuance Date August 23, 2018
Pre-Proposal Meeting August 28, 2018
Proposal Due Date September 5, 2018
Proposal Due Time Before 5:00 p.m.

Postmark date will not constitute timely delivery. Responses received after the above time **will not** be considered. Proposers are solely responsible for ensuring timely receipt of their proposals.

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I. GENERAL INFORMATION

A. Project Background and Description

This project consists of testing for Asbestos and Lead Based Paint materials in/on structures on different parcel lots located inside of the city limits of California City, California. The proposer would test between ten to twenty structures on parcels in a one year period. The proposer will give the City an average price per structure with the understanding the proposer would test at least ten structures in one year (see **Exhibit A**) Parcels are located inside of the Lakeview Mobile Home Park, in California City, California.

B. Services Required of Successful Proposer

The successful proposer will need to review and follow all federal, state and county laws and codes to determine what is considered to be Asbestos and Lead Based Paint material. Also, the successful proposer will need to submit an asbestos report upon completion of testing, see **Exhibit A**.

C. Services Provided by the City

The City will provide a contact person as a primary contact, who will arrange for staff assistance by other City staff as required. The City will also provide whatever information needed that is available. The City will also be available to meet and discuss project requirements.

D. Selection Process

1. All proposals received by the specified deadline will be reviewed by a City Evaluation Committee. After the initial scoring, the Evaluation Committee may select those firms deemed most qualified for this project for further evaluation. Interviews of these selected firms may be conducted as part of the final selection process. Proposers are advised that the City, at its option, may award a contract strictly on the basis of the initial proposals, and not create a short list of proposals for further consideration. The firm selected by the Evaluation Committee will be recommended to the City Council for this project, but the Council is not bound to accept the recommendation or award the project to the recommended firm.
2. The following is a list of general criteria that may be used by the Evaluation Committee in determining its recommendation to the City Council.

Please note that the Evaluation Committee may consider any information they deem relevant in determining a recommendation to the City Council or Board of Directors, and may give each of the criteria considered as little or as much weight as they consider appropriate.

- a. Proposer's understanding of the RFP requirements and end result.

- b. Proposer's proposed approach to tasks.
 - c. Proposer's experience in similar projects.
 - d. Fee(s).
 - e. Estimated completion date(s).
 - f. Client references.
 - g. Qualifications of proposer's staff for the project.
 - h. Any other factors the Evaluation Committee deems relevant.
3. The City reserves the right to reject any and all proposals and to waive informalities and irregularities in any proposals received. Absence of required information may render a proposal non-responsive in the sole discretion of the City, resulting in rejection of the proposal.
 4. The City may, during the evaluation process, request from any proposer additional information which the City deems necessary to determine the proposer's ability to perform the required services. If such information is requested, the proposer shall be permitted five (5) working days to submit the information requested.
 5. An error in the proposal may cause the rejection of that proposal; however, the City may, in its sole discretion, retain the proposal and make any corrections it deems appropriate. In determining if a correction will be made, the City will consider the conformance of the proposal to the format and content required by the RFP, and any unusual complexity of the format and content required by the RFP. If the proposer's intent is clearly established based on review of the complete proposal submittal, the City may, at its sole option, correct an error based on that established content. The City may also correct obvious clerical errors. The City may also request clarification from a proposer on any item in a proposal that the City believes to be in error, and make corrections accordingly.
 6. The City reserves the right to select the proposal which, in its sole judgment, best meets the needs of the City. The recommendation by the Evaluation Committee, and the final selection of a proposer by the City Council, shall be based on any information and criteria the Evaluation Committee considers relevant, which may include criteria not listed in paragraph 3 above. **The lowest proposed cost is *not* the sole criterion for recommending contract award.**
 7. All firms responding to this RFP will be notified of their selection or non-selection in writing after the Evaluation Committee has completed the selection process. All proposers shall have seven days from the date of the

notice to submit any additional information **not previously submitted** to the City for final consideration before the Evaluation Committee's recommendation is placed on the City Council's agenda.

8. City employees will not participate in the selection process when those employees have a relationship with a person or business entity submitting a proposal which would subject those employees to the prohibition of Section 87100 of the Government Code. Any person or business entity submitting a proposal who has such a relationship with a City employee who may be involved in the selection process shall advise the City of the name of the employee in the proposal.
9. Any person or business entity which engages in practices which might result in unlawful activity relating to the selection process including, but not limited to, kickbacks or other unlawful consideration paid to City employees, will be disqualified from the selection process.
10. The process, procedures and evaluation criteria used by City staff and the Evaluation Committee in developing and issuing this RFP and evaluating the proposals received for purposes of making a recommendation to the City Council shall be determined in the sole discretion of the City. Potential proposers shall have no rights whatsoever regarding the processes and procedures used by the City relating to this RFP or the manner in which a proposer is selected by either the Evaluation Committee or the City Council or Board of Directors, provided their decisions are not arbitrary and capricious, and there is some reasonable basis for the selection(s) made.

E. Solicitation Caveat

The issuance of this solicitation does not constitute an award commitment on the part of the City, and the City shall not pay for costs incurred in the preparation or submission of proposals. **The City reserves the right to reject any or all proposals or portions thereof if the City determines that it is in the best interest of the City to do so.**

Failure to furnish all information requested or to follow the format requested herein, or the submission of false information, may disqualify the proposer, in the sole discretion of the City. The City may waive **any** deviation in a proposal. The City's waiver of a deviation shall in no way modify the RFP requirements nor excuse the successful proposer from full compliance with any resultant agreement requirements or obligations.

F. Time

Time and the time limits stated in this RFP are of the essence of this Request for Proposal.

G. Form of Agreement

No agreement with the City is in effect until a contract has been signed by both parties. Attached to this RFP as Exhibit "B" is a sample agreement which is written substantially in the form the successful proposer will be expected to sign. The final agreement may include the contents of the RFP, any addenda to this RFP, portions of the successful proposer's proposal, and any other modifications determined by the City to be necessary prior to its execution by the parties.

The sample agreement included in this RFP is for informational purposes and should not be returned with a proposal; however, the proposal shall include a statement that the proposer has reviewed the sample agreement and either i) will agree to the terms contained therein if selected, or ii) indicate those specific provisions of the sample agreement to which the proposer takes exception and why. Raising of significant exceptions in a proposal, as determined in the sole discretion of the City, may be cause for rejection of the proposer's proposal.

The selected Company will be required to execute an agreement with the City for the services requested within 14 days of the award. If agreement on the terms and conditions of the contract that are acceptable to the City including, but not limited to, compensation, cannot be achieved within that timeframe, the City reserves the right to continue negotiations or to award the bid to another company and begin negotiations with that company.

The selected proposer must identify and provide contact information in their proposal of the individual within their organization who is authorized to negotiate the terms and conditions of any agreement between the company and the City.

H. Modifications to Scope of Work

In the event that sufficient funds do not become available to complete all the services identified in this RFP, the scope of services may be amended, as determined in the sole discretion of the City. The City may also, from time-to-time, request changes in and/or additions to the services to be provided by the successful proposer. Such changes, including any increase or decrease in compensation, which are mutually agreed upon by and between the City and the successful proposer, shall be incorporated into the contract prior to execution of the contract, and by written amendments thereto after execution.

I. News Releases

News releases pertaining to any award resulting from this RFP may not be made without prior written approval of the City Manager.

J. Payment Schedule

Periodic payments will be made to the Company upon submission of an invoice, based on a payment schedule to be developed and included in the final agreement for services.

K. Statutes and Rules

The terms and conditions of this RFP, and the resulting company services and activities performed by the successful proposer, shall conform to all applicable statutes, rules and regulations of the federal government, the State of California, the City, and the County of Kern.

L. Background Review

The City reserves the right to conduct a background inquiry of each proposer that may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories, reputation in the business community and financial condition. By submitting a proposal to the City, the proposer consents to such an inquiry and agrees to make available to the City all books and records the City deems necessary to conduct the review.

II. PROPOSAL INFORMATION AND REQUIREMENTS

A. General Instructions

To receive consideration, proposals shall be made in accordance with the following general instructions:

1. The completed proposal shall be without alterations or erasures. Errors may be crossed out and corrections printed in ink or typed adjacent, and must be initialed in ink by an authorized representative of the proposer.
2. No oral, telephonic, telegraphic, e-mailed or faxed proposals will be considered.
3. The submission of a proposal shall be an indication that the proposer has investigated and satisfied him/herself as to the selection process to be used by the City, the conditions to be encountered, the character, quality and scope of the work to be performed, and the requirements of the City.
4. All proposals shall remain firm for one hundred and eighty (180) days from the proposal submission deadline.

B. Business Address

Proposers shall furnish their business street address. Any communications directed either to the address so given, or to the address listed on the sealed proposal container, and deposited in the U.S. Postal Service by Certified Mail, shall constitute a legal service thereof upon the proposer.

C. Corrections and Addenda

If a proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the proposer shall immediately notify the Contact Person of such error in writing and request clarification or modification of the document. Modifications will be made by addenda as indicated below to all parties in receipt of this RFP.

If a proposer fails to notify the Contact Person prior to the date fixed for submission of proposals of a known error in the RFP, or an error that reasonably should have been known, the proposer shall submit a proposal at their own risk, and if the proposer is awarded a contract they shall not be entitled to additional compensation or time by reason of the error or its subsequent correction.

Addenda issued by the City interpreting or changing any of the items in this RFP, including all modifications thereof, shall be incorporated in the proposal. The proposer shall sign and date the Addenda Cover Sheet and submit same with the proposal (or deliver them to the City at 21000 Hacienda Blvd; California City, CA 93505, if the proposer has previously submitted a proposal to the department).

Any oral communication by the City's designated Contact Person or any other City staff member concerning this RFP is not binding on the City and shall in no way modify this RFP or the obligations of the City or any proposers.

D. Proposal Format and Contents

For ease of review and to facilitate evaluation, the proposals for this project should be organized and presented in the order requested as follows:

1. Cover Page:

Include a letter of introduction signed by an authorized representative of the firm certifying that all statements in the proposal are true and correct and shall constitute a warranty, the falsity of which shall entitle the City to pursue any remedy authorized by law, which shall include the right, at the option of the City, to declare any contract made as a result thereof, to be void. Indicate the name of the firm and the RFP project title.

2. Section I - Corporate/Agency Profile:

Provide specific information concerning the firm in this section, including the legal name, address and telephone number of your company and the type of entity (sole proprietorship, partnership, or corporation and whether public or private).

Include the name and telephone number of the person(s) in your company authorized to execute the proposed contract.

If two or more firms are involved in a joint venture or association, the proposal(s) should clearly delineate the respective areas of authority and responsibility of each party.

All parties signing the Agreement with the City shall be individually liable for the completion of the entire project even when the areas of responsibility under the terms of the joint venture or association are limited.

3. Section II - Qualifications and Experience:

This section is designed to establish the proposer as an entity with the ability and experience to operate the program, or provide the services, as specified in the RFP. Provide specific information in this section concerning the firm's experience in the services specified in this RFP, preferably within the State of California. Include the number of employees involved in providing services; number of years providing services; and financial statements (balance sheet and Dun & Bradstreet credit rating acceptable). Additionally, provide examples of completed projects.

Documentation of Satisfactory Past Performance/References:

Provide a minimum of three (3) reference letters for similar services rendered (must be within the last six (6) months on the reference company's letterhead. Each reference shall include a current point of contact and a phone number. Each reference letter must have the following information: Date of the original contract; end date of the contract; services rendered; and names, addresses, and telephone numbers of contact persons within client agencies for whom the services have been provided.

Provide a list of all clients, if any, to whom you have provided similar services over the last two years.

4. Section III - Credentials/Resumes:

Of critical importance is the composition of the team proposed to provide services on this project. Credentials and resumes of the person(s) responsible for administering or providing the services must be provided. Include a statement of qualifications and resumes/backgrounds of key personnel assigned to the project, including training certifications of professional and non-professional personnel. The proposer shall specifically provide the following information on all management, supervisory and other key employees who will be providing service:

- a. Name, address and phone number
- b. Description of education

- c. General experience
- d. Experience or education related to the RFP project
- e. Letters of reference, if available

List consultant firms, if any, that you plan to use for this project and their relevant experience.

The City will consider proposed agreements that involve the firm's use of subcontractors. List all subcontractors you plan to use for this project and their relevant experience. Such subcontractors will be acting as independent contractors and not as agents of the City.

- 5. Section IV - Project Approach, Work Schedule, Proposed Transition Plan and Technology Available:

Provide a detailed description of the methodology proposed to perform all required services. The project approach should include specific details with regard to how and what services, training, installation, etc. are included in your response to the City. Provide specific information and details. Include any additional information and options that you feel may be advantageous to the City. Label options clearly and specify all costs and fees associated with each option. Include specific details with regard to a work schedule/transition plan which contains an aggressive schedule that will complete, or start up, the project before February 2, if possible. This schedule should contain specific milestones and dates of completion which will be used to set schedules. Also identify the extent of City personnel involvement deemed necessary, including key decision points at each stage of the project. Specify all software and computer technology that is anticipated to be used in rendering the services. If the proposal includes the purchase of any software by the City, provide a copy of any software license agreements that the City would be required to execute.

Do not include brochures and advertisements in your proposal unless the content they provide is identified and included specifically in your description of the methodology and/or approach to the services you are proposing to provide the City.

- 6. Section V - Cost of Service:

The proposal shall clearly state all of the costs associated with the project, broken down by category of products and services, and all on-going costs for recommended/required products/services such as maintenance, and any proposed annual cost of living increases for contracts with terms exceeding one year. As a general rule, the City prefers a set price or hourly rate for the entire term of any contract.

Therefore, do not assume that the City will accept any proposed price escalations. Proposed price escalators may also have a detrimental impact on the proposer's score determined by the Evaluation Committee.

The project costs should include all expenses that will be charged to the City including but not limited to costs for shipping, insurance, communications, documentation reproduction, travel, taxes, etc. **Failure to not clearly identify all costs associated with the proposal may be cause for rejection of the Consultant's proposal.**

7. Section VI - Insurance:

The selected proposer will be required to obtain, as a condition of the award of a contract, and the proposal shall state that the proposer will obtain the insurance as required in the attached agreement.

All insurance shall be issued by a company or companies listed in the current "Best's Key Rating Guide" publication with a minimum of A-, VII rating; or in special circumstances, as pre-approved by the Risk Management Division of the Office of City/District/Nonprofit Counsel. The selected proposer shall file with the Contact Person a Certificate(s) of Insurance stating the required coverages are in effect.

8. Section VII - Additional Information:

Include any other information you believe to be pertinent but not required.

E. Pre-Proposal Meeting

A Pre-Proposal meeting has been set for August 28, 2018 at 10:00 a.m. The meeting will be held at 21000 Hacienda Blvd. The purpose of the conference is to permit proposers an opportunity to ask questions and/or provide feedback to City staff on specifics of this RFP. Preliminary answers may be given at the Pre-Proposal meeting. However, these responses are only preliminary and will not be final until they are provided as an addendum to the RFP. While some input obtained at the meeting may be incorporated into the RFP via addenda, remarks and explanations made at the meeting shall not change the provisions of the final RFP.

F. Proposal Submission

The proposer shall submit three (3) written copies of the proposal and, if possible, one (1) copy on a flash-drive. The flash-drive must be a standard Microsoft Windows compatible format readable by the City; using word processing software that is Windows based, preferably Microsoft Word. Please submit all proposals to:

City of California City Building Department
Attn: Lakeview Mobile Homes RFP
21000 Hacienda Blvd
California City, CA 93505
(760) 373-7162

Proposals may be delivered in person, by courier service or by mail to the address indicated above. **ALL PROPOSALS MUST BE SEALED AND RECEIVED BEFORE 5:00 P.M. on September 5,** at the above office and address.

Proposals submitted after the above deadline will not be accepted. It is strongly suggested that any proposers intending to hand deliver a proposal on the last day for submission arrive at the City location for proposal receipt at least ten (10) minutes prior to the proposal receipt deadline to receive a “test” time stamp to validate the official current time. The time stamp clock at the City location for proposal receipt will be the official time. Any proposal received at or after 5:00 p.m. will be returned unopened.

Only one (1) proposal may be submitted from each proposer. For purposes of this RFP, a proposer is defined to include a parent corporation of the proposer and any other subsidiary of that parent corporation. If a proposer submits more than one (1) proposal, all proposals from that proposer shall be rejected.

RFP proposals are not publicly opened.

G. Withdrawal and Submission of Modified Proposal

A proposer may withdraw a proposal at any time prior to the submission deadline by submitting a written notification of withdrawal signed by the proposer or his/her authorized agent. The proposer must, in person, retrieve the entire sealed submission package. Another proposal may be submitted prior to the deadline. A proposal may not be changed after the designated deadline for submission of proposals.

H. Disposition of Proposals and Proprietary Data

All materials submitted in response to this RFP become the property of the City. Any and all proposals received by the City shall be subject to public disclosure and inspection, except to the extent the proposer designates trade secrets or other proprietary data to be confidential, after the Evaluation Committee has completed its deliberative process and either the proposer has been informed that they are not the vendor selected by the Evaluation Committee for recommendation to the City Council, or the matter has been set for consideration before the City Council, whichever comes first.

Material designated as proprietary or confidential shall accompany the proposal and each page shall be clearly marked and readily separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. Prices, makes and models or catalog numbers of the items offered, deliverables,

and terms of payment shall be publicly available regardless of any designation to the contrary. The City will endeavor to restrict distribution of material designated as confidential or proprietary to only those individuals involved in the review and analysis of the proposals.

Proposers are cautioned that materials designated as confidential may nevertheless be subject to disclosure. Proposers are advised that the City does not wish to receive confidential or proprietary information and that proposers are not to supply such information except when it is absolutely necessary. If any information or materials in any proposal submitted is labeled confidential or proprietary, the proposal shall include the following clause:

_____ (legal name of proposer) shall indemnify, defend and hold harmless the City/District/Nonprofit, its officers, agents and employees from and against any request, action or proceeding of any nature and any damages or liability of any nature, specifically including damages awarded under the California Public Records Act (Government Code §6250 et seq.) arising out of, concerning or in any way involving any materials or information in this proposal that _____ (legal name of proposer) has labeled as confidential, proprietary or otherwise not subject to disclosure as a public record.

CITY of CALIFORNIA CITY
PROFESSIONAL SERVICES AGREEMENT
SCHEDULE TO MASTER TERMS AND CONDITIONS
California City Testing of Structures to be Demolished

THIS SCHEDULE shall be effective on October 1, 2018 and shall terminate no later than October 1, 2019.

City of California City located at: 21000 Hacienda Blvd; California City, CA 93505

Service Provider:

Located at:

Consultant is (select one): Sole Proprietorship
 Incorporated in the State of _____.
 Other (specify) _____.

Consultant shall provide the services and products described in **Exhibit A ("Services")**.
The City shall compensate the Company for the Services.

The City **shall not** reimburse Consultant for any costs or travel expenses incurred by the Company.

The Company shall be required to have the following insurance coverages which are marked, on the terms provided in the Master Terms and Conditions. The insurance coverages shall be in the amounts specified, unless another amount is shown (select all that apply):

- Workers' Compensation: As required by California Labor Code Section 3700
- Commercial General Liability (\$1,000,000/Occurrence; \$2,000,000/Aggregate) or other amounts: \$ _____
- Automobile Liability (\$1,000,000/Occurrence) or other amount: \$ _____
- Professional Liability (\$1,000,000/Claim; \$2,000,000/Aggregate) or other amounts: \$ _____

If there are any conflicts between the terms and conditions contained in this Schedule and the Master Terms and Conditions, this Schedule shall control.

The Parties have executed this Schedule, including the Master Terms and Conditions, which constitute the Agreement, on the Effective Date.

CITY of CALIFORNIA CITY

By _____

"City of California City"

Date:

COMPANY

By _____

Name and title _____.

_____, "COMPANY"

Date:

EXHIBIT A SERVICES

The Company shall provide the Services shown below for the City of California City based on the following payment schedule:

Consultant shall submit one invoice to the City of California City upon contract completion and acceptance of the Services by City.

1. Full description of the Services: The Company will perform testing for Asbestos and Lead Based Paint materials in/on structures on different parcel lots located inside of the city limits of California City, California. The proposer would test between ten to twenty structures on parcels in a one year period. The proposer will give the City an average price per structure with the understanding the proposer would test at least ten structures in one year. Parcels are located inside of the Lakeview Mobile Home Park, in California City, California. The City would most likely have the proposer test two parcels at a time. Typical Parcels are listed below:

215 Desert Breeze
220 Desert Breeze
239 Desert Breeze
245 Desert Breeze
271 Desert Breeze

194 Campfire
184 Campfire
180 Campfire
177 Campfire
169 Campfire
138 Campfire
117 Campfire

355 Morning Glory
349 Morning Glory
341 Morning Glory
330 Morning Glory
328 Morning Glory

2. The Company will need to provide an Asbestos and Lead Based Paint report upon completion of testing.

END OF SECTION

Exhibit B
CITY OF CALIFORNIA CITY
PROFESSIONAL SERVICES AGREEMENT
SCHEDULE TO MASTER TERMS AND CONDITIONS
California City Testing of Structures to be Demolished

THIS AGREEMENT is entered into effective on the Effective Date shown on the attached Schedule, by and between the City of California city, with its principal location at 21000 Hacienda Blvd, CA 93505, and the **COMPANY** identified on the Schedule. The City of California City and the Company are individually referred to as a “**Party**” and collectively as the “**Parties.**”

RECITALS

- A.** The City of California City identified on the Schedule requires those services which are specified in **Exhibit A**.
- B.** City of California City desires to engage the Company to provide the services and testing, by reason of its qualifications, experience, and facilities for doing this type of work, has offered to provide the required services on the terms set forth in this Agreement.

AGREEMENT

1. **Services to be Rendered.** The Company shall provide the services and products described in **Exhibit A (“Services”)**.
2. **Compensation to the Company.** City of California City shall compensate the Company in accordance with the compensation selection(s) shown on the Schedule. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to City of California City.
3. **Reimbursement Policy and Billing Requirements.** All invoices for payment shall be submitted in a form approved by City of California City based upon the payment schedule selected on **Exhibit A**, shall contain an itemization of all costs and fees broken down monthly and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the City of California City. Payment shall be made to the Company within 30 days of receipt and approval of the invoice by the City of California City.
4. **Term.** This term of this Agreement (“**Term**”) shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.
5. **Assignment.** The Company shall not assign, transfer or encumber this Agreement, or any part, and the Company shall not assign any monies due or which become due to the Company under this Agreement, without the prior written consent of the City of California City.
6. **Audit, Inspection and Retention of Records.** The Company shall maintain and make available to City of California City accurate books and records relative to the Services under this Agreement. The Company shall permit City of California City to audit, examine and make excerpts and transcripts from its records and to conduct audits of all invoices, materials, records of personnel or other data related to the Services under this Agreement. The Company shall maintain its data and records in an accessible location and condition for a period of not less than three years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights as the City of California City.
7. **Authority to Bind the City of California City.** It is understood that the Company, in the Company's performance of any Services under this Agreement, except as otherwise provided in this Agreement, has no authority to bind the City of California City to any agreements or undertakings.
8. **Indemnification.**
 - A. General.** The Company shall defend, indemnify, and hold harmless the City of California City and the City of California City's Council members, elected and appointed officials, officers, employees, agents, volunteers and authorized representatives (“**City of California City Indemnified Parties**”) from any losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments and costs (“**Claims**”) which arise out of or relate to any act or omission of the Company or Company's officers, employees, agents and subcontractors of any tier hired by the Company to perform the Services (“**the**

Company's Representatives"). This indemnification obligation shall include bodily and personal injury or death to any person; damage to any property, regardless of where located, including the property of City of California City; and any workers' compensation Claim arising from or relating to any Services.

B. Immigration Reform and Control Act. The Company acknowledges that the Company and the Companies Representatives are aware of and understand the Immigration Reform and Control Act ("IRCA"). The Company is and shall remain in compliance with the IRCA and shall ensure that any Company Representatives are and shall remain in compliance with the IRCA. In addition, the Company shall defend, indemnify and hold harmless the City of California City and the City of California City Indemnified Parties from any Claims which arise out of or relate to any allegations that the Company and the Company Representatives are not authorized to work in the United States and/or any other allegations based upon alleged IRCA violations committed by the Company or the Company Representatives.

C. Infringement Claim. If any Claim is asserted or action or proceeding brought against the City of California City or the City of California City Indemnified Parties which alleges that all or any part of the Services in the form supplied by the Company or the City of California City's use, infringes or misappropriates any United States or foreign patent or copyright, or any trade secret or other proprietary right, the City of California City shall give the Company prompt written notice. The Company shall defend any Claim with counsel of the Company's choice and at the Company's sole cost and shall indemnify the City of California City for any costs and damages actually incurred by the City of California City, including steps the City of California City may take to avoid entry of any default judgment or other waiver of The City of California City's rights. The City of California City shall cooperate fully with and may monitor the Company in the defense of any claim, action or proceeding and shall make employees available as the Company may reasonably request with regard to the defense, subject to reimbursement by the Company of all costs incurred by City cooperation in the defense.

D. Remedy of Infringement Claim. If the Services are, in the Company's opinion, likely to become or do become the subject of a claim of infringement or misappropriation of a United States or foreign patent, copyright, trade secret or other proprietary right, or if a temporary restraining order or other injunctive relief is entered against the use of part or all of the Services, the Company shall within 90 days:

- I. **Replace.** Promptly replace the Services with compatible, functionally equivalent and non-infringing Services;
- II. **Modify.** Promptly modify the Services to make them non-infringing without materially impairing the City's ability to use the Services as intended;
- III. **Procure Rights.** Promptly procure the right of the City to continue using the Services; or
- IV. **Refund.** As a last resort, if none of these alternatives is reasonably available to the Company, and the City is enjoined or otherwise precluded legally from using the Services, the Company shall, within 120 days of the judgment or other court action, promptly refund to the City all fees and costs paid for the Services, and this Agreement shall terminate. All licensed products will be disposed of as ordered by the governing court at the sole cost of the Company or as determined by the City if the court does not so direct.
- V. **Modification of Services.** This indemnification does not extend to modifications or additions to the Services made by the City or any third party without the prior written consent of the Company, or to any unauthorized use of the Services by the City.
- VI. **Survival of Indemnification Obligations.** Upon completion of this Agreement, the provisions of this **Section 8** shall survive.

9. Insurance.

The Company, in order to protect the City and the City Indemnified Parties against Claims as a result of the performance of the Company's obligations, as required in this Agreement, shall secure and maintain the following insurance. The Company shall not perform any Services until the Company has obtained all insurance required under this **Section 9** and the required certificates of insurance and all required endorsements have been filed with the City and with the City's authorized insurance representative, if any. ("**Authorized Insurance Representative**") Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of these insurance requirements. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, the Company shall supply proof that the designated person is an authorized representative, and is authorized to bind the named underwriter(s) and their company to the stated coverage, limits and termination provisions. The Company shall promptly deliver to the City and Authorized Insurance Representative, if any, a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the Term. The certificates and endorsements shall be delivered to the City and Authorized Insurance Representative, if any prior to the expiration date of any policy and bear a notation evidencing payment of the premium if so requested. The Company

shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any Claim by the Company or the City as an additional insured.

- A. Workers' Compensation and Employer's Liability Insurance Requirement.** If the Company has employees who may perform any Services under this Agreement, the Company shall submit written proof that the Company is insured against liability for workers' compensation in accordance with the provisions of California Labor Code Section 3700. The Company shall require any Company Representatives to provide workers' compensation for any of the Company Representative's employees, unless the employees are covered by the insurance carried by the Company. If any class of employees engaged in Services is not covered by California Labor Code Section 3700, the Company shall provide and/or require each Company Representative to provide adequate insurance for the coverage of employees not otherwise covered. The Company shall also maintain employer's liability insurance with limits of \$1,000,000 for bodily injury or disease.
- B. Liability Insurance Requirements.**
- I. **Types of Liability Insurance.** The Company shall maintain in full force and effect, during the Term, the following types of liability insurance:
- a **Commercial General Liability Insurance**, including Contractual Liability Insurance (specifically covering the indemnification provisions of this Agreement), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of the Company's performance of Services. The Commercial General Liability insurance shall contain no exclusions or limitations for Company Representatives working on the behalf of the named insured. The Company shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by Applicable Law following termination of this Agreement. The amount of the insurance coverage required by this Agreement shall be the policy limits, which shall be no less than the amount specified on the Schedule.
- b **Automobile Liability Insurance**, against claims of Personal Injury (including bodily injury and death) and Property Damage covering any owned, leased, hired and non-owned vehicles used in the performance of the Services with insurance coverage equal to the policy limits, which shall be no less than the amount specified on the Schedule.
- c **Professional Liability (Errors and Omissions) Insurance**, for liability arising out of or related to the performance of the Services, with insurance coverage equal to the policy limits, which shall be no less than the amount specified on the Schedule.
- C. Endorsements.** The Commercial General Liability and Automobile Liability Insurance required in this **Section 9** shall include an endorsement naming the City and the City's Indemnified Parties as additional insureds for liability arising out of this Agreement and any related operations. The endorsement shall be provided using one of the following three options: **(i)** on ISO form CG 20 10 11 85; or **(ii)** on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or **(iii)** on other forms which provide coverage at least equal to or better than form CG 20 10 11 85.
- D. Claims-Made Insurance.** If any of the insurance coverages required under this Agreement is written on a claims-made basis, the Company, at the Company's option, shall either **(i)** maintain the coverage for at least three years following the termination of this Agreement with coverage extending back to the Effective Date; **(ii)** purchase an extended reporting period of not less than three years following the termination of this Agreement; or **(iii)** acquire a full prior acts provision on any renewal or replacement policy.
- E. Insurance Companies.** All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved in writing by the City.
- F. Self-Insurance.** If the Company is, or becomes during the Term, self-insured or a member of a self-insurance pool, the Company shall provide coverage equivalent to the required insurance coverages and endorsements. The City will not accept the coverages unless the City determines, in its sole discretion and by written acceptance, that the coverages proposed to be provided by the Company are equivalent to the required coverages. Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to the City and must be approved in writing by the City's Risk Manager.

- G. **Primary Insurance; Waiver of Subrogation.** All insurance carried by the Company shall be primary to and not contributing to any insurance or self-insurance maintained by the City. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against the City.
 - H. **Insurance Does Not Replace Indemnification.** Maintenance of the insurance coverages in the minimum specified amounts shall not be construed to relieve the Company for any liability, whether within, outside, or in excess of the coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the City from taking other actions as are available to it under this Agreement or under Applicable Law.
 - I. **Failure to Maintain Insurance.** Failure by the Company to maintain all insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by the Company. The City, at its sole option, may terminate this Agreement and obtain damages from the Company resulting from the breach. Alternatively, the City may purchase the required insurance coverage, and without further notice to the Company, the City shall deduct from sums due to the Company any premiums and associated costs advanced or paid by the City for the insurance. If the balance of monies owed to the Company under this Agreement is insufficient to reimburse the City for the premiums and any associated costs, the Company shall reimburse the City for the premiums and pay for all costs associated with the purchase of the insurance. Any failure by the City to take this alternative action shall not relieve the Company of its obligation to obtain and maintain the insurance coverages required by this Agreement.
 - J. **Cancellation of Insurance.** The insurance coverages required to be maintained by the Company shall be maintained until the completion of all of the Services except as otherwise stated in this Agreement. Each insurance policy supplied by the Company shall not be terminated, suspended, voided, canceled, non-renewed or reduced in coverage or in limits except after 10 days prior written notice to the Company in the case of non-payment of premiums, or 30 days prior written notice in all other cases. This notice requirement does not waive these insurance requirements. The Company shall immediately obtain replacement coverage for any insurance policy that is terminated, suspended, voided, canceled, reduced in coverage, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.
10. **The Company Representations.** The Company makes the following representations, which the Parties agree are material to and form a part of the inducement for this Agreement:
- A. **Expertise and Staff.** The Company has the expertise, support staff and facilities necessary to provide the Services; and
 - B. **No Adverse Interests.** The Company does not have any actual or potential interests adverse to the City, nor does the Company represent a person or firm with an interest adverse to the City relating to the subject of this Agreement; and
 - C. **Timeliness.** The Company shall diligently provide the Services in a timely and professional manner in accordance with the terms and conditions in this Agreement.
 - D. **Ownership of Documents.** All reports, documents and other items generated or gathered in the course of providing the Services are and shall remain the property of the City, and shall be returned to the City upon full completion of the Services or termination of this Agreement, whichever first occurs.
 - E. **Rights to Contracted Products.**
 - a. **Belong to the City.** For no additional fee or charge, products developed, prepared, generated or gathered by the Company or the Company's Representatives under this Agreement, shall be considered creative works for hire and shall be delivered to and become the exclusive property of the City and may be used by the City in any way it may deem appropriate. The Company shall have no rights in the products, except the right to use the products for the exclusive purpose of providing the Services, and Consultant shall not copy or disclose to any third party any product, except as is expressly set forth in this Agreement or by separate written agreement between the Parties. These provisions do not apply to the Company's original licensed software or administrative communications and records, which shall remain the exclusive property of the Company,
 - b. **Use by the City.** The ideas, concepts, know-how, and techniques developed during the course of this Agreement may be used by the City in any way it may deem appropriate, so long as that use does not violate any term in this Agreement or any Applicable Law.

- c. **No Publication.** The Company or the Company's Representatives shall not publish or disseminate information gained through participation in this Agreement without the specific prior review and written consent by the City.
 - d. **Delivery to the City.** Upon termination or expiration of this Agreement, the Company shall immediately deliver to the City all the City-owned programs and documentation developed under this Agreement. In addition, the Company grants to the City a perpetual, royalty-free, non-exclusive, irrevocable, and non-transferable license to use, solely for the City purposes, any the Company owned program, including system software, utilized by the Company in performance of the Services.
 - e. **Survival of Covenants.** Upon completion of this Agreement, the provisions of this **Section 10** shall survive.
11. **Termination.** The City may at their election, without cause, terminate this Agreement by written notice ("**Notice of Termination**"). The Notice of Termination will be deemed effective 15 days after personal delivery, or 20 days after mailing by regular U.S. Mail, postage prepaid. In addition, either Party may immediately terminate this Agreement if the other Party fails to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination. In the event this Agreement is terminated by either the Company or the City, the Company shall submit to the City all files, memoranda, documents, correspondence and other items generated in the course of performing the Services, within 15 days after the effective date of the Notice of Termination. If either Party terminates this Agreement as provided in this **Section 11**, the City shall pay the Company for all satisfactory Services rendered by the Company prior to the effective date of Notice of Termination in an amount not to exceed the maximum dollar amount shown on the Schedule.
12. **Choice of Law/Venue.** The Parties agree that the provisions of this Agreement shall be construed under the laws of the State of California. This Agreement has been entered into and is to be performed in the City limits. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.
13. **Compliance with Applicable Law.** Consultant shall observe and comply with all applicable City, state and federal laws, ordinances, rules and regulations now in effect or later enacted ("**Applicable Law**"), each of which is made a part of this Agreement.
14. **Confidentiality.** The Company shall not, without the prior written consent of the City, communicate confidential information, designated in writing or identified in this Agreement as confidential, to any third party and shall protect confidential information from inadvertent disclosure to any third party in the same manner that it protects its own confidential information, unless disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Agreement, the provisions of this **Section 14** shall continue to survive.
15. **Conflict of Interest.** The Company has read and is aware of the provisions of Government Code Section 1090 et seq. and Section 87100 et seq. relating to conflict of interest of public officers and employees. The Company acknowledges that it is unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If is further understood and agreed that if a financial interest does exist at the inception of this Agreement, the City may immediately terminate this Agreement by giving written notice. The Company shall comply with the requirements of Government Code Section 1090 et seq. and 87100 et seq. during the Term.
16. **Enforcement of Remedies.** No right or remedy conferred on or reserved to a Party is exclusive of any other right or remedy under law, equity or statute, but each shall be cumulative of every other right or remedy now or in the future existing under law, equity or statute, and may be enforced concurrently or from time to time.
17. **Negation of Partnership.** In the performance of the Services, the Company shall be, and acknowledges that the Company is, in fact and law, an independent contractor and not an agent or employee of the City. The Company has and retains the right to exercise full supervision and control of the manner and methods of providing the Services. The Company retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting the Company in the provision of the Services. With respect to the Company's employees, if any, the Company shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employee taxes, whether federal, state or local, and compliance with any Applicable Law regulating employment.
18. **Non-collusion Covenant.** The Company represents and agrees that **(i)** it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with the City and **(ii)** it has received from the City no incentive or special payments and no considerations not related to the provision of the Services.

19. **Non-discrimination.** Neither the Company, nor any Company Representative, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or any other classification protected by Applicable Law, either directly, indirectly or through contractual or other arrangements.
20. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of the City. Forbearance or indulgence by the City shall not constitute a waiver of the covenant or condition to be performed by the Company. The City shall be entitled to invoke any remedy available to the City under this Agreement or by Applicable Law despite the forbearance or indulgence.
21. **Notices.** All notices under this Agreement shall be provided to the City at the address indicated in the opening section of this Agreement and to the Company and Responsible the City Department at the addresses shown on the Schedule. Delivery shall be by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified above. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five days after deposit. A Party may change the address to which notice is to be given by giving notice as provided above. Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices under this Agreement by leaving the notice with the receptionist or other person of like capacity employed in the Company's office, or the receptionist for the City's main offices.
22. **Captions and Interpretation.** Section headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted the provision. This Agreement is the product of negotiation and both Parties are equally responsible for its authorship. California Civil Code Section 1654 shall not apply to the interpretation of this Agreement.
23. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
24. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the Parties in interest at the time of the modification.
25. **Severability.** If any term or provision of this Agreement is determined by a court to be in conflict with any Applicable Law, or otherwise be unenforceable or ineffectual, the validity of the remaining terms or provisions shall be deemed severable and shall not be affected, provided that the remaining terms or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into on the Effective Date.
26. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
27. **Sole Agreement.** This Agreement, including the Schedule and Exhibits, contains the entire agreement of the Parties relating to the Services, rights, obligations and covenants contained in this Agreement and assumed by the Parties. No inducements, representations or promises have been made, other than those stated in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.
28. **Time of Essence.** Time is expressly declared to be of the essence of this Agreement and of each provision, and each provision is declared to be a material, necessary and essential part of this Agreement.
29. **No Third Party Beneficiaries.** The Parties understand and agree that the enforcement of these terms and conditions and all rights of action relating to enforcement, shall be strictly reserved to the City and the Company. Nothing contained in this Agreement shall give or allow any claim or right of action by any other third person. It is the express intention of the City and the Company that any person or entity, other than the City or the Company, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
30. **Gender/Plural.** References to feminine, masculine or neutral include the other, and references to the singular or plural include the other.
31. **Recitals.** Each of the recitals is incorporated in this Agreement, is deemed to be the agreement and a reflection of the intent of the Parties, and is relied upon by the Parties in agreeing to the provisions of this Agreement and in interpreting its provisions.
32. **Exhibits.** All exhibits attached to this Agreement are incorporated into this Agreement by reference.

- 33. **Applicable Federal Requirements.** Applicable Federal Requirements are as set forth in the attachment entitled "**Federal Contract Requirements**".
- 34. **Prevailing wages.** The Company will pay all its employees current prevailing wage rates.

END OF SECTION

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C O U N C I L P O L I C Y

DRUG-FREE WORKPLACE

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of California City, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the adoption of this policy. This Policy is intended to extend that effort to contractors and grantees of the City of California City in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of California City's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of California City share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of California City involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

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B. Establishing a Drug-Free Awareness Program to inform employees about:

1. The dangers of drug abuse in the workplace;
2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
3. Any available drug counseling, rehabilitation and employee assistance programs; and
4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by Subparagraph A;

D. Notifying the employee in the statement required by Subparagraph 1A that, as a condition of employment under the contract, the employee will:

1. Abide by the terms of the statement; and
2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

E. Notifying the City of California City within ten (10) days after receiving notice under Subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction.

F. Taking one of the following actions within thirty (30) days of receiving notice under Subparagraph 1 D 2 with respect to an employee who is so convicted:

1. Taking appropriate personnel action against such an employee, up to and including termination; or

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2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;
 - G. Making a good faith effort to maintain a drug-free workplace through implementation of Subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of California City determines that:
 - A. Contractor and/or sub-grantee has made a false certification under Paragraph 1 above;
 - B. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of Subparagraphs 1 A through 1 G above;
 - C. Such number of employees of Contractor and/or sub-grantee has been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the Contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
3. Should any Contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a Contractor and/or sub-grantee, the Contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of California City for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the Contractor and/or sub-grantee, the Contractor and/or sub-grantee shall be eligible for compensation as provided by law.