

REQUEST FOR QUALIFICATIONS

REGIONAL WASTEWATER CONTROL FACILITY CAPITAL IMPROVEMENT AND ENERGY MANAGEMENT PLAN

December 9, 2009



Issued by:

Municipal Utilities Department
2500 Navy Drive
Stockton, CA 95206



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SECTION 1. INTRODUCTION AND SCOPE OF SERVICES

1.1 OVERVIEW

The City of Stockton (City) Municipal Utilities Department (MUD) is soliciting Statements of Qualifications (SOQs) from interested parties (Respondents) to provide professional services for the proposed Capital Improvement and Energy Management Plan (Plan) at the Regional Wastewater Control Facility (RWCF). Project delivery is a two-step process starting with this Request for Qualifications (RFQ) and followed by a Request for Proposals (RFP).

Once SOQs are received, a City Council Study Session will be held to review the SOQs and consider the continuation of the two-step process into the RFP stage.

At the discretion of the City Council, the City will evaluate the SOQs and only those Respondents who satisfy the SOQ submission requirements and meet the minimum qualifications criteria will be considered to receive the RFP. The City's Professional Services Selection Committee (Selection Committee) will evaluate and rank the SOQs and short-list up to five Respondents. Interviews will be conducted with those Respondents and then the most qualified Respondents (approximately three to five) will receive the subsequent RFP.

The selected Respondent will execute the negotiated scope of work that will include the preparation of a Plan document and any necessary supporting documentation. This scope of work is limited to those services described below and will not include any follow-on services recommended by the Plan. Those services will be solicited under a separate request near or at the end of the preparation of the Plan. The potential for assignment of follow-on services will be considered at a future date. The City does not guarantee such assignment at this time and reserves the right to determine methods and assignments that will provide the best work products and future program quality. Eligibility will be determined by the City prior to soliciting any follow-on services.

1.2 PROJECT BACKGROUND

Water, wastewater and stormwater utility services are provided by the City through MUD. These services include the production and distribution of potable water, the collection and treatment of wastewater, and the collection and disposal of stormwater. The MUD is also responsible for associated policy, planning and financial management, regulatory planning and enforcement, public education and technical assistance to individuals and businesses, and disaster planning and response for MUD functions.

The MUD currently purchases potable water from the Stockton East Water District (SEWD), a publicly owned water wholesaler, and supplements the SEWD supply with groundwater production from City wells. Together, the SEWD and City water supplies serve approximately 44 percent of the City's water customers. The California Water Service Company (Cal Water) provides water service to the remaining portions of the City. The MUD also operates and maintains five water storage tanks at grade, two elevated tanks, approximately 405 miles of water

main, and approximately 187 miles of metered service connections. The City is currently constructing the Delta Water Supply Project (DWSP) that will utilize their water rights from the RWCF by extracting fresh water supplies from the main stem of the San Joaquin River. The DWSP is anticipated to begin supplementing the City's potable water supplies in 2012.

The City solicited services from engineering firms and environmental firms in 1996 to provide recommendations on upgrades and expansion of the RWCF. In 1999, a master plan (Parsons/Carollo/Jones & Stokes 1999) was developed and it recommended implementation of various components of a capital improvement program. Since that time, the City implemented numerous projects to provide increased levels of wastewater treatment and capacity.

The City outsourced maintenance and operations of the RWCF to a private firm, OMI/Thames Water Stockton, from August 2003 to March 2008. On July 17, 2007, the City Council voted to terminate the current service contract with OMI/Thames Water Stockton, Inc. (OMI/Thames) and for the City to resume utility operations. The City completed the transition and the RWCF is now fully operated and maintained by MUD.

The City received an updated National Pollutant Discharge Elimination System (NPDES) Discharger Permit (Permit) adopted by the Central Valley Regional Water Quality Control Board (Regional Water Board) on April 26, 2002 (Order No. R5-2002-0083). The City was operating under the provisions of that Permit until a recent update was completed. The current Permit was adopted by the Regional Water Board on October 23, 2008 (Order No. R5-2008-0154). Elements of the Permit were challenged by interested parties and by the City. At a public hearing on October 6, 2009, the State Water Resources Control Board (State Water Board) adopted an order that remands the Permit back to the Regional Water Board with specific instructions related to two (2) issues: salinity limits and dilution in the mixing zone.

1.3 RESOURCES FOR PROJECT INFORMATION

In addition to the previous master plan and the current NPDES Permit mentioned above, Respondents are encouraged to utilize any/all of the following resources during the preparation of their SOQ and subsequent Proposal, if they are short-listed:

- The City's Project Manager on this program is Antonio Tovar. All questions that are related to selection process, RFQ clarifications, and project resource information (e.g. City documents) must be directed to Mr. Tovar via electronic mail. He may be contacted at: Antonio.Tovar@ci.stockton.ca.us. All inquiries will be kept confidential and answers will not be shared with the entire list of Respondents.
- Questions that are of a technical nature (i.e. treatment processes, permit compliance) may be directed by the City's Project Manager to one or more of the following staff or program advisors:
 - o Any City staff with the exception of those that are on the Selection Committee (described in **Section 2.5**)
 - o Any of the following program advisors. The selected Respondent will ultimately be expected to work closely with these individuals/firms throughout the

development of the Plan. They are conflicted from providing any direct teaming arrangements to Respondents.

- Theta Consulting Services, LLC (TCS) – CIP Program Management – Environmental Compliance & Planning – RWCF Operations
 - ▷ Tom Trexler and Steve Gittings
- Somach Simmons & Dunn (SSD) – Environmental Law and Policy – Outside Counsel to the City
 - ▷ Paul Simmons and Tess Dunham
- Robertson-Bryan, Inc. (RBI) – Technical Advisor – Permit Compliance - Environmental Compliance and Planning
 - ▷ Michael Bryan
- Larry Walker Associates (LWA) – Technical Advisor – Permit Compliance
 - ▷ Mack Walker
- Integrated Resources, Inc. LLC – Technical Advisor – Process and Compliance
 - ▷ Wyatt Troxel

As stated above, these inquiries will be kept confidential and answers will not be shared with the entire list of Respondents.

- The City has established a project website for the RWCF Capital Improvement and Energy Management Plan (<http://www.stocktongov.com/MUD/RWCFMasterPlan.cfm>). A link will be available from the City of Stockton Municipal Utilities Department's webpage and the City of Stockton's Bid Flash webpage. The website will post electronic copies of the following documents:
 - o Independent Evaluator Report
 - o Triennial Review of the Managed Assets
 - o Design Basis Report for WW39, RWCF Expansion
 - o 2002 NPDES Permit - Order No. R5-2002-0083
 - o 2008 NPDES Permit - Order No. R5-2008-0154
 - o RWCF Existing Conditions and Risk Assessment Report
 - o Eco:Logic Tour and Findings Memos
 - o Managed Asset Condition Problems at Transition Date – RWCF and Remote Pump Stations
 - o MUD Business Plan
 - o 2009-2014 Municipal Utilities Department Capital Improvement Program
 - o 1999 RWCF Master Plan Update – Parsons Engineering Science / Carrollo
 - o RWCF conceptual projects list
 - o Staged Expansion Studies - various

- The City will post all updates, clarifications, addendums, and etcetera on the project website. Respondents are strongly encouraged to check the project website periodically for updates.
- Respondents are welcomed to review any additional materials at the MUD Engineering Building. A project library is maintained by Mr. Tovar. Respondents may view those resources and/or request additional resources from other City archives by requesting an appointment via electronic mail with Mr. Tovar. Respondents may request copies of any documents at their expense for production (and shipping, if requested). Please allow at least five days for copy requests to be completed.
- There will be no pre-bid meeting associated with this RFQ. However, there will be two voluntary walkthroughs at the RWCF with a Q&A session for those Respondents that may be interested. Dates and times of the walkthroughs are listed below in **Section 1.7**.

1.4 SCOPE OF SERVICES

The Plan and supporting documents will be used to guide the City of Stockton for the planning and implementation of specific projects in order to maintain compliance with existing discharge Permits (water and air), to maintain/improve RWCF infrastructure operational reliability, and to prepare for financially sustainable longer-term planning. Specific issues that the contractor will be expected to address include the following:

- Projects/Operations that the City should design and implement in order to maintain and to improve structural integrity, environmental compliance, and human health and safety;
- Projects/Operations that maximize cost savings via labor expenses, energy consumption, and other direct O&M expenses (e.g., chemical use);
- Implementation of planned RWCF projects, which include entry gates, security system, emergency notification system, laboratory, administration building, disinfection system, headworks, maintenance/collections building expansion, sludge thickening, cathodic protection/pipe lining under river, heat exchanger for Black Start, energy management plan, Fats, Oils, & Grease (FOG) acceptance station, Dissolved Air Floatation (DAF) upgrades, sludge pond demolition, cogeneration upgrades, and LED street lights;
- Provide perspective and recommendations on future, long-term RWCF considerations in order to avoid potential conflicts with near-term project implementation;
- Describe the challenging treatment issues that the City is likely to experience during the current NPDES Permit time span, in the subsequent NPDES Permit time span, and in a longer-term time span (thirty years);
- Describe opportunities through an energy management plan to generate additional revenue and reduced costs through implementation of emerging technologies (e.g., bioresources), energy development, and/or partnerships with other agencies and companies; and

- Given the current economic climate at all levels, recommend an approach to feasibly implement recommended projects.

1.5 FORMAT REQUIREMENTS OF THE SOQ

The following are mandatory requirements for the submission of the SOQ. Failure to follow all of these requirements will constitute a finding that the SOQ is unresponsive to this RFQ.

- The main body of text in the SOQ will be no longer than 16 one-sided pages (or 8 two-sided pages);
- The SOQ may include 2 one-sided pages (or 1 two-sided page) for a cover letter that will not be counted against the 16 pages limit above;
- The page setup should be 8 ½" x 11" and have margins that are no smaller than 1" on all edges;
- Font size will be no smaller than 11pt.;
- There is no page limit for supplemental project paragraphs or resumes, but they should be directly pertinent to the staff that will be assigned to this project;
- Submissions will be hard copy only; and
- Submissions may include one or more master plans (or similar documents) as an appendix.

1.6 PROPRIETARY INFORMATION

The City recognizes that some Respondents may wish to describe technologies, processes or other unique aspects of their qualifications that are proprietary and that provide a competitive advantage. The City also recognizes that the Respondents would not want any of their proprietary information to be shared with competitors. As such, the City will keep all submissions confidential if the Respondent places all proprietary information in a separate sealed package that is clearly labeled as confidential information. It may be submitted with the SOQ as described in **Section 2.2**, but under separate cover.

1.7 KEY ACTION DATES

The following are firm dates in this RFQ process. The City reserves the right to make adjustments to this schedule as necessary, but no deadlines will be made earlier than stated here. Respondents may request extensions, however, it would only be granted for compelling reasons. It is the intent of the City to adhere to this schedule.

- Wednesday, December 9, 2009 – Posting and Distribution of RFQ
- Thursday, December 17, 2009 at 9:00 a.m. – First walkthrough of the RWCF (meet at the Municipal Utilities Department, Administration Building, Delta Conference Room, 2500 Navy Drive, Stockton)

- Friday, January 8, 2010 at 9:00 a.m. – Second walkthrough of the RWCF (meet at the Municipal Utilities Department, Administration Building, Delta Conference Room, 2500 Navy Drive, Stockton)
- Municipal Utilities Department's offices will be closed from December 23, 2009 to January 1, 2010 due to holidays and furlough days.
- Friday, January 22, 2010 – SOQ Submission Deadline by 2:00 p.m. (described in **Section 2.2**)
- February 2010 - City Council Study Session

1.8 RWCF WALKTHROUGHS

The following information is necessary to attending the walkthroughs:

- Limit the attendance of representatives from your firm to a maximum of three (3).
- Each individual must bring a hard hat and safety shoes. The walkthrough will consist of touring several facilities within the RWCF.
- Please call to confirm your attendance to either walkthrough. The phone number is (209) 937-8753.

SECTION 2. SOQ EVALUATION, SUBMISSION REQUIREMENTS, AND SELECTION PROCESS

2.1 EVALUATION CRITERIA

The following factors will be used to score and rank the Respondents' SOQs. The selection committee (described in **Section 2.5**) will exercise their judgment on these factors to determine if the SOQ is responsive to this RFQ and to determine the relative qualifications of the Respondent.

- The firm shall have direct experience on at least three (3) master plans of similar scope;
- The Project Manager shall have experience leading at least one (1) master plan of similar scope;
- Experience, responsiveness and creativity in addressing the scope of services described in **Section 1.4**;
- The project team must include California registered Civil, Structural, and/or Treatment Engineers, and a Grade V Operator;
- References from at least three entities that have received, or are currently receiving similar services;
- Description and resumes of staff that would be assigned directly to this project and their capacity to engage in this project; and
- The location of key staff that will be assigned to the project. The use of local professionals will be considered by the City during the evaluation.

Information about the Respondent, its parent company, if any, and each major Participating Firm shall include:

- An organization chart identifying the Respondent, major participating firms, and project roles,
- A description of the legal structure of the Respondent; e.g. corporation, joint venture, and contractual relationship among individuals and/or entities constituting the Respondent (City may request copies of such agreements at a later date),
- If a Respondent includes teaming partners, identify similar projects where the team has worked together,
- A description of overall experience in the industry and in particular, the development of capital improvement programs and master plans, and
- A list of any public works projects on which the Respondent was terminated for default or cause by a public entity within the last five years.

2.2 SUBMISSION OF THE SOQ

As described in **Section 1.7**, the Submission Deadline is Friday, January 22, 2010 at 2:00 p.m. Pacific Time. Attempts to submit an SOQ after this date/time will be rejected and returned to the sender unopened. Postmarks, shipping receipts, and courier invoices are not acceptable as evidence of delivery. The physical documents must be received by the specified time. Respondents will provide fourteen (14) hard copies of the SOQ and any supporting appendices or documentation in a sealed box labeled as follows and delivered to:

City of Stockton
Municipal Utilities Department
2500 Navy Drive
Stockton, CA 95206

Attn: Mark Madison, Director
Re: Statement of Qualifications for the RWCF Capital Improvement and Energy Management Plan

Hand-delivered SOQs are acceptable only between the hours of 9:00 a.m. and 2:00 p.m. Pacific Time, Monday through Friday, excluding holidays, up to and including the submission deadline. Respondents are responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the required address information appears on the outer wrapper or envelope used by such service.

2.3 WITHDRAWAL FROM SELECTION PROCESS

Respondent may withdraw a submitted SOQ prior to the Submission Due Date by delivering a written request to the City by the Submission Due Date and time. Such withdrawal will not prejudice the City against the non-Respondent with regards to future opportunities to work with the City.

2.4 POSTPONEMENT/CANCELLATION OF RFQ

The City may, at its sole and absolute discretion, re-advertise the RFQ; postpone or cancel this RFQ process at any time; waive any minor irregularities in this RFQ or in the SOQs; or reject any and all, or parts of any and all SOQs. Respondents are strongly encouraged to check the project website periodically for updates.

2.5 SELECTION PANEL

The selection process will be consistent with City Council Policy 300-1. The Selection Panel (Panel) will be comprised of the following members:

- Councilmember Diana Lowery
- Laurie Montes, Deputy City Manager
- Mark Madison, Director of Municipal Utilities
- Robert Murdoch, Interim Director of Public Works
- Jeff Willett, Assistant Director of Municipal Utilities/Engineering Manager

As stated above in **Section 1.3**, these individuals may not discuss any aspect of this RFQ or the subsequent RFP.

SECTION 3. GENERAL CONDITIONS, DOCUMENTATION, AND CONTRACT PRINCIPLES

3.1 GENERAL CONDITIONS

3.1.1 Accuracy of RFQ and Related Documents

The City assumes no responsibility and disclaims any warranty for the completeness or accuracy of information presented in this RFQ, the reference documents and any other reports, studies or investigations, including, but not limited to, those concerning existing site conditions, or otherwise distributed or made available during the selection process. Without limiting the generality of the foregoing statement, the City is not bound by or responsible for any explanation or interpretation of the documents other than those prepared in writing by the City. In no event may a Respondent to this RFQ rely on any oral statement made by any of the City's agents, employees, advisors, or consultants.

The City considers any information that it may have released either orally or in writing prior to the issuance of this RFQ to be preliminary in nature, and the City is not bound by such information.

3.1.2 Personal Investigation

Respondents are solely responsible for conducting their own independent research and due diligence for the preparation of their SOQs, the preparation of their Proposals in response to the RFP, the negotiation of a Contract, and the subsequent project delivery under the terms and conditions of the Contract. No information derived from any part of this RFQ, the RFP, or from the City or any of its agents, employees, advisors, or consultants shall relieve the selected Respondent from any risk or from fulfilling all terms of the Contract.

3.1.3 Addenda to this RFQ

During the preparation of SOQs by Respondents, the City may issue addenda to this RFQ which will be numbered consecutively. The addenda will be posted on the project website and available to all interested parties. The addenda will be issued by or on behalf of the City and will constitute a part of this RFQ. All SOQs shall be prepared with full consideration of any addenda issued by the City. Respondent shall have the responsibility of checking for any addenda issued by the City.

3.1.4 Cost of SOQ Preparation

The costs and expenses associated with the preparation of an SOQ, attendance at an individual interview with City representatives and preparation of all other information required pursuant to this RFQ will be at the sole cost and expense of the Respondent. In no event will a Respondent have a claim against the City, its staff, or its consultants or agents for reimbursement of any such costs or expenses.

3.1.5 Equal Opportunity Requirements

This selection shall be subject to City, State and Federal requirements for equal opportunity (see City website for more information).

3.1.6 City Rights and Options

The City reserves, holds and may exercise, at its sole discretion, the following rights and conditions with regard to this selection process, including the RFQ, RFP and Contract negotiation processes. By submitting an SOQ, Respondents acknowledge and consent to the following conditions relative to the selection process:

1. This RFQ does not obligate the City to procure or contract for any services.
2. The City reserves the right to change or alter the schedule for any events associated with this selection process. By submitting an SOQ, the Respondent agrees to be bound by any modification made by the City.
3. All costs incurred by a Respondent in connection with submitting an SOQ, a Proposal in response to the RFP, the evaluation and selection processes undertaken in connection with this project, and any negotiations entered into in connection with developing the Contract will be borne by the Respondent.
4. The City reserves the right to reject, for any reason, any and all SOQs and components thereof; to eliminate any and all Respondents to this RFQ from further consideration; and to abandon this selection process at the City's convenience at any time.
5. The City reserves the right to eliminate any Respondent who submits incomplete or inadequate responses or is not responsive to the requirements of this RFQ.
6. The City reserves the right, at any time, to determine that any or all Respondents will not be selected for further consideration and to notify such Respondents of the City's determination.
7. The City may require Respondents to send representatives to the City for interviews and presentations.
8. The City reserves the right to conduct clarification discussions, at any time, with one or more Respondents and to discontinue discussions with any Respondent.
9. The City reserves the right to receive written questions concerning this RFQ from potential Respondents and to provide such questions and the City's written responses, if any, to all potential Respondents, except for matters relating to confidentiality as expressed in this document.
10. The City reserves the right, without prior notice and at its sole discretion, to supplement, amend or otherwise modify this RFQ.
11. All SOQs become the property of the City and will not be returned to Respondents, except SOQs that are not received by the Submission Due Date, which shall be rejected and returned unopened to those Respondents.
12. All activities related to the selection process and the project delivery shall be subject to Applicable Law.

13. Neither the City, its staff, representatives, nor any of its consultants or agents will be liable for any claims or damages resulting from the solicitation, collection, review, or evaluation of the SOQs.
14. The City (including its staff, representatives, consultants and agents) reserves the right to visit and examine any of the facilities referred to by the Respondent in its SOQ, observe and investigate the performance of such facilities, and discuss such facilities and performance and the Respondent's performance with those parties served by or associated with the facilities.
15. The City reserves the right to conduct investigations of the Respondents and their SOQs and request additional evidence to support the submitted information.
16. The City reserves all rights with respect to the evaluation, clarification and selection processes set forth in this RFQ.
17. The City reserves the right to reject an SOQ or discontinue further consideration of any Respondent if the City is in litigation with any such Respondent.
18. The City reserves the right, at any time prior to or during any negotiations entered into in developing the Contract, to negotiate with one or more parties.

3.2 LEGAL AUTHORITY FOR TRANSACTION

The Facilities project delivery is authorized and governed by the provisions of law set forth herein.

Article XX of the Charter of the City of Stockton (Charter) establishes the underlying authority relating to the award of public contracts. The Charter provides that the City Council, by ordinance, shall provide for a competitive method of awarding contracts for public works, services, and the purchase of material and supplies (Section 2000). The provisions of the Charter authorize exceptions to the general rule of competitive bidding. "Those circumstances may include, but are not limited to... (b) Negotiated contracts following solicitation of competitive proposals instead of sealed bids" (Section 2001).

Ordinances authorized by the Charter are set forth in Section 3-100 et seq. of the Municipal Code. Section 3-105, subdivision (c) authorizes "Negotiated contracts following the solicitation of proposals" and Section 3-105, subdivision (d) "Public Works construction contracts for design build projects." In August of 1998, the City Council adopted Policy 300-1, which implements the provisions concerning negotiated contracts following the solicitation of competitive proposals.

By statement of legal authority, the City has identified the basic legal authority for the intended project delivery of the Facilities. Such statement does not prevent, and is not intended to limit, the City from identifying and asserting other authority for project delivery in the event of litigation or other adversarial proceeding.

3.3 CITY RIGHTS AND RESPONSIBILITIES

In general, the City has the right and the responsibility to provide:

- Responses to inquiries from the selected Respondent and participation in certain communications, meetings and material decision making about the project scope
- Project management for the Capital Improvement and Energy Management Plan
- Ownership, operation and maintenance of the Facilities
- Financing the design, permitting and construction of the Facilities
- Policy, planning guidance and approval of capital improvements
- Environmental permitting for the facilities
- Signing of permit applications that are prepared by the selected Respondent, if necessary
- Public education and outreach, if necessary
- Access to the RWCF and affiliated sites for the selected Respondent, its agents and employees
- Expenses, costs or fees for property rights or easements
- An individual (City Contact Person) to act as liaison with the selected Respondent in connection with the performance of services
- Cooperation with the selected Respondent and taking all steps within its reasonable control to allow the selected Respondent to commence services in accordance with the requirements of the Contract
- All police, fire and other municipal services to the facilities as of the Contract Date, to the extent that these municipal services are provided from time to time to other industries in the City, at the same costs and on the same terms and conditions as are generally applicable to industries in the City
- Review of selected Respondent's design documents, potentially by a third-party consultant(s), although such review shall not relieve the selected Respondent from any responsibilities for Contract performance
- Review of selected Respondent's payment requests, and payment of approved requests to selected Respondent under terms of the Contract
- Monitoring of administrative and technical compliance with Contract requirements

3.4 SELECTED RESPONDENT RESPONSIBILITIES

The selected Respondent shall provide internal project management and the following services to the City:

- Delivery of the Capital Improvement and Energy Management Plan,

- Advising the City and facilitating City participation in all material decision-making concerning the Capital Improvement and Energy Management Plan, as such decision-making may affect the project scope and value,
- Facilitating City participation in Project meetings and communications,
- Cooperation with the City's advisory team,
- Consideration of local community impacts with regards to site design, landscaping, and lighting systems,
- Coordination and compliance with the City's CEQA, NEPA and Corps permits,
- Compliance with all permitting terms and conditions,
- Compliance with all environmental mitigation requirements, and
- Timely final completion of the project within the negotiated cost and in accordance with all Contract requirements.

3.5 GENERAL CONTRACT PRINCIPLES

This RFQ contains the preliminary contract principles envisioned by the City for incorporation into the draft Contract. They are described in this RFQ to solicit comments from Respondents to help the City in preparing a responsive RFP and draft Contract. The preliminary Contract principles are neither all inclusive nor definitive as to form or substance, and the City reserves the right to amend these Contract principles in the RFP and/or the draft Contract or during Contract negotiations.

3.6 CITY OWNERSHIP

The City will own all of the facilities that are planned or designed by the selected Respondent. The selected Respondent may not treat itself as the owner of the facilities or any of the capital improvements thereto for federal tax or any other purpose, and will not be entitled to borrow against, or mortgage or otherwise encumber any interest in the facilities.

Furthermore, the City will own all of the reports, plans, specifications, as-built record drawing electronic files prepared by the selected Respondent for the Capital Improvement and Energy Management Plan project. City ownership will include any copyrights for the documents and their contents. Regardless of which software is used to prepare the drawing files, the selected Respondent shall submit any drawing files as AutoCAD files.

3.7 "AS-IS" RISK

Subject to the requirements of Public Contract Code section 7104, which are specifically incorporated into this RFQ, and with the exception of conditions that could not have been reasonably foreseen or anticipated by the City or selected Respondent, the selected Respondent shall assume the "as-is" risk of the existing conditions of the RWCF and all associated facilities. No additional relief in the form of time and/or compensation shall be afforded to the selected Respondent in the event that existing conditions adversely affect the selected Respondent's ability

to meet its performance, schedule, and other contractual commitments, and no such adverse effect shall constitute an Uncontrollable Circumstance.

3.8 CONTRACT TERM

The Contract will take effect upon execution by the City and selected Respondent and continue through delivery of the Capital Improvement and Energy Management Plan as designated by the negotiated schedule in the Contract.

3.9 FINANCING RESPONSIBILITY

The City is responsible for financing of the Capital Improvement and Energy Management Plan and facilities. The selected Respondent shall support the City in the financing efforts, including the provision of information about engineering, environmental and economic matters, and the organization and resources of the selected Respondent, as required to obtain financing and satisfy the associated administrative requirements.

3.10 AUDIT RIGHTS

The City shall have the right on three (3) business days' written notice to review, examine and audit the selected Respondent's books, records and related documents concerning the costs, fees and expenses related to the performance of the Contract.

3.11 COMPLIANCE WITH APPLICABLE LAW

All of the responsibilities that the selected Respondent and its subcontractors perform under the Contract must be performed in accordance with Applicable Law. The selected Respondent will remedy any failure to comply with Applicable Law at its expense, bear all loss and expense, including consequential damages, attorney's fees, engineer's and other consultant's fees and expenses, expert witness costs, other litigation costs, and pay any fines and penalties related thereto.

3.12 INSURANCE

Throughout the life of this Contract, the Consultant shall pay for and maintain in full force and effect with an insurance company(s) (Company) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

- A. COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage (including Fire Legal Liability) Liability insurance with combined single limits of not less than \$2,000,000 per occurrence, and if written on an Aggregate basis, \$4,000,000 Aggregate limit (CG 0001).

- B. COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for “any auto” with combined single limits of liability of not less than \$1,000,000 each occurrence. (CA 0001)
- C. PROFESSIONAL ERRORS AND OMISSIONS**, Not less than \$1,000,000 per Claim./\$2,000,000 Aggr. (5 yr discovery and reporting tail period coverage). Certificate of Insurance only required.
- D. WORKERS’ COMPENSATION** Insurance as required under the California Labor Code, and Employers Liability Insurance with limits not less than \$1,000,000 per accident/injury/disease.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by CITY.

Other Insurance Provisions

The Policy (s) shall also provide the following:

- a.) The Commercial General Liability and Automobile Liability insurance shall be written on ISO approved occurrence form (see item 1 and 2 above) and endorsed to name: *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds*. ISO form CG 20 37 10 01 edition shall be used as the Additional Insured Endorsement. This form **must be used with** either ISO form CG 20 10 10 01, or CG 20 33 10 01 (or earlier editions of these forms).
- b.) For any claims related to this project, the Consultant’s insurance coverage shall be primary insurance as respects the City of Stockton, its Mayor, Council, officers, representative, agents, employees, and volunteers. Any coverage maintained by the CITY shall be excess of the Consultant’s insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.
- c.) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days’ prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers’ compensation, which shall permit ten (10) days advance notice. The Insurer shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.
- d.) Regardless of these contract minimum insurance requirements, the Consultant and its insurer shall agree to commit the Consultant’s full policy limits and these minimum requirements shall not restrict the Consultant’s liability or coverage limit obligations.

- e.) 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 California Civil Code.
- f.) The Company shall furnish the City of Stockton with the Certificates and Endorsements for all required insurance, prior to the CITY's, execution of the Agreement and start of work.
- g.) Proper Address for Mailing Certificates, Endorsements and Notices shall be:

City of Stockton,
Attn: Risk Services
425 N. El Dorado
Stockton, CA 95202

- h.) Upon notification of receipt by the City of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the City a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the City's Risk Services Manager (209) 937-8682. Fax number is (209) 937-8833.

If at any time during the life of the Contract or any extension, the Consultant fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the Consultant shall be withheld until acceptable replacement coverage notice is received by the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Contract. In the event of insurance cancellation, the City reserves the right to purchase insurance or insure (or self-insure) for the above required coverages, at the Consultant's full expense.

If the Consultant should subcontract all or any portion of the work to be performed in this contract, the Consultant shall cover the Subconsultant, and/or require each Subconsultant to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any Cancellation, Lapse, Reduction in Coverage, or Change of Subcontractors insurance shall have the same impact as described above.

3.12.1 Waiver of Subrogation

The City and selected Respondent waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the City's consultants, if any, for damages to the extent covered by insurance required to be obtained herein, even if such claims or causes of action arise from or are attributed to the joint, concurrent, or comparative negligence of the City or Respondent, or their respective employees, agents, representatives, or invitees. The selected Respondent shall require each subcontractor to provide similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective

as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged or injury sustained.

3.13 NO LIMITATION ON LIABILITY

The City will not select or qualify any Respondent or accept a Proposal from any Respondent who attempts to limit its liability. The Contract will contain a covenant against any limitation of liability of the selected Respondent.

3.14 DEFAULT, TERMINATION AND DISPUTE RESOLUTION

3.14.1 Termination for Cause

City shall terminate upon notice and without cause this Agreement if selected Respondent: (1) fails to commence the work in accordance with the provisions of this Agreement, (2) fails to prosecute the work to Final Completion in a diligent, efficient, timely, skillful, and careful manner and in strict accordance with the provisions of the Contract, (3) fails to use an adequate amount or quality of personnel, equipment or materials to complete the work without delay, (4) disregards laws, permits, ordinances, rules, regulations or orders of a public authority having jurisdiction, (5) disregards the instructions of City (when such are based on the requirements of the Contract), (6) files or records or allows anyone claiming by, through or under Respondent to file or record a stop notice or lien or other claim against City, City's funds or City's property without removing and discharging the same as required under this Agreement, (7) fails to make prompt payments related to the Project, or (8) otherwise fails to fully comply with the Contract.

For breach of the Performance Requirements and other Contract requirements, payment of liquidated damages and any fines, penalties, losses and expenses will be the remedies available unless such non-performance rises to the level of an Event of Default (and except with respect to third party claims in which the Contract requires indemnification).

Events of Default by the selected Respondent that will permit (at the City's discretion) termination of the Contract without notice and cure opportunity may consist of bankruptcy or insolvency (whether voluntary or involuntary) of the selected Respondent

Events of Default by the selected Respondent, which will permit termination of the Contract only with notice and cure opportunity consist of: (1) failure to pay undisputed amounts owed the City; (2) failure to comply with the Performance Requirements excluded in the list above, (3) failure to comply with the Contract for provisions other than those identified above without notice and cure opportunity; or (4) failure to provide required financial security. The selected Respondent shall have a reasonable time period to cure such breaches, so long as the selected Respondent is diligent in pursuing and achieving compliance.

3.14.2 Forum for Dispute Resolution

Except for tort claims, all claims by Respondent for a time extension, payment of money or damages arising from work done by, or on behalf of, Respondent pursuant to the Contract and

payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or as to the amount of payment which is disputed by the City of Three Hundred Seventy-Five Thousand Dollars (\$375,000) or less shall be subject to the settlement and arbitration provisions procedures set forth in Public Contract Code Section 20104, et seq. Those sections require that the claim be in writing, include the documents necessary to substantiate the claim, and be filed on or before the final date of payment, subject to all time limits and notice requirements for filing claims under this Contract.

In the event of any dispute of any amount between the parties as to performance of the work, the interpretation of the Contract or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute informally. Respondent shall conduct such informal dispute negotiations only with designated City employees. If the parties are unable to resolve the dispute informally, either party can give written notice that it elects to proceed with mediation under the Construction Mediation Rules of the American Arbitration Association. Completion of such mediation is a condition precedent to the filing of any action other than one for injunctive relief or if a statute of limitations may expire. Pending resolution of the dispute, Respondent agrees to continue its work and/or disputed work diligently to completion. If the dispute is not resolved, Respondent agrees it will neither rescind the Contract nor stop the progress of the work and/or the disputed work, but Respondent's sole remedy shall be to submit such controversy to determination by a court of the State of California, in San Joaquin County, having competent jurisdiction of the dispute. The Contract will not provide for arbitration of disputes, but will provide that the parties can waive the right to a trial by jury.

For each claim submitted or filed by Respondent, Respondent shall include the following certification, signed in the same manner as the Contract was signed:

"I, _____, being the (must be an officer) of (general contractor), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached claim for additional compensation and/or extension of time, and know its contents, and said claim is made in good faith; the supporting data is truthful and accurate; that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the City is liable; and, further, that I am familiar with California Penal Code Section 72 and California Government Code Section 12650, et seq., pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences.

(Signature of officer)

(Date)

3.14.3 Non-Binding Mediation

Either party may refer any dispute arising under the Contract to non-binding mediation for resolution based upon mutual agreement.

3.14.4 Indemnification by the Selected Respondent

The indemnity clause in the Contract will follow the general parameters set forth below. The City reserves the right to change the final indemnity language to be set forth in the Contract.

To the fullest extent permitted by applicable law, Respondent shall and does agree to indemnify, protect, defend and hold harmless the City, its property, and City's members, partners, successors, consultants, legal representatives, officials, representatives, contractors, subcontractors, employees, agents and the project (collectively, "Indemnitees") for, from and against any and all liabilities, claims, damages, losses, liens, causes of action, suits, awards, judgments and expenses, attorney and/or consultant fees and costs, taxable or otherwise, of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (in whole or in part), (1) the permitting, design, construction, and/or performance of the facilities and the Project, or any part thereof, (2) the Agreement, including any approved modifications, or (3) any act or omission of Respondent, any Subcontractor of any tier, anyone directly or indirectly employed by them, or anyone that they control or exercise control over, (collectively, "liabilities"). The obligations of Respondent under this indemnification shall apply to liabilities even if such liabilities arise from or are attributed to the concurrent conduct and/or culpability of any Indemnatee. The only liabilities with respect to which Respondent's obligation to indemnify the Indemnitees does not apply is with respect to liabilities resulting from the sole negligence or willful misconduct of an Indemnatee and/or the active negligence of the City. This indemnity clause is intended to be a Type I indemnity clause.

Respondent shall promptly advise City in writing of any action, arbitration hearing(s), administrative or legal proceeding or investigation as to which this indemnification may apply, and Respondent shall assume on behalf of City (and the other Indemnitees) and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to City; provided, however, that City shall have the right, at its option, to be represented therein by advisory counsel of its own selection and at its own expense. In such event, Respondent shall direct its counsel to fully and unconditionally share all information and materials with City's counsel in a timely manner so calculated as to permit City's counsel to be fully and timely aware of all activity and conduct. In the event of failure by Respondent to fully perform in accordance with this indemnification paragraph, City, at its option, and without relieving Respondent of its obligations hereunder, may so perform.

This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under this section, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect. The provisions shall survive expiration or earlier termination of the contract, the final completion of the work performed herein, and any other services to be provided pursuant to this Agreement.

In the event that the selected Respondent or any employee, agent, or subcontractor of the selected Respondent providing services under the Contract is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, the selected Respondent shall indemnify, defend,

and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of selected Respondent or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

3.15 EMPLOYEES

3.15.1 Selected Respondent Employment

The selected Respondent shall provide for employment of qualified, properly licensed and certified staff sufficient to meet the requirements of Applicable Law and to satisfy the requirements of the Contract.

3.15.2 Termination of Employment or Transfer of Employees

If key employees, as designated in the Contract, are terminated or transferred, the selected Respondent must replace said employees with equally qualified staff. The City shall have the right to approve or reject the proposed replacements for key employees.

3.15.3 Hiring of Selected Respondent Employees

The City shall have the right to hire selected Respondent employees. If there is interest in a selected Respondent employee, the City first will notify the selected Respondent and seek authorization to recruit the selected Respondent employee with due consideration for selected Respondent concerns about the timing of the recruitment and Applicable Law.

3.16 UNCONTROLLABLE CIRCUMSTANCES

Except with respect to the parties' respective payment obligations, neither the City nor the selected Respondent will be liable to the other for any failure or delay in performance of any obligation under the Contract due to the occurrence of Uncontrollable Circumstances (after exercising reasonable preventive and mitigating measures).

3.17 COMMENTS REGARDING CONTRACT PRINCIPLES

Respondents should state their level of willingness to accept the business terms described in this RFQ. In addition, Respondents are encouraged to identify any provisions of the Contract Principles, which they would not accept or suggest a change to such provision. Respondents should be specific in describing the reason for disagreement and any suggested change in the relevant provision. Any such information provided by Respondents in response to this subsection will not influence the determination of Qualified Respondents. However, such information will assist the City in preparing the RFP and draft Contract.

3.18 ABILITY TO PERFORM SERVICES IN CALIFORNIA, SAN JOAQUIN COUNTY AND STOCKTON

- Respondent must not currently be debarred or precluded in any way by the federal government, the State of California, the County of San Joaquin or the City of Stockton from bidding on public projects or performing the requested services.

- Respondent must be in “Good Standing” with the United States Government, the State of California (if applicable), San Joaquin County (if applicable) and the City of Stockton (if applicable) regarding payment of any taxes or fees.
 - Respondent must not be convicted of any criminal conduct or found to be in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination, or prevailing wages.
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