



CITY OF VISALIA, CALIFORNIA
REQUEST FOR PROPOSALS (RFP) NO. 24-25-04

UNINTERRUPTIBLE POWER SUPPLY (UPS) REFRESH

DESCRIPTION:

The City of Visalia is inviting proposals from qualified vendors for Uninterruptible Power Supply (UPS) Refresh as specified in this Request for Proposals.

This project is supported, in whole or in part, by federal award number SLFRP2005, awarded to City of Visalia by the U.S. Department of the Treasury. Federal Funds being utilized for this project is American Rescue Plan Act Funds (ARPA).

PROPOSER CONFERENCE:

On Tuesday, September 17, 2024, a virtual conference will be held via TEAMS at 10:00 A.M. (Pacific Standard Time). Interested Proposers are encouraged to participate by emailing their contact information to the Purchasing Division: purchasing@visalia.city to be listed on the attendance roster and provided with the meeting log-in/call-in phone number. This is an opportunity to ask questions regarding the project and the Request for Proposal requirements.

SUBMITTAL DEADLINE:

One (1) unbound original, and four (4) copies, plus one (1) copy on flash drive must be received no later than: 2:00 P.M. (Pacific Standard Time) on Wednesday, October 2, 2024. *Proposals received after the time and date stated above shall be returned unopened to the proposer. Emailed Proposals will not be accepted.*

SUBMITTAL INSTRUCTIONS:

<i>Addressed to:</i>	Purchasing Division 707 W. Acequia Avenue, Visalia, CA 93291
<i>From:</i>	Proposer's Name & Mailing Address
<i>Mark envelope:</i>	RFP No. 24-25-04 UPS Refresh

INQUIRIES: Questions/clarification of this document or the scope of services should be addressed to the Purchasing Division (559) 713-4334. To prevent misinterpretation, the Purchasing Division prefers that all questions be sent in writing via email purchasing@visalia.city. Questions may be asked at any time prior to, but no later than Friday, September 20, 2024.

**CITY OF VISALIA, CALIFORNIA
REQUEST FOR PROPOSALS
RFP 24-25-04**

SEALED PROPOSALS will be received by the Purchasing Division located at 707 West Acequia, Visalia, CA 93291, until **2:00 P.M. (Pacific Standard Time) on Wednesday, October 2, 2024** for:

Uninterruptible Power Supply (UPS) Refresh

The City of Visalia is inviting proposals from qualified vendors for its Request for Proposal (RFP) to provide Uninterrupted Power Supply (UPS) Battery Backup Systems, including hardware, central management, monitoring, and reporting.

This project is supported, in whole or in part, by federal award number SLFRP2005, awarded to City of Visalia by the U.S. Department of the Treasury. Federal Funds being utilized for this project is **American Rescue Plan Act Funds (ARPA)**.

Informational Conference: On Tuesday, September 17, 2024 a virtual conference will be held via TEAMS at 10:00 A.M. (Pacific Standard Time). Interested Proposers are encouraged to participate by emailing their contact information to the Purchasing Division: purchasing@visalia.city to be listed on the attendance roster and provided with the meeting log-in/call-in phone number. This is an opportunity to ask questions about the project and specifications.

RFP Documents: Contract documents may be obtained in the office of the Purchasing Division, 707 W. Acequia Ave., Visalia, California 93291 or by calling (559) 713-4334, or may be downloaded from BidNetdirect by registered users. To register with BidNetdirect, please see the City's web site: visaliapurchasing.org.

Project Budget: The total approved budget for this project is approximately **\$150,000** which is an estimate of the total project delivery costs.

The City hereby affirmatively assures that Minority Business Enterprises and Disadvantaged Business Enterprises (DBE) will be afforded full opportunity to submit proposals in response to this notice. Individuals and/or entities submitting bids/proposals to the City of Visalia will not be discriminated against on the basis of age, race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, gender, gender identity or expression, sexual orientation, or military and veteran status in any consideration leading to the award of contract.

No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity leading to the award of a contract.

Executive Order N-6-22 – Russia Sanctions On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Contractor's bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

The right is reserved by the City of Visalia to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted and to award the contract according to the proposal which best serves the interests of said City.

Legal Ad Dates: 09/05/24 & 09/10/24

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Additional Attachments (must be completed and returned with Response to RFP)

Attachment 1 - Technical Questionnaire

Attachment 2 - Disclosures

Attachment 3 - Federal Forms and Clauses with signature page.

I. DEFINITIONS

For the purposes of RFP No. 24-25-04, the following terms shall have the meanings indicated:

1. "City" means the City of Visalia
2. "City Council" means the Council of the City of Visalia
3. "Bidder", "Vendor", "Supplier", "Consultant", "Contractor" and "Sub-recipient" are used interchangeably throughout this invitation to mean the person, firm, or corporation or other entity submitting a Bid in response to the Request for Bid.
4. "Bid" and "Proposal" are used interchangeably to mean an individual's or entity's offer in response to this Request for Proposal.
5. "RFP" means Request for Proposal No. 24-25-04.

II. INTRODUCTION

A. Information

The City of Visalia Purchasing Division is soliciting proposals from qualified vendors to provide Uninterrupted Power Supply (UPS) Battery Backup Systems. Proposals should include hardware, central management, monitoring and reporting. Proposed solution should include 3-5 years of manufacture maintenance. Initial maintenance term to include battery replacements, any related software license or subscriptions and hardware support, warranty, and training.

This project is supported, in whole or in part, by federal award number SLFRP2005, awarded to City of Visalia by the U.S. Department of the Treasury. Federal Funds being utilized for this project is American Rescue Plan Act Funds (ARPA).

This Request for Proposals is being issued by the City of Visalia Purchasing Division. Unless otherwise directed, all communications regarding this Request for Proposals should be directed to the Purchasing Division, at (559) 713-4334. To avoid miscommunication, the Purchasing Division prefers that all questions be submitted in writing via email to purchasing@visalia.city.

Any revisions to the Request for Proposals will be issued and distributed as addenda. Proposers are encouraged to submit any questions or items for clarification in writing to the above email address.

B. Background

About the City

The City of Visalia, CA ("vy-sail-yah") covers 37 square miles with a diverse population of nearly 145,000 that is growing at an estimated rate of two percent per year. Visalia is located in the San Joaquin Valley, a large and agriculturally rich basin that runs through the center of the state. It is located at the junction of Highways 99 and 198, on the western side of the majestic Sierra Nevada Mountain Range. Visalia sits 185 miles north of Los Angeles and 225 miles south of San Francisco.

Additionally, Visalia is surrounded by many opportunities to explore the great outdoors. Often referred to as the "Gateway to the Sequoias," Visalia is the closest major city to Sequoia and Kings Canyon National Parks, home to some of the largest trees on Earth, the Giant Sequoias.

The City of Visalia has 683 allocated full-time positions and typically employs an additional 100-200 hourly (temporary/seasonal) employees throughout the year.

Existing Environment

Existing UPS batteries have been replaced on a regular and on an as needed schedule, however the UPS systems are in need of replacement due to age. When a commercial power outage occurs, most City facilities have UPS systems with the purpose to carry load and bridge the short time frame until a generator has started and ready to take load. Each UPS is designed to have a minimum battery uptime of 20 minutes at the UPS rated full load.

C. Purpose and Objective

The primary goal of this project is to replace existing UPS systems that have reached end of life. Proposed models that will be sufficient to carry the given load and requirements as specified in this RFP. Proposer will not be required to be on-site.

D. RFP/Agreement Schedule

Activity	Wed
RFP Available to the Public	Thursday, September 5, 2024
Proposer Conference @ 10:00 a.m. (PST) - Virtual	Tuesday, September 17, 2024
Deadline for Written Questions	Friday, September 20, 2024
RFP Submission Deadline @ 2:00 p.m.	Wednesday, October 2, 2024
<i>Review RFP responses, short list established, vendors notified, and interviews and/or demonstrations</i>	<i>October 2 – October 16, 2024</i>
<i>Consultant Interviews, presentations/demonstrations (if required)</i>	<i>By or before November 1, 2024</i>
<i>Consultant Selection & fees negotiated</i>	<i>By or before November 15, 2024</i>
<i>Council approval of contract & contract execution</i>	<i>Nov/Dec, 2024 (Estimated Date)</i>
<i>Initial meeting with City staff</i>	<i>December 2024 (Estimated Date)</i>
<i>Work with City Staff - clarifications, programs, etc., if applicable</i>	<i>tbd</i>

Italicized items and dates are at the City's option. The City reserves the right to award contract solely on the basis of proposal content.

III. SCOPE OF SERVICES/PROJECT

Scope includes delivery of fifty-five (55) 1500VA, eight (8) 500-750VA and four (4) 6000VA UPS systems with a total of eight (8) Managed or Switched Power Distribution Units (PDU).

A. UPS Specifications - Required

1. Software Specifications

- Microsoft Entra ID Integration (Formerly named Azure Active Directory).
- SSO (Single Sign On) using SAML with Microsoft Entra ID.
- Have ability to remotely manage and control all UPS configurations, health tests, monitoring and alerting.
- Browser based user interface compatible with Edge and Chrome.
- Include a UPS Remote Monitoring and Management (RMM) platform.
- Ability to have multiple platform users with different levels of security/roles.
- Secure web portal access to RMM for all UPS and PDU modification and configurations.
- Stage and deploy updates such as firmware from the RMM.

2. Hardware

- a. All UPS will be true on-line, full double conversion UPS units.
- b. All UPS includes network connectivity with health monitoring and reporting.
- c. All UPS will have an option to add an external environmental probe/sensor.
- d. All UPS batteries will be easily found, accessible and be capable of a no downtime hot swappable replacement.
- e. 500-750VA UPS input will be 120V 15amp with a NEMA 5-15P connection
- f. 500-750VA UPS output will have battery protected 4 x NEMA 5-15R outlets.
- g. 500-750VA UPS will include a wall mount option.
- h. 1500VA UPS input will be 120V 15amp with a NEMA 5-15P connection.
- i. 1500VA UPS output will have battery protected 8 x NEMA 5-15R outlets.
- j. 1500VA will include Rackmount and Tower install options.
- k. 1500VA UPS total depth not to exceed 19 inches.
- l. 6000VA UPS input will be 208V 30amp Single Phase, NEMA L6-30P connection.
- m. 6000VA UPS output will support and include 2 x NEMA L6-20 and 2 x NEMA L6-30
- n. 6000VA will include Rackmount and Tower install options.
- o. 6000VA UPS will include a Manual Bypass Switch that will transfer load to commercial utility and switch back to UPS, without dropping load. Manual Bypass Switch will manage UPS and PDU load transfers.
- p. Managed or Switched PDU's will be 0U Vertical rack mounted and provide at minimum 20 x C13 outlets.
- q. Managed or Switched PDU's must include a built-in network management card that will show real-time power usage of each outlet with the ability to remotely shut down and turn on each outlet.

3. Reporting

- a. Quick overview of all UPS events.
- b. Regular UPS health tests including batteries.
- c. Alert Notifications by email including warning and critical events.

4. Support and Maintenance

- a. Provide updated software/firmware for equipment and devices within the supported product life.
- b. Warranty to include same day technical support and next day shipping of hardware items which support identifies that a replacement is needed.

B. Project Management

The Project Manager must present a comprehensive project plan of the UPS control by central management solution and will be responsible for the design and layout of all UPS components including hardware and software. Weekly project status meetings via Teams, Zoom, phone will be coordinated by the proposer's project manager and will coordinate with the City's designated Project Managers.

The Project Manager will be responsible for coordinating with the City of Visalia's IT Department prior to shipping and delivering system components required for the project.

C. Testing

The implementation must include adequate provisions for functional, performance and reliability testing. The City requires Proposer involvement in the development and execution of all test plans to assure the

System delivers the expected results. Satisfactory completion of a mutually agreed-upon Acceptance Test for each stage of the implementation is required, as is a Final Acceptance Test in a fully integrated environment (to ensure components work together as intended).

D. City Responsibilities

- Compensate the consultant as provided in the contract agreement.
- Provide a “City Representative”, who will represent the City and who will work with the consultant in carrying out the provisions of the RFP. The Consultant shall communicate with the City representative who will provide the following services:
- Provide consultant with or contact with the appropriate department or staff related to documentation, if recently completed, available, applicable and necessary for completion of Consultant’s work.
- Examine documents submitted to the City by the Consultant and render timely decisions pertaining thereto.
- Give reasonably prompt consideration to all matters submitted by the Consultant for approval to the end that there will be no substantial delays in the Consultant’s program of work.
- Process invoices submitted by Consultant.
- Act as coordinator between Consultant and other City representatives.

IV. PROPOSAL CONTENT AND FORMAT REQUIREMENTS

The following are proposal requirements. Respondents are requested to organize their proposal into sections with tabs corresponding to the listed selection criteria as follows. You must answer the following questions in the same sequence as below. A screening committee will evaluate the completeness of the response to the RFP.

A. General Information

- Firm name, address, telephone number, fax number and email address.
- Name of Account Representative or other person to contact for clarification of any item contained in the proposal. Include telephone number, fax number and email address if different from above.
- Specify type of organization (individual, partnership or corporation) and if applicable indicate whether you are:
 - a. Small Business.
 - b. Disadvantaged Business.
 - c. Minority and/or Women-Owned Business.
- Personnel of the Proposer’s Firm must be identified in the proposal with their background and the firm must give assurances of continuity of its personnel. A contact person needs to be identified.
- Provide your Dun and Bradstreet Number
- Provide surety information for all sureties – General and Automobile Liability, E/O and Worker’s Compensation
- References and Referrals

B. Proposed Program Approach

Summarize your approach and understanding of the project and any special considerations of which the City of Visalia should be aware. Indicate clearly, the levels of participation you will expect from City of Visalia staff in the fulfillment of the contract.

Any exceptions to the requirements of the RFP should be clearly delineated in this section.

In addition, you are invited to include a maximum of two (2) pages of information not included, nor requested in this RFP, if you feel it may be useful and applicable to this project.

The information in this section will aid the City in the refinement of the scope of work during contract negotiations.

C. Staff Qualifications and Related Experience

1. Staff Qualifications and Experience

This section should demonstrate the qualifications of all professional personnel to be assigned to this project by providing resumes/experience summaries describing their education, credentials, related experience and their proposed roles for this contract. Note: Consultant may not substitute any member of the project team without prior written approval of the City.

If your firm intends to subcontract any of the services required under this RFP it should be discussed in this section. Detailed information for each subcontractor must be provided.

2. Related Experience

Include descriptive information concerning the experience of the firm. Include information about previous projects that might be comparable, including the size and type of projects and the scope of services provided. These projects must demonstrate that the consultant has experience in providing UPS systems similar to the requirements called out in this RFP. In addition, provide references for the three (3) most comparable projects for which your firm has provided, or currently is providing, similar services in the past three years.

List the projects in reverse chronological order and provide the following information for each project:

Indicate for each of these projects:

- Type of Project/Contract
- Project location (business address)
- Brief description (type of contract, functional components, special considerations)
- Name of owner/entity
- Name of owner's contact person and telephone number (contact person, who, at the time of RFP submittal, will be employed by the owner)
- Your firm's specific involvement
- The Total contract amount awarded vs the Final Contract amount at end of project.
- Status of completion.

D. Proposed Fee Structure and Schedule (Under separate sealed cover)

The Proposed Fee Structure and Schedule shall be provided under separate, sealed cover (envelope) as a part of the RFP submittal. Only one (1) sealed envelope containing Proposer's Fees is requested.

Provide proposed fees and cost information and recommend a budget plan for all services to be provided in the following format:

Proposers should review the requirements of this RFP and address all services in this fee schedule that might reasonably be expected to support the project. Indicate how the City will be invoiced for services, i.e., by task completed. Information should be detailed and broken down by type of service and units of work or other applicable measure. Proposers should endeavor to provide a comprehensive, fee schedule, as the City will not include compensation in the contract for items not addressed.

Include a total cost to provide services, based on the consultant's fee schedule and the scope of work as outlined in this RFP. This cost will be used as a basis for negotiations.

The fee proposal submitted under separate, sealed cover, along with the proposed project approach, will be used as a basis for any contract negotiations. The actual scope of services and fees included in the contract may be negotiated and may vary to satisfy the City's actual needs.

E. Conflict of Interest

- Disclose any financial, business or other relationship with the City or any member of the City staff that may have an impact on the outcome of the project.
- List current clients who may have a financial interest in the outcome of the project.

F. Required Documents

- Complete and submit Attachment 1, Technical Questionnaire
- Complete and submit Attachment 2: Disclosures
- Complete and submit Attachment 3: Federal Forms and Clauses with signature page.
- A signed copy of all addenda issued for this RFP.

V. CONSULTANT SELECTION PROCEDURE

Selection of the successful proposal shall be generally based on the information provided by the Consultant in response to the Request for Proposals and any subsequent interviews that may be conducted. *Consultant interviews will be held solely at the option and discretion of the City of Visalia.*

The process for selection shall occur in the following sequence:

- I. Review Proposals
- II. Establish a "short list" of three or more firms
- III. Interviews/Presentations by "short-listed" firms (at the option and discretion of the City)
- IV. Demonstration of products of top ranked Proposers
- V. Identify best qualified firm
- VI. Determine which, if any, alternates will be selected, and negotiate a fee
- VII. Award contract

A project Selection Committee, as deemed necessary, will be formed to evaluate the proposals and to make recommendation to the Visalia City Council. This committee may consist of representatives of the user department, members of other City Departments, and may include a representative knowledgeable in UPS Systems from outside of the community. Composition and creation of this committee, should one be formed, is at the sole discretion of the City. Names of the Committee members, should one be formed, will not be released prior to the time for interviews.

The Committee will review the proposals for format to ensure conformance with the requirements of the RFP and may select finalists to interview/make presentations or give demonstrations to the Committee as a part of the Committee's evaluation process. The City does not guarantee that an interview will take place, thus reserving the right to select a consultant based solely on the information provided in the proposals received in response to the RFP. *Should an interview take place, the key personnel responsible for fulfilling the requirements of the project shall be required to be present for the interview.*

A. Criteria & Weight of Criteria

The Committee will address the following criteria in evaluation of proposals in order to gauge the ability of a consultant to perform the contract as specified. The same general criteria will be used to judge both the proposal and the presentation, should the City choose to conduct interviews with short-listed firms.

Criteria	Explanation	Weight/Points
Merit of Proposal Submitted / Presentation	<ul style="list-style-type: none"> • Thoroughness of Proposal Submitted • Required Forms completed & submitted 	15
Experience, Qualifications of the Firm	<ul style="list-style-type: none"> • Background information on company/organization • Adequacy of Staff to perform the work specified • References • Ability to work effectively with City staff, other public agencies and related parties 	15
Experience & Qualifications of Personnel & Record of Past Performance	<ul style="list-style-type: none"> • Experience & qualifications of the Proposer's team in working on similar projects and with local government 	15
Experience- Specific to UPS Systems	<ul style="list-style-type: none"> • Past Projects (size and similarity to those specifications described in this RFP) 	20
Responsiveness & Ability to Provide Services and meet needs of the City of Visalia	<ul style="list-style-type: none"> • Proposer Responses to Attachment 1 (including questionnaire) 	35

Prior to the award of contract, the City must be assured that the proposer selected has all of the resources required to successfully perform under the contract. This includes, but is not limited to, personnel with the skills required, equipment/materials and financial resources sufficient to provide services called for under this contract. If, during the evaluation process, the City is unable to assure itself of the proposer's ability to perform under the contract, if awarded, the City has the option of requesting from the proposer, any information that the City deems necessary to determine the proposer's capabilities. If such information is required, the proposer will be notified and will be permitted seven (7) working days to submit the requested information.

B. Background Check

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

C. Award of Contract

The successful firm will be required to execute a contract with the City of Visalia. A Draft Agreement has been included in this RFP to alert proposers to the provisions generally found in City contracts. The Draft Agreement may be altered from the enclosed form at the discretion of the City and without notice to consultant prior to award of contract. The City does not guarantee that the Final Agreement will duplicate the enclosed Draft Agreement.

VI. GENERAL CONDITIONS

A. Important Notice

The City of Visalia will not be responsible for oral interpretations given by any City employee, representative, or others. Proposers are cautioned that any statements made that materially change any portion of the proposal documents shall not be relied upon unless subsequently ratified by a formal written amendment to the proposal document. The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this Request for Proposals, the City will attempt to notify all prospective vendors who have secured same. However, it will be the responsibility of each vendor, prior to submitting their proposal, to contact the Purchasing

Division, located at 707 W. Acequia, Visalia, CA 93291, (559) 713-4334 to determine if addendums were issued and to make such addendum a part of the proposal.

B. Contracting Agency

The contract resulting from this Request for Proposals will be administered by the City of Visalia Information Services Department and the Purchasing Division.

C. Legal Responsibilities

It is the responsibility of Contractor to comply with all local, state, and federal laws and regulations which apply to this project. This includes, but is not limited to, compliance with Uniform Building, Plumbing, Mechanical, Electric, and Fire Codes. Contractor shall provide a safe working environment in compliance with the Occupational Safety and Health Act, and California Health and Safety Code.

Contractor shall secure all necessary permits, licenses, and similar requirements to carry out the project (if any). Contractor shall comply with all applicable labor laws and ensure against discrimination.

Permits and Licenses

1. Business Tax Certificate

Possession of a City of Visalia Business Tax Certificate is not required to submit a proposal in response to this invitation. *However, Consultant shall be required to possess, at his/her own expense, a valid and current City of Visalia Business Tax Certificate, prior to commencing work.* Fee is based on gross receipts for all business transactions in the City of Visalia. For additional information, contact the City of Visalia at (559) 713-4326.

1. Professional License

Consultant is to be licensed in accordance with the California Business and Professions Code and is to possess current professional registration and be licensed to perform work in the State of California.

2. Permits

Consultant shall be required to obtain and maintain at his/her own expense, any and all permits, licenses and certifications issued by any federal, state or local governmental agency, pertaining to, and necessary for providing the services required in this Request for Proposals.

D. Insurance

Indemnification and Insurance

As respects acts, errors, or omissions in the performance of services, CONTRACTOR agrees to indemnify and hold harmless CITY, its elected and appointed officers, employees, and CITY designated volunteers from and against any and all claims, demands, losses, defense costs, liability or consequential damages arising directly out of CONTRACTOR's negligent acts, errors or omissions in the performance of his/her services under the terms of this Agreement; except to the extent those arise out of the negligence of CITY.

CITY agrees to indemnify and hold harmless CONTRACTOR, its officers, employees, and designated volunteers from and against any and all losses, defense costs, liability or consequential damages to the extent arising out of CITY'S negligent acts, errors or omissions in the performance of this Agreement.

As respects all acts or omissions which do not arise directly out of the performance of services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONTRACTOR agrees to indemnify, defend (at CITY's option), and hold harmless CITY, its elected and appointed officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with CONTRACTOR's (or CONTRACTOR's subcontractors, if any) performance or failure to perform, under the terms of this Agreement; except to the extent those which arise out of the negligence of CITY.

Without limiting CITY's right to indemnification, it is agreed that CONTRACTOR shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:

- Workers' Compensation insurance as required by California statutes.
- Commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products and Completed Operations Liability, Broad Form Property Damage (if applicable), Independent Contractor's Liability (if applicable).
- Professional Liability insurance coverage, in an amount not less than One Million Dollars (\$1,000,000).
- Comprehensive Automobile Liability coverage with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles and shall be provided by a business automobile policy.

Each insurance policy required by this Agreement shall contain the following clause:

"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the City Clerk, City of Visalia, 707 W. Acequia, Visalia, CA 93291, with the exception of cancellation for non-payment of premium, in which case ten (10) days' notice shall be given", In addition, the Commercial general liability and comprehensive automobile liability policies required by this Agreement shall contain the following clauses:

"It is agreed that any insurance maintained by the City of Visalia shall apply in excess of and not contribute with insurance provided by this policy."

"The City of Visalia, its officers, agents, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured, performed under contract with the City of Visalia."

The successful bidder shall maintain the insurance for the life of the contract. Endorsements are to be received and approved by the City before work commences. Should contractor cease to have insurance as required during any time, all work by contractor pursuant to this agreement shall cease until insurance acceptable to the City is provided.

VII. CONTRACT REQUIREMENTS AND ACCEPTANCE OF PROPOSAL CONTENT

Before submitting a proposal, proposer's must satisfy themselves by personal examination of the proposal requirements and other contract documents, and by any other means as they may believe necessary, as to the actual conditions, requirements, and difficulties under which the work must be performed and to verify any representations made by the City of Visalia, upon which the offeror will rely.

The submission of a proposal shall be considered conclusive evidence that the proposer has carefully investigated all conditions that affect, or may at some future date affect the performance of services covered by this solicitation, and is satisfied as to the character, quality, and quantities of work to be performed and as to the requirements of the proposal. Submission of a proposal shall also be evidence that the proposer

is familiar with directives that in any way affect prosecution of the work or persons engaged or employed in the work.

No proposer shall at any time after submission of a proposal make any claim or assertion that there was any misunderstanding or lack of information regarding the nature or amount of work necessary for satisfactory performance under the contract. If the proposer receives an award as a result of this Request for Proposals, failure to have made such investigations and examinations will in no way relieve the proposer from its obligations to comply in every detail with all provisions and requirements of the contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for claim whatsoever by the proposer for additional compensation. Any errors, omissions, or discrepancies found in the specifications or other contract documents shall be called to the attention of the City and clarified prior to the submission of proposals.

Should the proposer feel there has been a supplemental or oral modification, it shall be his responsibility to verify said modification in writing prior to submission of the proposal.

The contents of the proposal of the successful proposer shall become contractual obligations if procurement action ensues. Failure to accept these obligations in a contractual agreement shall result in cancellation of award.

A. Withdrawal of Proposals

Any proposal may be withdrawn at any time prior to the time fixed in the public notice for the receipt of proposals, only by written request for the withdrawal of the proposal filed with the Purchasing Division. The request shall be executed by the proposer or his duly authorized representative. The withdrawal of a proposal does not prejudice the right of the proposer to file a new proposal. No proposal may be withdrawn after the time fixed in the public notice for the receipt of proposals.

B. Rejection of Proposals

Failure to meet the requirements of the RFP may be cause for rejection of the proposal. The City may reject the proposal if it is deemed incomplete, contains irregularities of any kind or is offered conditionally. The City reserves the right to reject any and all proposals without cause.

The proposal is to be prepared in such a way as to provide a straightforward, concise delineation of the information requested. Proposals which contain false or misleading statements, or which do not support an attribute or condition claimed by the proposer, may be cause for rejection of the proposal. If, in the opinion of the City, such information was intended to mislead the City in its evaluation of the proposal, it will be cause for rejection of the proposal.

C. Evaluation/Award of Contract

Evaluation and selection of proposals will be based on the information called for in this RFP. Brochures or other promotional presentations beyond that sufficient to submit a complete and effective proposal are not desired. Elaborate artwork, expensive paper or binders, and expensive visuals are not necessary. Proposals will be evaluated by a Selection Committee. This committee may consist of representatives of the user department, members of the community, the Purchasing Division, and may include a representative knowledgeable in engineering services from outside of the community. In connection with its evaluation, the City may, at its option, invite one or more proposers to make an oral presentation to the Selection Committee. During these interviews, the proposers will be allowed to present such evidence as may be appropriate in order that the Committee can correctly analyze all materials and documentation submitted as a part of the proposals.

The award, if made, will be made within ninety (90) days from proposal closing date. Proposer agrees and so stipulates in submitting this proposal, as though stated therein, and in any subsequent award of contract that:

1. Proposer is an independent contractor, not an employee, agent, or officer of the City.

2. Contract, should it be awarded, shall be interpreted, construed, and given effect in all respects according to the laws of the State of California.
3. Should proposer be awarded contract, proposer shall not assign contract, or any part thereof, or any moneys due or to become due thereunder, without prior consent of the City.

Proposer shall indemnify and hold harmless the City, its officers, officials, employees, and agents from and against all claims, damages, losses, and expenses caused in whole or in part by any negligent act or omission of the proposer, its consultants, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct by the City.

Proposer shall hold the City harmless from liability of any nature or kind, including cost and expenses for infringement or use of any copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.

Proposer warrants that no gratuities, in the form of gifts, entertainment, or otherwise, were offered or given by the proposer, to any officer or employee of the City with a view toward securing the contract or securing favorable treatment with respect to any determination concerning the performance of the contract. For breach or violation of this warranty, the City shall have the right to terminate the contract, either in whole or in part. The rights and remedies of the City provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

D. Proposal Pricing Guidelines

Proposer shall provide proposed fees and cost information as a part of this Request for Proposals. Proposed fees shall be submitted under separate, sealed cover and in great detail.

E. Assignment of Contract

No assignment by the vendor of the contract or any part hereof, or of funds to be received there under, will be binding upon the City unless such assignment had prior written approval and consent of the City. In the event the City gives such consent, the terms and conditions of the agreement shall apply to, and bind the party or parties to whom such work is assigned, sublet or transferred.

F. Right of Requirement Performance

The failure of the City at any time to require performance by the proposer of any provisions hereof shall in no way affect the right of the City thereafter to enforce the same. Nor shall waiver by the City of any breach of any provision hereof be taken or held to be waiver of any succeeding breach of such provision or as a waiver of any provision itself.

G. Ethics in Public Contracting

Each proposer, by submitting a proposal, certifies that it is not a party to any collusive action or any action that may be in violation of the Sherman Antitrust Act by submitting a proposal, the proposer certifies that its proposal was made without fraud; that it has not offered or received any kickbacks or inducements from any other proposer in connection with the request for proposal; and that it has not conferred on any public employee, public member or public official having responsibility for this procurement transaction, any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value. The proposer further certifies that no relationship exists between itself and the City or another person or organization that interferes with fair competition or constitutes a conflict of interest with respect to a contract with the City of Visalia.

Prior to the award of any contract, the potential Consultant may be required to certify in writing to the Purchasing Division that no relationship exists between the proposer and any City employee, officer, official

or agent that interferes with fair competition or is a conflict of interest with respect to a contract with the City of Visalia.

More than one proposal from an individual, firm, partnership, corporation or association under the same or different names may be rejected. Reasonable grounds for believing that a proposer has interest in more than one proposal for the work solicited may result in rejection of all proposals in which the proposer is believed to have an interest.

H. Equal Employment Opportunity

During the performance of the contract, proposer agrees to the following:

1. Proposer shall comply with all the requirements, when applicable, of the California Fair Employment Practice Commission and provisions of, when applicable, all Federal, State of California, County of Tulare and City of Visalia laws and ordinances related to employment practices.
2. Proposer shall not discriminate against any employee or applicant for employment on the basis of race, religion, color, gender, age, handicap, national origin or ancestry, except when such a condition is a bona fide occupational qualification reasonably necessary for the normal operations of the proposer. The proposer agrees to post in conspicuous places, visible to the employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
3. Proposer, in all solicitations or advertisements for employees, placed by, or on behalf of the proposer, shall state that proposer is an Equal Opportunity Employer.

I. Venue

Any contract resulting from this solicitation shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any litigation arising out of the contract will be vested in Tulare County, California.

J. Proprietary Information

The proposals received shall become the property of the City of Visalia and are subject to public disclosure. Proposal prices and information submitted by proposers will be made available to proposers after City Council has approved award of contract. Proposers are to indicate any restrictions on the use of data contained in their responses. Those parts of a proposal which are defined by the proposer as business or trade secrets, as that term is defined in California Government Code, Section 6254.7, and are reasonably marked as "Trade Secrets", "Confidential" or "Proprietary" shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most, or all, of their proposal as exempt from disclosure may be deemed non-responsive.

K. Incurring Costs

The City of Visalia is not liable for any cost incurred by proposers in responding to this Request for Proposals.

L. Firearms Prohibited

Guns may not be carried by contractors/vendors/consultants while working on City of Visalia premises without the expressed written approval of a City of Visalia Department Head, or an exemption in the contract. If a contractor/vendor/consultant is caught carrying a gun, without City permission, their contract will be terminated.

M. Executive Order N-6-22 – Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions

imposed under state law. By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Contractor's bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

VIII. MEASUREMENT AND PAYMENT

A. Billing and Payment

Awarded Vendor is responsible for assuring that all services arising from the agreement are billed at the correct and applicable contract prices. The vendor is required to establish and maintain a process to monitor its billing practices and will refund all over-charges that may occur.

IX. SPECIAL CONDITIONS APPLICABLE TO THIS FEDERALLY FUNDED CONTRACT

A. Required Bonds

Awarded Consultant shall be required to submit a Performance Bond in the amount of one hundred percent (100%) of the agreement, as surety condition for the full, complete and faithful performance of the agreement. In addition, Awarded Consultant shall be required to furnish a Payment Bond in the amount of fifty percent (50%) of subcontractors work to guarantee payment of any subcontractors, if subcontractors are proposed to be used to complete this project.

According to City standards the surety company must be either a California Admitted Surety OR current Treasury Listed Surety (Federal Register) to its specified dollar limitation AND a current A.M. Best A: VIII rated surety.

B. Federal Uniform Guidance 2 CFR Part 200.

All federal procurement requirements provided in Uniform Guidance 2 CFR Part 200 shall be in effect. Attachment 2 of this RFB "Federal Forms and Clauses" with signature page, outlines the applicable Federal Requirements. This project is supported, in whole or in part, by federal award number SLFRP2005, awarded to City of Visalia by the U.S. Department of the Treasury. Federal Funds being utilized for this project are American Rescue Plan Act Funds (ARPA).

C. Project Administrative Issues

1. Complete Project

The successful consultant shall be responsible for providing all materials, labor, equipment, and services necessary to fulfill the requirements of this RFP. It is the intent of this RFP and related agreement to describe a functionally complete project.

2. Quantities/Change Orders

The City reserves and shall have the right to make such changes to the work as may be necessary and desirable to complete the work originally intended in an acceptable manner. Unless otherwise specified herein, the Project Manager shall be and is hereby authorized to make such changes in the work as may increase or decrease the originally awarded contract quantities and/or total contract cost. The Contract Price, or the amount due the Contractor will only be reduced/increased after the price change is reviewed and authorized by the City of Visalia Change Order Committee.

Should the Contractor disagree with any terms or conditions set forth in an approved contract change order not executed by the Contractor, the Contractor shall submit a written protest to the Engineer within 15 days after the receipt of the approved contract change order and the procedures outlined in Section 4-1.03 of the Standard Specifications apply.

If a requested change order is sent back to the Contractor for revisions, the Contractor has 15 (fifteen) calendar days to resubmit.

Changes shall not invalidate the contract nor release the surety, and the Contractor agrees to accept payment for such changes as if the altered work had been a part of the original contract. These changes which are for work within the general scope of the contract shall be covered by Change Orders issued by the City. Change orders for altered work shall include extensions of contract time where, in the Project Manager's opinion, such extensions are commensurate with the amount and difficulty of added work.

Excessive altered work shall be covered by supplemental agreement that is subject to funding agency approval as applicable. If the City and the Contractor are unable to agree on a unit adjustment for any contract item that requires a supplemental agreement, the City reserves the right to terminate the contract with respect to the item and to make other arrangements for its completion.

3. Omitted Items

Project Manager is authorized to omit minor contract items. Major items must be omitted by supplemental agreement.

4. Extra Work

Contractor is prohibited from doing extra work, unless authorized in writing by Project Manager before the work is done. The Project Manager should obtain authorization from the Change Order Committee before agreeing to extra work requested by the Contractor. In the instances where it is necessary for the work to be done immediately, the Project Manager may authorize the work prior to taking the additions to the Change Order Committee. Payment for approved Extra Work shall be as agreed to in writing by the Project Manager prior to the Extra Work being completed or the Change Order Committee shall approve an increase in a Change Order issued after the Extra Work is completed. No additional payment is due for unauthorized Extra Work.

If the Project Manager authorizes Extra Work but the payment for the Extra Work has not been agreed to in writing prior to the work being completed, then Contractor shall submit to the Project Manager the documentation required for a Change Order within forty-five (45) days of completing the Extra Work. The Project Manager will submit a Change Order request for review and approval by the Change Order Committee. If the Contractor does not submit any documentation within that time period, the Project Manager may move forward with issuing a Change Order to adjust the contract price.

X. SAMPLE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT FOR UNINTERRUPTIBLE POWER SUPPLY (UPS) REFRESH

This Agreement, entered into this _____ day of _____, 20____, by and between the City of Visalia, hereinafter referred to as the "CITY", and _____ hereinafter referred to as the "CONSULTANT".

W I T N E S S E I H

WHEREAS, the CITY is authorized and empowered to employ consultants and specialists in the performance of its duties and functions; and

WHEREAS, the CITY has the desire to secure certain technical and professional services to assist in the completion of the items of work described as "Scope of Services" in RFP No. 24-25-04, which along with the response submitted by CONSULTANT is attached as Exhibit "A", and hereinafter referred to as the "PROJECT"; and

WHEREAS, the CONSULTANT represents it is licensed, qualified and willing to provide such services pursuant to terms and conditions of this Agreement; and

WHEREAS, this project will be supported, in whole or in part, by federal award number SLFRP2005, awarded to City of Visalia by the U.S. Department of the Treasury. Federal Funds being utilized for this project are American Rescue Plan Act Funds (ARPA).

NOW, THEREFORE, CITY and CONSULTANT agree as follows:

I. SERVICES TO BE PERFORMED BY THE CONSULTANT

- A. Authorized Scope of Work: The CONSULTANT agrees to perform all work necessary to complete in a manner satisfactory to the CITY those tasks described in Exhibit "A" - Scope of Services, which shall be the Scope of Work for the project as described in RFP No. 24-25-04 unless the parties agree in writing to modify the Scope of Work as stated in the RFP, for the cost identified in Exhibit "B" - Project Fee.
- B. Additional Services: Incidental work related to the PROJECT and not provided for in Exhibit "A" may be needed during the performance of this Agreement. The CONSULTANT agrees to provide any and all additional services at the rates identified in attached Exhibit "C" – Consultant Schedule of Fees for Professional Services. Such additional services shall not be performed by CONSULTANT without the written consent of CITY.

II. TIME OF PERFORMANCE

The CONSULTANT shall commence performance of this Agreement within ten (10) days of the effective date on the Consultant's written Notice to Proceed and shall complete the work within the timeframes outlined in Exhibit "B", unless otherwise extended in writing by CITY, in its sole discretion.

If the CONSULTANT fails to complete the PROJECT within the time specified, plus any extensions of time which may be granted, the CITY shall determine the percent of each work item completed and shall pay the CONSULTANT on that basis.

CONSULTANT shall not be responsible for delays which are due to causes beyond the CONSULTANT's reasonable control. In the case of any such delay, the time of completion shall be extended accordingly in a writing signed by both parties.

III. COMPENSATION

- A. Total Compensation: For services performed pursuant to this Agreement, the CITY agrees to pay and the CONSULTANT agrees to accept, a lump sum amount of _____) as shown in Exhibit "B". This amount shall constitute complete compensation, including document production and out-of-pocket expenses for all services for the work and PROJECT identified in Exhibits "A" and "B". CONSULTANT agrees these amounts, as authorized, will constitute complete compensation, including document production and out-of-pocket expenses, for services authorized by CITY for the PROJECT per the Scope of Work, Project Fees, and Schedule identified in Exhibit "A", "B", and "C", respectively. No other compensation is authorized by this Agreement without separate written amendment.
- B. Payment of Compensation: The CONSULTANT shall be compensated no more than monthly, based on percentage of work of each noted phase completed to date. The CONSULTANT shall be paid no later than thirty (30) days following submission of a written, verified billing to the CITY. Said billing shall include the percentage of each task completed to date and since the date of the preceding billing, if any.

IV. AUTHORIZED REPRESENTATIVE

- A. CITY: The _____ shall represent the CITY in all matters pertaining to the services to be rendered under this Agreement, except where approval of the City Council of the City of Visalia is specifically required.
- B. CONSULTANT: _____ shall represent and act as principle for CONSULTANT in all matters pertaining to the services to be rendered by it under this Agreement.

V. TERMINATION

The right to terminate this Agreement, with or without cause, may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

- A. Termination Without Cause: The CITY may terminate this Agreement at any time by giving written notice to the other of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.
- B. Termination of Agreement for Cause: The CITY may by written notice to the CONSULTANT specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination, terminate the whole or any part of this Agreement in any of the following circumstances:
1. If the CONSULTANT fails to perform the services called for by this Agreement within time(s) specified herein or any extension thereof; or
 2. If the CONSULTANT fails to make progress under this Agreement as to endanger performance of this Agreement in accordance with its terms, and does not correct such failure within a period of ten (10) days (or longer period as the CITY may authorize in writing) after receipt of notice from the CITY specifying such failure.
- C. Post-Termination:
1. In the event the CITY terminates this Agreement with or without cause, the CITY may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.
 2. Except with respect to defaults of sub-consultants, the CONSULTANT shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the CONSULTANT. Such causes include, but are not limited to, acts of God or of the public enemy, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather; but in the event the failure to perform is caused by the default of a sub-consultant, the CONSULTANT shall not be liable for failure to perform, unless the services to be furnished by

the sub-consultant were obtainable from other sources in sufficient time and within budgeted resources to permit the CONSULTANT to meet the required delivery schedule or other performance requirements.

3. Should the Agreement be terminated with or without cause, the CONSULTANT shall provide the CITY with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by the CONSULTANT pursuant to this Agreement.
4. Upon termination, with or without cause, CONSULTANT will be compensated for the services satisfactorily completed to the date of termination according to compensation Provisions contained herein. In no event, shall the total compensation paid CONSULTANT exceed the total compensation agreed to herein.
5. If, after notice of termination of this Agreement, as provided for in this article, it is determined for any reason that the CONSULTANT was not in default under the provisions of this article, then the rights and obligations of the parties shall be the same as if the Agreement was terminated without cause.
6. Termination of this Agreement shall not terminate any obligation to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination activities.

VI. INTEREST OF OFFICIALS AND THE CONSULTANT

- A. No officer, member, or employee of the CITY who exercises any functions or responsibilities in the review or approval of this Agreement shall:
 1. Participate in any decision relating to this Agreement which effects his personal interest or the interest of any corporation, partnership, or association in which he has, directly or indirectly, any interest; or
 2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his tenure or for one year thereafter.
- B. The CONSULTANT hereby covenants that he has, at the time of the execution of this Agreement, no interest, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The CONSULTANT further covenants that in the performance of this work, no person having any such interest shall be employed.

VII. NO PERSONNEL, AGENCY OR COMMISSION

The CONSULTANT warrants, by execution of this Agreement, that no personnel agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

VIII. SUBCONTRACTING

- A. The CONSULTANT shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of the CITY.
- B. In no event shall the CONSULTANT subcontract work in excess of 50% of the contract amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a consultant performing the particular type of project.

IX. INDEPENDENT CONTRACTOR

In the performance of the services herein provided for, the CONSULTANT shall be, and is, an independent contractor and is not an agent or employee of the CITY. The CONSULTANT has and shall retain the right to exercise full control and supervision of all persons assisting the CONSULTANT in the performance of said services hereunder. The CONSULTANT shall be solely responsible for all matters relating to the payment of its employees including compliance with social security and income tax withholding and all other regulations governing such matters.

X. SPECIFICATIONS

All specifications, manuals, standards, data collection, analysis, etc., either attached to this Agreement or incorporated by reference, are binding as to the performance of the work specified in this Agreement unless they are changed by written amendment to this Agreement modified in writing to incorporate such changes.

XI. DOCUMENTS/DATA

- A. Ownership of Documents: All original papers and documents, produced as a result of this Agreement, shall become the property of the CITY. In addition, CITY shall be provided with access and use of any other papers and documents consistent with the purpose and scope of services covered by this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of the CITY.

Documents, including drawings and specifications, prepared by CONSULTANT pursuant to this Agreement, are not intended or represented to be suitable for reuse by CITY or others on extensions of the PROJECT or on any other project. Any use of the completed documents for other projects and any use of incomplete documents without the specific written authorization from CONSULTANT will be at CITY's sole risk and without liability to CONSULTANT. Further, any and all liability arising out of changes made to CONSULTANT's deliverables under this Agreement by CITY or persons other than CONSULTANT is waived as against CONSULTANT, and the CITY assumes full responsibility for such changes unless the CITY has given CONSULTANT prior notice and has received from CONSULTANT written consent for such changes.

- B. Publication: No report, information, or other data given or prepared or assembled by the CONSULTANT pursuant to this Agreement, shall be made available to any individual or organization by the CONSULTANT without the prior written approval of the CITY. Notwithstanding the foregoing, however, the CONSULTANT shall not be required to protect or hold in confidence and confidential information which (1) is or becomes available to the public with the prior written consent of the CITY; (2) must be disclosed to comply with law; or (3) must be disclosed in connection with any legal proceedings.
- C. Copyrights: The CONSULTANT shall be free to copyright material developed under this Agreement with the provision that the CITY be given a nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material for government or public purposes. Should CONSULTANT place a copyright notice on documents it must state, "City of Visalia holds a nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the material for government or public purposes."

XII. INDEMNIFICATION AND INSURANCE

As respects acts, errors, or omissions in the performance of services, CONSULTANT agrees to indemnify and hold harmless CITY, its elected and appointed officers, and employees from and against any and all claims, demands, losses, reasonable defense costs, or liability, whether actual, alleged, or threatened, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT in the performance of his/her services under the terms of this Agreement, except to the extent those arise out of the negligence of CITY.

- A. CITY agrees to indemnify and hold harmless CONSULTANT, its officers, employees, and designated volunteers from and against any and all losses, defense costs, or liability to the extent arising out of CITY'S negligent acts, errors or omissions in the performance of this Agreement.
- B. As respects all acts or omissions which do not arise directly out of the performance of services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance,

CONSULTANT agrees to indemnify, defend (at CITY's option), and hold harmless CITY, its elected and appointed officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, reasonable defense costs, or liability of any kind or nature arising out of or in connection with CONSULTANT's (or CONSULTANT's subcontractors, if any) performance or failure to perform, under the terms of this Agreement; except to the extent those which arise out of the negligence of CITY.

- C. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the CITY nor the CONSULTANT, their respective officers, directors, partners, employees, contractors or sub consultants shall be liable to the other or shall make any claim for any remote or speculative breach of contract damages that the breaching party could not have reasonably foreseen when entering into this Agreement. To the extent this Agreement is considered a "Construction Contract" as defined by California Civil Code section 2783, CONSULTANT's duty to indemnify CITY under this or any other provision of the Agreement shall not apply when to do so would be prohibited by California Civil Code section 2782.
- D. Without limiting CITY's right to indemnification, it is agreed that CONSULTANT shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:
1. Workers' compensation insurance as required by California statutes.
 2. Commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products and Completed Operations Liability, Broad Form Property Damage (if applicable), Independent Contractor's Liability (if applicable).
 3. Professional liability insurance coverage, in an amount not less than One Million Dollars (\$1,000,000).
 4. Comprehensive Automobile Liability coverage with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles and shall be provided by a business automobile policy.
- E. CITY'S Risk Manager is hereby authorized to reduce the requirements set forth above in the event he/she determines that such reduction is in the CITY'S best interest.
- F. CONSULTANT agrees to provide thirty (30) days written notice of any policy cancellation, limitation in scope or coverage, or non-renewal. Such notice shall be provided to the, City of Visalia, 707 W. Acequia, Visalia, CA 93291.

In addition, the commercial general liability and comprehensive automobile liability policies required by this Agreement shall contain the following clauses:

"It is agreed that any insurance maintained by the City of Visalia shall apply in excess of and not contribute with insurance provided by this policy."

"The City of Visalia, its officers, agents, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured, performed under contract with the City of Visalia."

- G. Prior to commencing any work under this Agreement, CONSULTANT shall deliver to CITY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Within thirty (30) days of the execution date of this Agreement, CONSULTANT shall provide to CITY endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by CITY, it shall be CONSULTANT's responsibility to see that CITY receives documentation acceptable to CITY which sustains that the individual signing said endorsements is indeed authorized to do so

by the insurance company. CITY has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

- H. In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:
1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; or
 2. Order CONSULTANT to stop work under this Agreement and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof; or
 3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for CONSULTANT's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractor's performance of the work covered under this Agreement.

XIII. NON-DISCRIMINATION

CONSULTANT and all subcontractors shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement.

IV. MISCELLANEOUS PROVISIONS

- A. Firearms Prohibited: Guns may not be carried by contractors/vendors/consultants while working on City of Visalia premises without the expressed written approval of a City of Visalia Department Head, or an exemption in the contract. If a contractor/vendor/consultant is caught carrying a gun, without City permission, their contract will be terminated.
- B. Asbestos and Hazardous Materials: In providing its services hereunder, CONSULTANT shall not be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or hazardous material if such is present in connection with the PROJECT. In the event the CITY becomes aware of the presence of asbestos or hazardous material at the jobsite, CITY shall be responsible for complying with all applicable federal and state rules and regulations, and shall immediately notify CONSULTANT, who shall then be entitled to cease any of its services that may be affected by such presence, without liability to CONSULTANT arising therefrom.
- C. Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.
- D. Prohibition of Assignment: Neither the CITY nor CONSULTANT shall assign, delegate or transfer their rights and duties in this Agreement without the written consent of the other party.
- E. Dispute/Governing Law: Any dispute not resolvable by informal arbitration between the parties to this Agreement shall be adjudicated in a Court of Law under the laws of the State of California.

- F. Notices: Notice shall be sufficient hereunder if personally served upon the City Clerk of the CITY or an officer or principal of the CONSULTANT, or if sent via the United States Postal Service, postage prepaid, addressed as follows:

CITY OF VISALIA
707 W. Acequia Ave.
Visalia, CA 93291
Attention: City Clerk

CONSULTANT

(Attention)

Phone: _____

Email: _____

- G. Jurisdiction/Venue/Waiver Of Removal: This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Tulare County, California. The CONSULTANT hereby expressly waives any right to remove any action to a county other than Tulare County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
- H. Integration/Modification: This Agreement and each of the exhibits referenced herein, which are incorporated by reference, represents the entire understanding of the CITY and the CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the CITY and the CONSULTANT.
- I. Conflict With Law: If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.
- J. Attorney's Fees: In the event either party commences any action, arbitration or legal proceedings for the enforcement of this Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recovery of its attorney's fees and court costs incurred in the action brought thereon.
- K. Construction: This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.
- L. Authority: Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the party to which its signature represents.
- M. Headings: Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.
- N. Executive Order N-6-22 – Russia Sanctions Russia Sanctions On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

CITY OF VISALIA

CONSULTANT

City Manager

Date

Date

Approved as to Form

City Attorney

Date

Risk Manager

Date

Project Manager

Date

Exhibit "A": Accepted Scope of Work as Negotiated by the City and the Consultant

Exhibit "B": Accepted Project Schedule and Fee as Negotiated by the City and the Consultant

Exhibit "C": Consultant Schedule of Fees