

City Council Meeting Minutes



April 25, 2023

6:00 p.m.

City of Turlock Yosemite Room

156 S. Broadway, Turlock, California

CALL TO ORDER

Mayor Bublak called the meeting to order at 6:00 p.m.

SALUTE TO THE FLAG

ROLL CALL AND DECLARATION OF CONFLICTS

Present: Councilmembers Cassandra Abram, Kevin Bixel, Rebecka Monez, Vice Mayor Pam Franco, and Mayor Amy Bublak.

Absent: None

Councilmember Abram	Councilmember Bixel	Councilmember Franco	Councilmember Monez	Mayor Bublak
None	None	None	None	None

1. APPROVAL OF AGENDA AS POSTED OR AMENDED

Action: Motion by Councilmember Monez, seconded by Councilmember Bixel, to approve the agenda as posted. Motion carried 5/0 by the following vote:

Councilmember Abram	Councilmember Bixel	Councilmember Franco	Councilmember Monez	Mayor Bublak
Yes	Yes	Yes	Yes	Yes

2. PROCLAMATIONS, RECOGNITIONS, APPOINTMENTS, ANNOUNCEMENTS, PRESENTATIONS, AND BRIEFINGS

A. Proclamation: May as Older Americans Month

City Manager Wilson presented the proclamation for "May as Older Americans Month."

B. Presentation: Legacy Health Endowment – Jeffery Lewis, President and CEO

Jeffery Lewis, President and CEO of Legacy Health Endowment, provided an update on the Mobile Health Service Program as well as the Person-Centered Long-Term Care Program.

C. *This Item was pulled from the agenda*

Presentation: League of California Cities – Stephen Qualls, Regional Public Affairs Program Manager

3. PUBLIC PARTICIPATION

Mayor Bublak opened the meeting for public participation and the following members of the public spoke:

Michael Gonzales
Milt Trieweller
Gavin Kline

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Justin Farkas
Ron Bridegroom
Ron Puffer
Debbie Hall-Koftinow
Ryan Taylor

With no further comments, Mayor Bublak closed public participation.

4. MOTION WAIVING READING OF ALL ORDINANCES ON THE AGENDA, EXCEPT BY TITLE

Action: Motion waiving reading of all ordinances on the Agenda, except by title. Motioned by Vice Mayor Franco, seconded by Councilmember Monez, and carried 5/0 by the following vote:

Councilmember Abram	Councilmember Bixel	Councilmember Franco	Councilmember Monez	Mayor Bublak
Yes	Yes	Yes	Yes	Yes

5. CONSENT CALENDAR

Mayor Bublak announced there was a green sheet for Consent Item 5K

- A. Resolution 2023-096: Accepting Weekly Demands of 04/06/2023 in the amount of \$2,197,898.95, 04/13/2023 in the amount of \$836,173.45, and EFT Payments from 10/01/2022 through 10/31/2022 in the amount of \$7,114,047.66
- B. 1) Resolution 2023-097: Approving a Master Agreement with Mark Thomas & Company, Inc. (Sacramento, California office), in a form approved by the City Attorney, for Engineering Design Services for Roads Program Capital Improvement Program (CIP) Projects (City Contract No. 2023-109) (*Pezeshk*)
 - 2) Resolution 2023-098: Approving a Master Agreement with Provost & Pritchard Consulting Group (Clovis, California office), in a form approved by the City Attorney, for Engineering Design Services for Program Capital Improvement Program (CIP) Projects (City Contract No. 2023-110) (*Pezeshk*)
 - 3) Resolution 2023-099: Approving a Master Agreement with Siegfried Engineering, Inc. (Stockton, California office), in a form approved by the City Attorney, for Engineering Design Services for Roads Program Capital Improvement Program (CIP) Projects (City Contract No. 2023-111) (*Pezeshk*)
- C. 1) Resolution 2023-100: Approving of Amendment No. 1 for Task Order No. 1 under the terms of the Master Agreement with Mark Thomas & Company, Inc. (Sacramento, California office), in a form approved by the City Attorney, in the amount of \$716,377.08 to be funded by Fund 115 "Measure A – Roads," account number 115-10-115.43366_001 "Design Roads" for Professional Services for the City of Turlock's Roads Initiative Program under City Project No. 23-031 "Mark Thomas Task Order No. 1 for Roads Program CIP Projects." (*Pezeshk*)
 - 2) Motion: Authorize staff to proceed with advertising, for construction, City Project No. 23-031 "Mark Thomas Task Order No. 1 for Roads Program CIP Projects" upon completion of bid documents

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- D. 1) Resolution 2023-101: Approving Amendment No. 1 for Task Order No. 1 under the terms of the Master Agreement with Provost & Pritchard Consulting Group (Clovis, California office), in a form approved by the City Attorney, in the amount of \$449,835.28 to be funded by Fund 115 “Measure A – Roads,” account number 115-10-115.43366_001 “Design Roads” for Professional Services for the City of Turlock’s Roads Initiative Program under City Project No. 23-032 “Provost & Pritchard Task Order No. 1 for Roads Program CIP Projects.” (*Pezeshk*)
- 2) Motion: Authorize staff to proceed with advertising, for construction, City Project No. 23-032 “Provost & Pritchard Task Order No. 1 for Roads Program CIP Projects” upon completion of bid documents
- E. 1) Resolution 2023-102: Approving Amendment No. 1 for Task Order No. 1 under the terms of the Master Agreement with Siegfried Engineering, Inc. (Stockton, California office), in a form approved by the City Attorney, in the amount of \$399,344.10 to be funded by Fund 115 “Measure A – Roads,” account number 115-10-115.43366_001 “Design Roads” for Professional Services for the City of Turlock’s Roads Initiative Program under City Project No. 23-033 “Siegfried Task Order No. 1 for Roads Program CIP Projects.” (*Pezeshk*)
- 2) Motion: Authorize staff to proceed with advertising, for construction, City Project No. 23-033 “Siegfried Task Order No. 1 for Roads Program CIP Projects” upon completion of bid documents
- F. Resolution 2023-103: Awarding bid and approving an Agreement for reconstruction of City streets between the City of Turlock and Cal Valley Construction, Inc., of Fresno, CA, in a form approved by the City Attorney, in the amount of \$9,157,293.75 and a contingency amount of \$450,000.00 (4.9%) for City Project No. 22-001 "Design of Projects for 2022 Construction for Roads Program" (Bid Package 1) to be funded by Fund 115 “Measure A – Roads,” account number 115-10-115.51270 “Construction Project.” (*Pezeshk*)
- G. Resolution 2023-104: Awarding bid and approving an Agreement for reconstruction of City streets between the City of Turlock and Cal Valley Construction, Inc., of Fresno, CA, in a form approved by the City Attorney, in the amount of \$1,169,308.00 and a contingency amount of \$115,000.00 (9.8%) for City Project No. 22-001 "Design of Projects for 2022 Construction for Roads Program" (Bid Package 3) to be funded by Fund 115 “Measure A – Roads,” account number 115-10-115.512170 “Construction Project.” (*Pezeshk*)
- H. Resolution 2023-105: Approving Amendment No. 2 to the Agreement between the City of Turlock and Mark Thomas & Company, Inc. of Sacramento, California, in a form approved by the City Attorney, in the amount of \$801,761.00 to be funded by Fund 115 “Measure A – Roads,” account number 115-10-115.43327 “Construction Management” for professional construction management and inspection services (City Contract No. 2022-89) for the City of Turlock’s Roads Initiative Program under City Project No. 22-001 “Design of Projects for 2022 Construction for Roads Program.” (*Pezeshk*)
- I. Resolution 2023-088: Authorizing the City Manager to execute the Certifications and Assurances, Authorized Agent Forms and related documents for the Low Carbon Transit Operations Program (LCTOP) for the Fiscal Year 2022-23 Free Fares Project in the amount of \$128,537 (*Schulze*)
- J. Resolution 2023-089: Approving revisions to the job description for the Housing Program Manager (*Dhami*)

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- K. Resolution 2023-090: Approving an Agreement between the City of Turlock and “The Market,” in a form approved by the City Attorney, related to the implementation of the Temporary Traffic Control Plan as approved by the City of Turlock, at The Market’s assumption of liability and risk, for the Maker’s Market event, taking place on a weekly basis for twenty-six (26) weeks, on Sundays from 10:00 a.m. to 5:00 p.m., beginning May 7, 2023 through October 29, 2023 and authorizing the City Manager to approve, annually, an agreement between the City of Turlock and The Market to provide traffic control labor and equipment as approved by the City of Turlock, at The Market’s assumption of liability and risk, for future market seasons, to be reviewed annually by the special event committee, and to be revoked at City Staff’s discretion if it is determined that The Market is not maintaining the integrity of the agreement, or adhering to the Temporary Traffic Control Plan provided (*Schulze*)

- L. Resolution 2023-091: Approving a Professional Services Agreement between NHA Advisors LLC and the City of Turlock, in a form approved by the City Attorney, for On-Call Financial Consulting, Funding Strategies and Municipal Advisory Services in the total amount not-to-exceed \$250,000 and with an initial assigned project related to proposed 2023 Lease Revenue Bonds (Streets Capital Improvement Project) in an amount not-to-exceed \$67,000 to Fund 115 “Measure A – Roads” account 115-10-115.43060_000 “Contract Services General” (*Moreno*)

- M. Resolution 2023-092: Adopting a resolution of concurrence with the Stanislaus HOME Consortium FY 2023-2024 Annual Action Plan for the HOME Investment Partnership Program and support submission of the draft plan by Stanislaus County to HUD (*Quintero*)

- N. Resolution 2023-093: Authorizing the City Manager to offer an employment signing bonus program for Lateral Police Officers, Police Officer Trainees and for Academy Graduates in an amount ranging from \$6,000 to \$20,000 depending on their job classification, as well as offering any Turlock Police Department employee a referral bonus of \$3,000 for the successful recruitment of a full-time Turlock Police Officer, in an estimated starting amount of \$50,000 to be appropriated to account number 118-20-210.41060 “Signing Bonus” (*Hedden*)

Action: Motion by Councilmember Monez, seconded by Vice Mayor Franco, to adopt the Consent Calendar as amended for Item 5K, and carried 5/0 by the following vote:

Councilmember Abram	Councilmember Bixel	Councilmember Franco	Councilmember Monez	Mayor Bublak
Yes	Yes	Yes	Yes	Yes

6. FINAL READINGS

None

7. PUBLIC HEARINGS

- A. Introduction and first reading of an ordinance amending Turlock Municipal Code (TMC) Title 1, Chapter 6, Article 01, Minimum Insurance Requirements to simplify keeping minimum insurance requirements current and comporting to industry standards by adoption of future revisions through City County resolution in preference to ordinance amendments (*Loehr/Petrulakis*)

City Attorney Petrulakis introduced an ordinance amending the Turlock Municipal Code Title 1, Chapter 6, Article 01, Minimum Insurance Requirements. He explained the purpose of the amendment was to simplify keeping minimum insurance requirements current and comporting

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to industry insurance standards to ensure the City would be sufficiently protected against contractual risks.

Mayor Bublak opened the hearing for public comment and with no comments, closed the public comment portion of the hearing.

Action: Ordinance 13XX-cs: Introduction and first reading of an ordinance amending Turlock Municipal Code (TMC) Title 1, Chapter 6, Article 01, Minimum Insurance Requirements to simplify keeping minimum insurance requirements current and comporting to industry standards by adoption of future revisions through City County resolution in preference to ordinance amendments as introduced by Councilmember Monez, seconded by Vice Mayor Franco, and carried 5/0 by the following vote:

Councilmember Abram	Councilmember Bixel	Councilmember Franco	Councilmember Monez	Mayor Bublak
Yes	Yes	Yes	Yes	Yes

- B. Introduction and first reading of an ordinance amending Turlock Municipal Code (TMC) Title 2, Chapter 2-7, Section 08(e) and 08(e)(2), Bidding Requirements relating to the City Manager’s authority to approve and execute certain contracts, raising the signing authority amount from \$50,000 to \$100,000 (*Moreno*)

Director Moreno presented the staff report on the request to amend Turlock Municipal Code Title 2, Chapters 2-7, Section 08(e) and 08(e)(2) regarding Bidding Requirements related to the City Manager’s authority for approving and executing certain contracts and raising the signing authority. He explained the amendment would increase the City Manager’s dollar threshold to enter into budgeted contracts that do not exceed \$100,000 and that any contract exceeding that amount would be presented to the City Council for approval.

Director Moreno and City Manager Wilson responded to questions from the City Council.

Mayor Bublak opened the hearing for public comment and the following members of the public spoke:

Milt Trieweller
Ron Puffer
Ryan Taylor

With no further comment, Mayor Bublak closed the hearing.

Director Moreno responded to questions from the public.

Action: Ordinance 13XX-cs: Introduction and first reading of an ordinance amending Turlock Municipal Code (TMC) Title 2, Chapter 2-7, Section 08(e) and 08(e)(2), Bidding Requirements relating to the City Manager’s authority to approve and execute certain contracts, raising the signing authority amount from \$50,000 to \$100,000 as introduced by Vice Mayor Franco, seconded by Councilmember Abram, and carried 5/0 by the following vote:

Councilmember Abram	Councilmember Bixel	Councilmember Franco	Councilmember Monez	Mayor Bublak
Yes	Yes	Yes	Yes	Yes

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- C. ***The Public Hearing for this item was rescheduled to the May 9, 2023 City Council meeting.***
Introduction and first reading of an Ordinance repealing Turlock Municipal Code (TMC) Title 3, Chapter 3, Article 2, Section 203, Annual Deposit and Section 204, General Fund Reserve Account Purposes and amending Section 205, City Council Approval; Procedure regarding the City of Turlock General Fund Reserve Policy (*Moreno*)

Mayor Bublak opened the hearing for public comment and the following members of the public spoke:

Ron Bridegroom

With no further comment, Mayor Bublak closed the hearing.

8. ACTION ITEMS

- A. Authorizing the City Manager to enter into an agreement with Winton-Ireland Insurance Agency, Inc. for three years with two one-year extension options to provide Insurance Broker Services in a total amount not to exceed \$300,000 that will be funded and paid from Fund 510 “Workers Compensation Ins.” account 510-10-150.43060_000 “Contract Services General” and Fund 512 “Casualty Insurance” account 512-10-152.43060_000 “Contract Services General” (*Loehr*)

Risk Management Director Loehr provided a staff report regarding a request to enter into an agreement with Winton-Ireland Insurance Agency, Inc. for insurance broker services for property and casualty insurance. Director Loehr introduced Michael Ireland Jr. and Dwayne Adams from Winton-Ireland.

Mayor Bublak opened the item for public comment and with no comments, closed the public comment period.

Mr. Ireland briefly addressed the City Council.

Action: *Resolution 2023-094*: Authorizing the City Manager to enter into an agreement with Winton-Ireland Insurance Agency, Inc. for three years with two one-year extension options to provide Insurance Broker Services in a total amount not to exceed \$300,000 that will be funded and paid from Fund 510 “Workers Compensation Ins.” account 510-10-150.43060_000 “Contract Services General” and Fund 512 “Casualty Insurance” account 512-10-152.43060_000 “Contract Services General” as motioned by Councilmember Monez, seconded by Vice Mayor Franco, and carried 5/0 by the following vote:

Councilmember Abram	Councilmember Bixel	Councilmember Franco	Councilmember Monez	Mayor Bublak
Yes	Yes	Yes	Yes	Yes

- B. Approving a Service Provider Agreement with We Care, in a form approved by the City Attorney, to provide day use navigation center services for unsheltered homeless at 275 S. Broadway, for a six-month pilot program in an amount not to exceed \$178,220.00 with the cost to be paid for from Fund 625 RDA Successor Agency – Low and Moderate Housing” account 625-10-199.43060 “Contract Services General” (*Quintero*)

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Mayor Bublak announced there was a green sheet submitted for Action Item 8B.

Director Quintero provided a staff report on a request to approve a Service Provider Agreement with We Care Program-Turlock for a six-month pilot program for day use navigation center services at 275 Third Street. She discussed the proposed schedule the center would be open and services that would be offered.

Mayor Bublak opened the item for public comment and the following members of the public spoke:

Maris Sturtevant
Ron Bridegroom
Milt Trieweiler

With no further comment, Mayor Bublak closed public comment.

Director Quintero, Ms. Sturtevant and City Manager Wilson responded to questions from the City Council.

Action: Resolution 2023-095: Approving a Service Provider Agreement with We Care, in a form approved by the City Attorney, to provide day use navigation center services for unsheltered homeless at 275 S. Broadway, for a six-month pilot program in an amount not to exceed \$178,220.00 with the cost to be paid for from Fund 625 RDA Successor Agency – Low and Moderate Housing” account 625-10-199.43060 “Contract Services General” as motioned by Councilmember Monez, seconded by Vice Mayor Franco, and carried 4/1 by the following vote:

Councilmember Abram	Councilmember Bixel	Councilmember Franco	Councilmember Monez	Mayor Bublak
Yes	Yes	Yes	Yes	No

Mayor Bublak called a five (5) minute recess at 7:18 p.m. so staff could set up tables for the budget discussion.

Mayor Bublak called the meeting the back to order at 7:25 p.m.

- C. Engage in discussion and provide direction to staff regarding the proposed Fiscal Year 2023-2024 General Fund Budget (*Moreno*)

Director Moreno presented a PowerPoint Presentation on the proposed FY 2023-2024 General Fund Budget which included a brief overview of General Fund items including sales tax projections, balance and expenditures, unfunded accrued liability, Measure A revenues, expenditures and sales tax projections, and General Fund Reserves.

Director Moreno responded to questions from the City Council regarding the presentation.

Director Moreno and Principal Accountant Silva began the formal budget review process with the City Council and reviewed each of the General Fund accounts, discussed any augmentations, and responded to questions, comments and suggestions from the City Council throughout the review.

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Staff also responded to questions from the City Council regarding specific department augmentation requests.

Mayor Bublak opened the item for public comment and the following members of the public spoke:

Ryan Taylor

With no further comments, Mayor Bublak closed public comment and thanked Director Moreno for his presentation.

9. CITY MANAGER REPORTS/UPDATES

A. Monthly Department Reports (*Wilson*)

City Manager Wilson had nothing additional to report.

B. Proposed General Fund Reserve Policy (*Moreno*)

Finance Director Moreno provided a brief overview of the General Fund Reserve Policy that will be presented to City Council at the May 9, 2023 meeting.

10. COUNCIL ITEMS FOR FUTURE CONSIDERATION

Councilmember Abram would like to see the City Treasurer attend a few Council meetings throughout the year to report on investments and provide a presentation on the City's investment policy.

11. COUNCILMEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Councilmember Abram reported out on the League of California Cities City Leaders Summit she recently attended and expressed disappointment the City did not include renewing its membership with the League in the budget as she feels it is a valuable resource.

Vice Mayor Franco expressed excitement that all forty-nine road programs listed on the agenda were approved. She also reported out on the StanCOG trip to Washington D.C. and thanked Congressman Duarte and Townsend for their assistance. Lastly, Vice Mayor Franco spoke about May as Bike to Work Month and encouraged everyone to participate.

Councilmember Monez thanked Officer Ian Rodriguez for his assistance with a call for service for one of her constituents. She also asked City Manager Wilson about Stanislaus Regional Water Authority's (SRWA) opening date to which he responded that it is expected to open sometime in December. He also mentioned that the vehicles for the SRWA will be going before City Council in the next month or so.

Mayor Bublak announced the groundbreaking ceremony for Divert, Inc., the Arbor Day event, the LOVE Turlock event and the Sikh community event.

12. CLOSED SESSION

City Clerk Christel announced the closed session item.

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- A. Conference with Labor Negotiators - California Government Code §54957.6(a)
Agency Designated Representative: Deputy City Manager Sarah Eddy
Employee Organization: Turlock Management Association – Public Safety

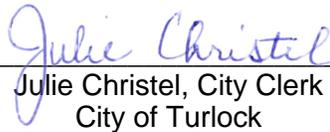
13. REPORTS FROM CLOSED SESSION

No reportable action.

14. ADJOURNMENT

Mayor Bublak adjourned the meeting at 9:28 p.m.

Respectfully submitted



Julie Christel, City Clerk
City of Turlock



Erik Schulze
PUBLIC WORKS DIRECTOR
ESchulze@turlock.ca.us

PUBLIC WORKS DEPARTMENT
ADMINISTRATION

156 S. BROADWAY, SUITE 150 | TURLOCK, CALIFORNIA 95380 | PHONE 209-668-5520 EXT 4601 | FAX 209-668-5563

Consent Item 5K

MEMORANDUM

TO: MAYOR AND COUNCILMEMBERS

DATE: APRIL 25, 2023

RE: CORRECTION/REVISION TO CONSENT ITEM 5K

Staff requests the City Council accept the attached revised documents related to Consent Item 5K, an agreement with The Market which relates to the Maker's Market event organizers implementing the Temporary Traffic Control Plan for the Maker's Market event.

On April 21, 2023, well after the event had gone through the ordinary approval processes and documents related to this item were submitted to the City Clerk for placement on the agenda for this City Council Meeting, the event organizers contacted City staff to request a change to their event time, and therefore, a change to the street closure times. Initially, the event was scheduled to take place from 12 PM – 4 PM with the street closure in effect from 10 AM – 5 PM on a weekly basis beginning May 7, 2023 through October 29, 2023. However, the event organizers concluded that hot weather anticipated during that timeframe and those months would have a negative impact on the event. They have requested a revision to the event and street closure times, now 10 AM – 2 PM and 8 AM – 3 PM, respectively, on the same weekly basis as outlined above.

The City takes the impact of special events to neighboring organizations and residents very seriously; therefore, the requested changes activate a second review by the Special Event Committee and a new public notification. The original event schedule was approved by the Special Event Committee and it received no negative feedback during the public notification process. Staff anticipate similar outcomes with the adjusted event schedule. As a result, staff are bringing this item forward, which, if approved, allows the Maker's Market event organizers to implement the Temporary Traffic Control Plan for the adjusted Maker's Market event. The revised times are outlined in the documents (staff report, resolution, and agreement) related to this item.

City Council Staff Report

April 25, 2023



From: Erik Schulze, Public Works Director

Prepared by: Amber Traini, Public Works, Recreation, Event Assistant

Agendized by: Regan M. Wilson, City Manager

1. ACTION RECOMMENDED:

Resolution: Approving an Agreement between the City of Turlock and “The Market” related to the implementation of the Temporary Traffic Control Plan as approved by the City of Turlock, at The Market’s assumption of liability and risk, for the Maker’s Market event, taking place on a weekly basis for twenty-six (26) weeks, on Sundays from ~~10:00 a.m. to 5:00 p.m.~~ 8:00 a.m. to 3:00 p.m., beginning May 7, 2023 through October 29, 2023 and authorizing the City Manager to approve, annually, an agreement between the City of Turlock and The Market to provide traffic control labor and equipment as approved by the City of Turlock, at The Market’s assumption of liability and risk, for future market seasons, to be reviewed annually by the special event committee, and to be revoked at City Staff’s discretion if it is determined that The Market is not maintaining the integrity of the agreement, or adhering to the Temporary Traffic Control Plan provided

2. SYNOPSIS:

Approving an agreement between the City of Turlock and The Market to implement traffic control and authorizing the City Manager to approve future annual agreements related to The Market providing traffic control labor and equipment and adhering to the Temporary Traffic Control Plan provided

3. DISCUSSION OF ISSUE:

On March 14, 2023 applicants Adrina Silveira and Stephanie Torres submitted a Special Event Permit Application with the Public Works Department, Recreation Division, for the Makers Market. This event is unique in that it is a recurring event to take place every Sunday for twenty-six (26) consecutive weeks, beginning May 7, 2023 through October 29, 2023. The event will take place from ~~12:00 p.m. to 4:00 p.m.~~ 10:00 a.m. to 2:00 p.m., however the street closure will be in effect from ~~10:00 a.m. to 5:00 p.m.~~ 8:00 a.m. to 3:00 p.m. to allow for vendor set-up/take-down.

~~Property owners directly affected by the closure have been notified of this event/closure request and were invited to participate in a public hearing process that was previously held. The City of Turlock Special Event Committee has reviewed and approved this application.~~

In line with the approval process associated with the special event permit, property owners directly affected by the closure were notified of this event/closure request when the request detailed a street closure from 10 AM – 5 PM and event hours from 12 PM – 4 PM and were invited to participate in a public hearing process that was previously held. This public hearing yielded no negative feedback from the public. The City of Turlock Special Event Committee had reviewed and approved that application. However, on April 21, the event organizers approached City staff requesting that every effort be made to move the event and street closure times earlier in the day, 10 AM – 2 PM and 8 AM – 3 PM, respectively. City staff have ensured that the event organizers fully understand that the event will be evaluated again by the Special Event Committee and that a new public hearing will take place. Because the event was approved by the special event permit process before, it is expected that it will be similarly approved again.

The ongoing nature of the closure and the weekly City staff costs associated with the street closure set-up are a challenge for The Market. To mitigate this challenge, staff is proposing to enter into an agreement with The Market, for them to provide the labor and equipment to implement the City approved Temporary Traffic Control Plan. This agreement also states that City personnel will review the completed closure each week at the applicant's expense. City staff has reviewed the agreement and process and it is believed to benefit both City staff and The Market. A similar annual agreement has been reached and deemed successful between the City of Turlock and the Turlock Certified Farmers Market. Due to the similar nature of the events, staff and event coordinators are seeking an arrangement for the same type of agreement. If, for any reason staff determine The Market is not maintaining the integrity of the agreement, or adhering to the Temporary Traffic Control Plan provided, this agreement may be revoked and the standard procedures outlined in the special event permit application will be followed, including City staff implementing the traffic control plan each week at the applicant's expense.

Upon The Market assuming liability for all traffic control related occurrences it was recommended a volunteer "Release, Waiver of Liability, and Assumption of Risk Agreement" is implemented for anyone who may assist in the execution of any Temporary Traffic Control Plan labor or transporting equipment. A "Release, Waiver of Liability, and Assumption of Risk Agreement" has been previously approved and will be implemented in this agreement for the 2023 Maker's Market season. This is a document which all The Market volunteers will sign acknowledging that he/she waive and release all claims and causes of action now or in the future that they may

have against The Market, or the City of Turlock, that are related directly or indirectly to their voluntary participation in the activity identified within the agreement.

4. BASIS FOR RECOMMENDATION:

- A. The Maker's Market event terms outlined in their special event application have been approved, but the costs associated with City staff implementing the Temporary Traffic Control Plan are too great for the event organizers. Representatives from the Market have requested that they use their own labor and equipment to comply with the Temporary Traffic Control Plan.
- B. Entering into an agreement with The Market is the mechanism for official accommodation of this exception to policy.
- C. Without an agreement in place allowing for this arrangement, the event will not take place.
- D. Council approval of this agreement is necessary because the request is deviating from the Council-adopted special event permit application.

5. FISCAL IMPACT / BUDGET AMENDMENT:

The event applicant is covering all costs associated with the event up to and including City staff time incurred as a result of the weekly review of The Market's adherence to the Temporary Traffic Control Plan.

6. STAFF RECOMMENDATION:

Recommend approval.

7. CITY MANAGER'S COMMENTS:

Recommend approval.

8. ENVIRONMENTAL DETERMINATION:

N/A

9. ALTERNATIVES:

- A. City Council could choose to deny approval of the agreement. Staff does not recommend this alternative because a similar agreement is in place with another vendor, and enables them to facilitate a positive community event in Turlock.

- B. City Council could choose to not authorize the City Manager to approve future similar agreements with The Market. Staff does not recommend this alternative because it is expected that this agreement will be successful and therefore, the process for approving future agreements with The Market will be streamlined.

10. ATTACHMENTS:

- A. Draft Resolution
- B. Agreement
 - 1. Exhibit A - Temporary Traffic Control Plan

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

RESOLUTION NO. 2023-XXX

APPROVING AN AGREEMENT BETWEEN THE CITY OF TURLOCK AND "THE MARKET" RELATED TO THE IMPLEMENTATION OF THE TEMPORARY TRAFFIC CONTROL PLAN AS APPROVED BY THE CITY OF TURLOCK, AT THE MARKET'S ASSUMPTION OF LIABILITY AND RISK, FOR THE MAKER'S MARKET EVENT, TAKING PLACE ON A WEEKLY BASIS FOR TWENTY-SIX (26) WEEKS, ON SUNDAYS FROM ~~10:00 A.M. TO 5:00 P.M.~~8:00 A.M. TO 3:00 P.M., BEGINNING MAY 7, 2023 THROUGH OCTOBER 29, 2023 AND AUTHORIZING THE CITY MANAGER TO APPROVE ANNUALLY, AN AGREEMENT BETWEEN THE CITY OF TURLOCK AND THE MARKET TO PROVIDE TRAFFIC CONTROL LABOR AND EQUIPMENT AS APPROVED BY THE CITY OF TURLOCK, AT THE MARKET'S ASSUMPTION OF LIABILITY AND RISK, FOR FUTURE MARKET SEASONS, AND TO BE REVOKED AT CITY STAFF'S DISCRETION IF IT IS DETERMINED THAT THE MARKET IS NOT MAINTAINING THE INTEGRITY OF THE AGREEMENT, OR ADHERING TO THE TEMPORARY TRAFFIC CONTROL PLAN PROVIDED

WHEREAS, the Public Works Department, Recreation Division received a Special Event Permit application for the Maker's Market, an event taking place on a weekly basis each Sunday for twenty-six (26) consecutive weeks, beginning May 7, 2023 through October 29, 2023; and

WHEREAS the nature of the event requires street closures that are in effect from ~~10:00 a.m. to 5:00 p.m.~~8:00 a.m. to 3:00 p.m. to allow for vendor set-up/take-down; and

~~WHEREAS, property owners directly affected by the closure have been notified of this event/closure request and were invited to participate in a public hearing process that received no negative feedback pertaining to this event; and~~

WHEREAS, approval by the Special Event Committee and reception of no negative feedback yielded by the public hearing was formerly produced for the same event when the event's timeframe was two (2) hours later each day; therefore, it is expected that the event, with the adjustment to their timeframe, will be approved by the Special Event Committee and that the public hearing will again receive no negative feedback from the affected property owners the City of Turlock Special Event Committee has reviewed and approved this application; and

WHEREAS, representatives from The Market have requested to furnish their own labor and equipment to adhere to the Temporary Traffic Control Plan rather than pay for City staff to implement the Temporary Traffic Control Plan, as is the norm; and

WHEREAS, The Market's adherence to the Temporary Traffic Control Plan will be inspected by City staff, at The Market's expense; and

WHEREAS, entering into an agreement with The Market is the mechanism for official accommodation of exception to policy; and

WHEREAS, Council approval of this agreement is necessary because the request is deviating from the Council-adopted special event permit application.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Turlock approves an Agreement between the City of Turlock and "The Market" related to the implementation of the Temporary Traffic Control Plan as approved by the City of Turlock, at The Market's assumption of liability and risk, for the Maker's Market event, taking place on a weekly basis for twenty-six (26) weeks, on Sundays from ~~10:00 a.m. to 5:00 p.m.~~ 8:00 a.m. to 3:00 p.m., beginning May 7, 2023 through October 29, 2023 and authorizing the City Manager to approve, annually, an agreement between the City of Turlock and The Market to provide traffic control labor and equipment as approved by the City of Turlock, at The Market's assumption of liability and risk, for future market seasons, to be reviewed annually by the special event committee, and to be revoked at City Staff's discretion if it is determined that The Market is not maintaining the integrity of the agreement, or adhering to the Temporary Traffic Control Plan provided.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Turlock this 25th day of April, 2023, by the following vote:

AYES:

NOES:

NOT PARTICIPATING:

ABSENT:

ATTEST:

Julie Christel, City Clerk
City of Turlock, County of Stanislaus,
State of California



AGREEMENT FOR SPECIAL SERVICES
between
THE CITY OF TURLOCK
and
THE MARKET
for
TEMPORARY TRAFFIC CONTROL IMPLEMENTATION

THIS AGREEMENT is made this 25th day of April, 2023, by and between the **CITY OF TURLOCK**, a municipal corporation of the State of California hereinafter referred to as "CITY" and **THE MARKET**, a for-profit community event organization, hereinafter referred to as "OPERATOR." CITY and OPERATOR may be collectively referred to herein as the "Parties" or individually as "Party." There are no other parties to this Agreement.

WITNESSETH:

WHEREAS, OPERATOR has submitted a Special Event Application to operate a weekly event on Main Street on Sundays from ~~12 PM to 4 PM~~ 10AM – 2 PM, May 7, 2023 through October 29, 2023; and

WHEREAS, in order to close Main Street for the event, the CITY requires the implementation of a Temporary Traffic Control Plan as designed by the City of Turlock for pedestrian safety; and

WHEREAS, OPERATOR has requested furnish labor and equipment to implement the Temporary Traffic Control Plan; and

WHEREAS, adherence to the Temporary Traffic Control Plan will be subject to CITY review, to be funded by OPERATOR.

NOW, THEREFORE, the Parties hereto mutually agree as follows:

1. SCOPE OF WORK: OPERATOR shall furnish all labor, equipment, materials and process, implements, tools, and machinery, except as otherwise specified, which are necessary and required to provide the Services described in Exhibit A ("Services") and shall perform such special services in accordance with the standards of the profession and the specifications described in Exhibit A. OPERATOR shall provide Services that are acceptable to CITY.

2. PERSONNEL AND EQUIPMENT: OPERATOR shall, at its sole cost and expense, provide all personnel needed to accomplish the Services hereunder. OPERATOR, shall additionally acquire, provide, maintain, and repair, at its sole cost and expense, such equipment, materials, and supplies as OPERATOR shall reasonably require to accomplish said Services at its sole cost and expense.

3. SAFETY REQUIREMENT: All Services and merchandise must comply with

{CW111735.2}

California State Division of Industrial Safety orders and O.S.H.A.

4. CONSIDERATION: The Services provided by OPERATOR, its agents, employees, volunteers, and/or subcontractors, are being provided for the benefit of OPERATOR, at OPERATOR's own expense, and assumption of liability and risk. In consideration for being allowed to perform such Services, the CITY will not charge any fees or costs otherwise attributable to such Services. However, if such Services are deemed unacceptable to CITY at any time, CITY shall have the right to prohibit OPERATOR from performing the Services and resume charging any and all applicable fees and costs. OPERATOR shall comply with any other requirements to conduct a special event, and shall pay any other associated fees not otherwise attributable to the Services.

5. TERM OF AGREEMENT: This Agreement shall become effective April 25, 2023 and end October 29, 2023, subject to the OPERATOR'S performance.

6. INSURANCE: OPERATOR shall not commence work under this Agreement until OPERATOR has obtained CITY's approval regarding all insurance requirements, forms, endorsements, amounts, and carrier ratings, nor shall OPERATOR allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor shall have been so obtained and approved. OPERATOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by OPERATOR, its agents, representatives, employees or subcontractors. Failure to maintain or renew coverage or to provide evidence of renewal may constitute a material breach of contract. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to CITY.

(a) **General Liability Insurance:** OPERATOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence, four million Dollars (\$4,000,000.00) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse and underground property damage hazards. OPERATOR's general liability policies shall be primary and not seeking contribution from the CITY's coverages, and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, contain standard separation of insured provision and state that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to the CITY. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required.

(b) **Workers' Compensation Insurance:** OPERATOR shall maintain Workers' Compensation Insurance as required by the State of California under the Labor Code and Employer's Liability Insurance in the amount of One Million Dollars (\$1,000,000.00) per accident, with a One Million Dollar (\$1,000,000.00) policy limit for bodily injury by disease, and a One Million Dollar (\$1,000,000.00) limit for each employee's bodily injury by disease. OPERATOR shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its officers, agents, employees, and volunteers.

(c) **Auto Insurance:** OPERATOR shall provide auto liability coverage

{CW111735.2}

for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than One Million Dollars (\$1,000,000.00) per accident. If OPERATOR owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

(d) Deductibles and Self-Insured Retentions: Upon request of CITY, any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to CITY, its elective and appointive boards, officers, agents, employees, and volunteers; or (2) OPERATOR shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(e) Other Insurance Provisions: The commercial general liability policy shall contain, or be endorsed to contain, the following provisions:

(1) In the event of cancellation, non-renewal, or material change that reduces or restricts the insurance coverage afforded to CITY under this Agreement, the insurer, broker/producer, or OPERATOR shall provide CITY with thirty (30) days' prior written notice of such cancellation, non-renewal, or material change.

(2) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(f) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII or with an insurer to which the CITY has provided prior approval.

(g) Verification of Coverage: OPERATOR shall furnish CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before Services commences. However, failure to obtain the required documents prior to the Services beginning shall not waive OPERATOR's obligation to provide them. CITY reserves the right, at any time, to require complete, certified copies of all required insurance policies and endorsements. Such Certificates shall be kept current for the Term of the Agreement.

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

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

{CW111735.2}

(j) Surety Bonds: OPERATOR shall provide a Performance Bond and a Payment Bond.

7. INDEMNIFICATION: OPERATOR shall indemnify, defend with counsel reasonably acceptable to the CITY, and hold harmless CITY and any and all of its elective and appointive boards, officers, officials, agents, employees or volunteers from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by OPERATOR, its officers, agents, employees, board members, volunteers, subcontractors, or by any individual or agency for which OPERATOR is legally liable, including, but not limited to, officers, agents, employees, volunteers, representatives, board members, or subcontractors of OPERATOR. This indemnification duty shall apply to OPERATOR, for any such liabilities or claims made by any individual, employee, volunteer, or subcontractor of OPERATOR.

8. INDEPENDENT CONTRACTOR RELATIONSHIP: All acts of OPERATOR, its agents, officers, and employees and all others acting on behalf of OPERATOR relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers, or employees of CITY. OPERATOR, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of CITY. OPERATOR has no authority or responsibility to exercise any rights or power vested in the CITY. No agent, officer, or employee of the CITY is to be considered an employee of OPERATOR. It is understood by both OPERATOR and CITY that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.

OPERATOR, its agents, officers and employees are and, at all times during the terms of this Agreement, shall represent and conduct themselves as independent contractors and not as employees of CITY.

OPERATOR shall determine the method, details and means of performing the work and services to be provided by OPERATOR under this Agreement. OPERATOR shall be responsible to CITY only for the requirements and results specified in this Agreement, and, except as expressly provided in this Agreement, shall not be subjected to CITY's control with respect to the physical action or activities of the OPERATOR in fulfillment of this Agreement. OPERATOR has control over the manner and means of performing the Services under this Agreement. OPERATOR is permitted to provide services to others during the same period service is provided to CITY under this Agreement. If necessary, OPERATOR has the responsibility for employing other persons or firms to assist OPERATOR in fulfilling the terms and obligations under this Agreement.

If in the performance of this Agreement any third persons are employed by OPERATOR, such persons shall be entirely and exclusively under the direction, supervision, and control of OPERATOR. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by the OPERATOR.

It is understood and agreed that as an independent contractor and not an employee of CITY neither the OPERATOR or OPERATOR's assigned personnel shall have any entitlement as a CITY employee, right to act on behalf of the CITY in any capacity whatsoever as an agent, or to bind the CITY to any obligation whatsoever.

{CW111735.2}

It is further understood and agreed that OPERATOR must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of OPERATOR'S personnel.

As an independent contractor, OPERATOR hereby indemnifies and holds CITY harmless from any and all claims that may be made against CITY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement. OPERATOR shall be liable for its acts and omissions, and those of its employees, contractors, subcontractors, representatives, volunteers, and its agents.

9. VOLUNTARY TERMINATION: CITY may terminate this Agreement at any time without cause or legal excuse, by providing written notice to OPERATOR.

10. CONFORMANCE WITH FEDERAL AND STATE LAW: All equipment, supplies and services used by OPERATOR in the performance of this Agreement shall conform to the laws of the government of the United States and the State of California.

11. NONDISCRIMINATION: In connection with the execution of this Agreement, OPERATOR shall not discriminate against any employee or applicant for employment because of age, race religion, color, sex, or national origin. OPERATOR shall take affirmative action to insure that applicants are employed, and the employees are treated during their employment, without regard to their age, race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, promotions, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. OPERATOR shall also comply with the requirement of Title VII of the Civil Rights Act of 1964 (P.L. 88-352) and with all applicable regulations, statutes, laws, etc., promulgated pursuant to the civil rights acts of the government of the United States and the State of California now in existence or hereafter enacted. Further, OPERATOR shall comply with the provisions of Section 1735 of the California Labor Code.

12. WAIVER & RELEASE OF LIABILITY: In consideration for waiver of fees and costs otherwise payable to CITY for traffic staging and implementation, OPERATOR agrees to use employees, volunteers, subcontractors, and individuals to perform the Services. OPERATOR further agrees to sign a waiver and release of liability against the CITY, and to require such employees, volunteers, subcontractors, and individuals to sign a waiver and release of liability against the CITY, in a form acceptable to CITY and in substantial conformity to the waiver attached hereto as Exhibit B.

13. ENTIRE AGREEMENT AND MODIFICATION: This Agreement, together with its specific references, attachments and exhibits, supersedes all previous agreements negotiations, understandings with respect hereto, whether oral or written, and constitutes the entire understanding of the Parties hereto. OPERATOR shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. OPERATOR specifically acknowledges that in entering into and executing this Agreement, OPERATOR relies solely upon the provisions contained in this Agreement and no others. Should any conflict exist between the terms and conditions of the Agreement and any and all exhibits attached hereto, the terms and conditions of the Agreement shall prevail.

14. OBLIGATIONS OF OPERATOR: Throughout the term of this Agreement, OPERATOR shall possess, or secure all licenses, permits, qualifications and approvals legally required to conduct business. OPERATOR warrants that it has all of the necessary professional capabilities and experience, as well as all tools, instrumentalities, facilities and other resources {CW111735.2}

necessary to provide the CITY with the services contemplated by this Agreement. OPERATOR further represents that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

15. INTEREST OF OPERATOR: OPERATOR warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Agreement. OPERATOR warrants that, in performance of this Agreement, OPERATOR shall not employ any person having any such interest. OPERATOR agrees to file a Statement of Economic Interests with the City Clerk at the start and end of this Agreement if so required at the option of CITY.

16. AMENDMENTS: Both Parties to this Agreement understand that it may become desirable or necessary during the execution of this Agreement, for CITY or OPERATOR to modify the scope of Services provided for under this Agreement. Any material extension or change in the scope of Services shall be discussed with CITY and the change and cost shall be memorialized in a written amendment to this Agreement prior to the performance of the additional services.

Until a written amendment is so executed, CITY will not be responsible for paying any additional compensation to OPERATOR for performing any additional services not included in the scope of Services, and OPERATOR shall not be required to perform any such additional services.

17. CERTIFIED PAYROLL REQUIREMENT: For OPERATORS performing field work on public works contracts on which prevailing wages are required, OPERATOR shall comply with the provisions under the California Labor Code including, but not limited to, Section 1776 regarding payroll records, and shall require its suboperators and subcontractors to comply with that section as may be required by law.

18. PARTIAL INVALIDITY: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

19. WAIVER: The waiver by any Party to this Agreement of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

20. AUDIT: CITY's duly authorized representative shall have access at all reasonable times to all reports, records, documents, files, and personnel necessary to audit and verify OPERATOR's performance of Services and charges to CITY under this Agreement. Such records shall be turned over to CITY upon request.

OPERATOR agrees to maintain and retain reports, records, documents, and files related to OPERATOR's performance of Services and charges under this Agreement for a period of four (4) years following the date of final payment for OPERATOR services. CITY's representative shall have the right to reproduce any of the aforesaid documents.

21. GOVERNING LAW/VENUE: This Agreement shall be governed according to the laws of the State of California. Venue for all legal proceedings shall be in the Superior Court of California for the County of Stanislaus.

22. HEADINGS NOT CONTROLLING: Headings used in the Agreement are for {CW111735.2}

reference purposes only and shall not be considered in construing this Agreement.

23. COMPLIANCE WITH LAWS: OPERATOR shall insure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and county safety and health regulations and laws including, but not limited to prevailing wage laws, if applicable. OPERATOR shall fully comply with all applicable federal, state, and local laws, ordinances, regulations and permits.

24. CITY BUSINESS LICENSE: OPERATOR will have a City of Turlock business license.

25. ASSIGNMENT: This Agreement is binding upon CITY and OPERATOR and their successors. Except as otherwise provided herein, neither CITY nor OPERATOR shall assign, sublet, or transfer interest in this Agreement or any part thereof without the prior written consent of the other.

26. EXCLUSIVE USE: Services provided within the scope of this Agreement are for the exclusive use of CITY and OPERATOR agrees that, until final approval by CITY, all data, plans, specifications, reports, and other documents will not be released to third parties by OPERATOR without the prior written consent of CITY.

27. NOTICE: Any and all notices permitted or required to be given hereunder shall be in writing and deemed duly given and effective (1) upon actual delivery, if delivery is by hand; or (2) five (5) days after delivery into the United States mail, if delivery is by postage paid, registered, or certified (return receipt requested) mail. Each such notice shall be sent to the Parties at the address respectively indicated below or to any other address as the respective parties may designate from time to time by providing written notice to the other Party:

**for OPERATOR: THE MARKET
 19559 SANFORD DR
 HILMAR, CALIFORNIA 95324
 PHONE: (209) 216-7356**

**for CITY: CITY OF TURLOCK
 ATTN: ERIK SCHULZE, PUBLIC WORKS DIRECTOR
 PUBLIC WORKS DEPARTMENT
 156 SOUTH BROADWAY, STE 150
 TURLOCK, CALIFORNIA 95380-5456
 PHONE: (209) 668-5594**

28. CITY CONTRACT ADMINISTRATOR: The City's contract administrator and contact person for this Agreement is:

Erik Schulze
Public Works Department
156 South Broadway, Ste 150
Turlock, California 95380-5456
Telephone: (209) 668-5594
E-mail: eschulze@turlock.ca.us

29. DRAFTING AND AMBIGUITIES: Each Party acknowledges that it has reviewed {CW111735.2}

this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by and through their respective officers thereunto duly authorized.

CITY OF TURLOCK, a municipal corporation

THE MARKET

By: _____
Reagan M. Wilson, City Manager

By: _____

Date: _____

Title: _____

APPROVED AS TO SUFFICIENCY:

Print name: _____

By: _____
Erik Schulze, Public Works Director

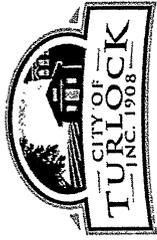
Date: _____

APPROVED AS TO FORM:

By: _____
George A. Petrulakis, City Attorney

ATTEST:

By: _____
Julie Christel, City Clerk



Project: Makers Market
 Location: W. Main St., Turlock, CA
 Client:
 Author: Wayne York
 Date: 3/16/2023
 Page #: 1 of 1

Notes: This Temporary Traffic Control Plan (TTCP) has been designed in substantial conformance with the current version of the California Manual on Uniform Traffic Control Devices (CA MUTCD). This TTCP shall not be valid until after it has been reviewed, signed and stamped by the Turlock City Engineer. All traffic control devices in place during periods of darkness shall be retroreflective or illuminated, as appropriate, as required by the CA MUTCD.

Legend

Event Closure Area Type II Barricade

Manifest

- 16 x Type II Barricade
- 4 x SPECIAL EVENT AHEAD (SC5)
- 2 x NO LEFT TURN (R3-2)
- 2 x NO RIGHT TURN (R3-1)
- 2 x ROAD CLOSED (R11-2)
- 2 x ROAD CLOSED AHEAD (W20-3)



Exhibit A

**STAMP/SIGNATURE OF
 CITY OF TURLOCK CITY ENGINEER**



KATIE QUINTERO
DEVELOPMENT SERVICES DIRECTOR
kquintero@turlock.ca.us

8B
DEVELOPMENT SERVICES

156 S. BROADWAY, SUITE 120 | TURLOCK, CALIFORNIA 95380 | PHONE 209-668-5542 EXT. 2215 | TDD 1-800-735-2929

MEMORANDUM

TO: Honorable Mayor and Councilmembers
FROM: Katie Quintero
DATE: April 25, 2023
RE: **AMENDMENTS TO ACTION ITEM 8B**

Staff respectfully submits the attached green sheet amendments to Action Item 8B. The proposed amendments are summarized below:

- Update the documents to add the legal name of the organization, We Care Program-Turlock and the correct address of the building.
- Add language to clarify the center will be available to people 18 and over and pets will not be allowed.
- Update the contract to correct the written-out compensation amount, to delete the restriction for no subcontracting of work, to delete the section pertaining to ownership of work product and to add a 90-day termination notice

City Council Staff Report

April 25, 2023



From: Katie Quintero, Development Services Director
Prepared by: Katie Quintero, Development Services Director
Agendized by: Reagan M. Wilson, City Manager

1. ACTION RECOMMENDED:

Resolution: Approval of a Service Provider Agreement with We Care Program-Turlock ("We Care") to provide day use navigation center services for unsheltered homeless at 275 S. BroadwayThird Street, for a six-month pilot program in an amount not to exceed \$178,220 with the cost to be paid for from Fund 625 "Successor Agency-Low and Moderate Housing" account 625-10-199.43060 "Contract Services General".

2. **SYNOPSIS:** Council consideration of a Service Provider Agreement between the City of Turlock and We Care to operate a day use navigation center for unsheltered homeless in the existing building at 275 S. BroadwayThird Street for six (6) months as a pilot program.

3. DISCUSSION OF ISSUE:

The emergency shelters currently operated within the City of Turlock are primarily open during the evening and night hours leaving some unsheltered homeless individuals with no place to go during the day. The City reached out to We Care and United Samaritans to determine if there was potential for We Care to operate a day use navigation center in the existing United Samaritans building at 275 Third Street S. Broadway as part of a six-month pilot program. Both agencies are willing to pursue the day use navigation center concept resulting in the item before Council for consideration.

Under the proposed agreement the day center would operate Monday through Friday from 7:30 a.m. to 3:00 p.m. We Care will lease the building from United Samaritans and will operate the day center. The day center will be open to anyone seeking shelter during the day time hours. Supportive case management services, housing navigation services and rapid rehousing services will also be offered at the day center. We Care will have on-site security. We Care also provides street outreach services which can help let people know the day center is available.

We Care has prepared a proposed budget for the start-up and operational costs for the six-month pilot program. We Care has projected the total cost not to exceed \$178,220.

We Care will maintain data on the clients served at the navigation center so Council can evaluate the pilot program. The center is proposed to be open seven and a half hours a day five days a week initially to eliminate the need for over time or additional staffing. Operationally the center needs to close at 3:00 p.m. because a portion of the building is being used as a temporary dining hall for We Care while their dining hall is under construction. Expansion of hours and weekend operation will be studied during the pilot program but would require the dining hall construction to be completed and an amendment to the proposed budget.

4. BASIS FOR RECOMMENDATION:

A. There are currently unsheltered individuals who do not have a place they can be during the day. The day use navigation center will provide a safe place for people during the day as well as case management and rapid rehousing services. The operation of the day navigation center should also help alleviate some of the impacts to local businesses and parks by providing a safe place people can go during the day.

5. FISCAL IMPACT / BUDGET AMENDMENT:

The \$178,220 will be paid out of Fund 625, "Successor Agency -Low and Moderate Housing" account 625-10-199.43060 "Contract Services General". Up to \$250,000 of successor agency funds may be spent annually per fiscal year on homeless prevention and rapid rehousing services These funds have been appropriated through a budget transfer.

Because this is a new program for We Care the contract includes a deposit amount of \$20,900 to cover capital expenses that would need to be made prior to being able to open the center. Items such as tables, chairs, computers and printers would need to be purchased. The contract proposes to pay We Care for their projected expenses at the beginning of the month. We Care will provide records of actual expenses monthly for the City to reconcile the paid amount with the actual expenses. The final months payment will be adjusted if there was any overpayment in the previous months.

6. STAFF RECOMMENDATION:

Recommends Approval.

7. CITY MANAGER'S COMMENTS:

Recommends Approval

8. ENVIRONMENTAL DETERMINATION:

N/A

9. ALTERNATIVES:

City Council could choose to not approve the proposed agreement with We Care.

10. ATTACHMENTS:

- A. Resolution
- B. Agreement

NOES:
NOT PARTICIPATING:
ABSENT:

ATTEST:

Julie Christel, City Clerk,
City of Turlock, County of Stanislaus,
State of California



**SERVICE PROVIDER AGREEMENT BETWEEN THE CITY OF TURLOCK
and WE CARE
for
Day Use Navigation Center Services**

City Contract No. 2023-108

THIS SERVICE AGREEMENT (the “Agreement”) is entered into by and between the CITY OF TURLOCK, a California municipal corporation (“City”), and We Care Program-Turlock (“We Care”), a California nonprofit public benefit corporation (“Service Provider”), on this 24th day of April 2023 (the “Effective Date”). City and Service Provider may be collectively referred to herein as the “Parties” or individually as “Party.” There are no other parties to this Agreement.

RECITALS

A. City seeks to hire an independent contractor to perform Service Provider services to assist City with the operation of a day use navigation center (the “Project”).

B. Service Provider has made a proposal to City to provide such Service Provider services. A description of the services Service Provider proposes to provide is included in the Scope of Services in **Exhibit A** attached hereto and incorporated herein by reference (“Services”). City desires to retain Service Provider to perform the Services, subject to the terms and conditions set forth in this Agreement.

C. The Parties have outlined the schedule or timeline for providing the Services (“Completion Schedule”), which shall be included in the Scope of Services in **Exhibit A**.

D. The Parties have outlined the rates and method of payment to Service Provider for its performance of the Services under this Agreement (“Compensation Schedule”), which shall be included in the Scope of Services in **Exhibit A**.

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

AGREEMENT

1. **Recitals.** The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Section 1 through 52 of this Agreement, Sections 1 through 52 shall prevail

2. **Term.** The term of this Agreement shall be one (1) year(s) and will commence on the Effective Date and terminate on the 24th day of April, 2024 (“Term”) unless the Parties mutually agree in writing to terminate the Agreement earlier or extend the Term pursuant to this Agreement.

3. **Extension of Agreement.** *{Intentionally Omitted}*.

4. **Effective Date.** This Agreement shall only become effective once all of the Parties have executed the Agreement (the “Effective Date”).

5. **Work.**

5.1. **Services.** Subject to the terms and conditions set forth in this Agreement, Service Provider shall provide City the Services described in **Exhibit A**. Any request for Services not included in **Exhibit A** will be considered a request for additional or modified Services (“Modification” or “Modifications”). Service Provider shall not receive additional compensation for any Modification of the Services unless the Parties agree otherwise in a writing executed by both Parties.

5.2. **City Requested Modification of Services.** City may, by written order, authorize Modifications to the Services described in **Exhibit A**. If such Modifications cause an increase in the cost or time required for performance of Service Provider’s Services, the Parties shall enter into a written amendment to this Agreement to adjust the Services and the compensation to be paid to Service Provider and, if necessary, amend the Completion Schedule or Compensation Schedule. The Services, Completion Schedule, or Compensation Schedule shall not be revised unless City and Service Provider mutually agree to a written amendment to this Agreement reflecting such revisions, additional compensation, time for performance or such other terms or conditions mutually agreed upon by the Parties.

5.3. **Service Provider Requested Modification in Services.** Service Provider shall not be compensated for work outside the Services described in this Agreement, unless, prior to the commencement of the Services:

(a) Service Provider provides City with written notice that specific work requested by City or required to complete the Project is outside the agreed upon Services. Such notice shall: (1) be supported by substantial evidence that the work is outside the Services; (2) set forth the Service Provider’s proposed course of action for completing the work and a specific request for City to approve the Modification to the Services; (3) set forth the Service Provider’s proposed revisions, if any, to the Completion Schedule; and (4) set forth the Service Provider’s proposed revisions, if any, to the Compensation Schedule; and

(b) City agrees that the work requires a Modification;

(c) City approves all adjustments, if any, to the Completion Schedule and Compensation Schedule.

6. Compensation.

6.1. **Amount, Time and Manner of Payment for Service Provider Services.** City shall pay Service Provider according to the rates and timing set forth in the Compensation Schedule. City's total compensation to Service Provider shall not exceed One hundred seventy-eight thousand and two hundred and twenty and No/100ths Dollars (\$178,220) ("Maximum Payment"), unless the Parties mutually agree in writing otherwise.

6.2. **Deposit.** City shall pay Service Provider an initial deposit in the amount of twenty thousand nine-hundred Dollars (\$20,900.00) within five (5) business days of the Effective Date of this Agreement ("Deposit").

6.3. **Subsequent Payments.** City shall make monthly payments in the amount invoiced by Service Provider within thirty (30) calendar days of receiving such invoice. In the event that an amount of an invoice is in dispute, City shall inform Service Provider of the amount and basis for the dispute and may withhold the amount which is in dispute until the dispute has been resolved.

6.4. **Invoices.** Service Provider shall provide City with monthly invoices for payments due in accordance with the compensation schedule for the upcoming month. All invoices furnished to City by Service Provider shall be in a form approved by City. The payments specified shall be the only payments made to Service Provider for performance of the Services, including compensation for any Modification. City shall issue payment according to City's customary procedures and practices for issuing payments to independent contractors.

7. **Notice to Proceed.** Service Provider shall not commence the performance of the Services until it has been given notice by City ("Notice to Proceed").

8. **Time of Performance.** Service Provider warrants that it will commence performance of the Services on June 1, 2023 or as soon as is administratively feasible and shall conform to the Completion Schedule. The time of performance is a material term of this Agreement relied on by City in entering into this Agreement.

9. **City Assistance to Service Provider.** *{Intentionally Omitted}*

10. **Time and Personnel Devoted to Services.** Service Provider shall devote such time and personnel to the performance of this Agreement, as is necessary to perform the Services in compliance with the Completion Schedule, Compensation Schedule, and this Agreement.

11. **Performance by Qualified Personnel; ~~No Subcontracting~~.** Services under this Agreement shall be performed only by competent personnel under the supervision and direct

~~employment of Service Provider or those subcontracted by Service Provider. Service Provider will conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Service Provider. Service Provider is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is expressly approved by City in writing. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void.~~

12. Representations of Service Provider. City relies upon the following representations by Service Provider in entering into this Agreement:

12.1. Qualifications. Service Provider represents that it is qualified to perform the Services provided in **Exhibit A** and that it possesses the necessary licenses and permits required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are required. Service Provider shall also ensure that all subcontractors are similarly licensed and qualified. Service Provider and all subcontractors shall also obtain a business license from City before they commence performance of the Services. Service Provider represents and warrants to City that Service Provider shall, at Service Provider's sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and approvals which are legally required for Service Provider to practice Service Provider's profession at the time the Services are rendered.

12.2. Service Provider Performance. Service Provider represents that all Services under this Agreement shall be performed in a professional manner and shall conform to the customs and standards of practice observed on similar, successfully completed projects by providers of the Services to be provided. Service Provider shall adhere to accepted Service Provider standards as set forth by relevant Service Provider associations and shall perform all Services required under this Agreement in a manner consistent with generally accepted Service Provider customs, procedures and standards for such Services. Service Provider agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Service Provider shall re-perform or replace unsatisfactory Service at no additional expense to City.

12.3. No Waiver of Claims. The granting of any progress payment by City, or the receipt thereof by Service Provider, or any inspection, review, approval or oral statement by any representative of City, or state certification shall not, in any way, waive, limit, or replace any certification or approval procedures normally required or lessen the liability of Service Provider to re-perform or replace unsatisfactory Service, including, but not limited to, cases where the unsatisfactory character of such Service may not have been apparent or detected at the time of such payment, inspection, review or approval.

12.4. City's Remedies are Cumulative. Nothing in this Section shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which City or Service Provider may have under this Agreement or any applicable law. All rights and remedies of City, whether under this Agreement or applicable law, shall be cumulative.

12.5. No Conflict of Interest. Service Provider represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement.

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

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

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

14. Confidentiality. Service Provider understands and agrees that, in the performance of Services under this Agreement or in the contemplation thereof, Service Provider may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City ("Confidential Information").

Service Provider shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Service Provider written authorization to make any such disclosure, Service Provider shall do so only within the limits and to the extent of that authorization. Service Provider may be directed or advised by the City Attorney on various matters relating to the performance of the Services on the Project or on other matters pertaining to the Project and, in such event, Service Provider agrees that it will treat all communications between itself, its employees and its subcontractors as being communications which are within the attorney-client privilege.

Notwithstanding the foregoing, Service Provider may disclose Confidential Information required to be disclosed under law, provided that, prior to disclosure, Service Provider shall first give notice to City and make a reasonable effort to obtain a protective order requiring that City's Confidential Information not be disclosed. This exception is limited to the extent disclosure is required under law.

15. Excusable Delays; Notice to Other Party of Delay. Service Provider shall not be in breach of this Agreement in the event that performance of Services is temporarily interrupted or discontinued due to a "Force Majeure" event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Service Provider. Force Majeure does not include: (a) Service Provider's financial inability to perform; (b) Service Provider's failure to obtain any necessary permits or licenses from other governmental agencies; or (c) Service Provider's failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Service Provider.

16. Assignment Prohibited. No Party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

17. Suspension of Services by City. City reserves the right to suspend Service Provider's Services under this Agreement when City determines that it is necessary to do so. When possible, City shall give Service Provider notice of such suspension and Service Provider shall, upon receipt of said notice, suspend all Services except any Services, the completion of which is authorized by the notice given by City. If the Services are suspended by City for more than sixty (60) consecutive days, for reasons other than the fault of the Service Provider, the Service Provider shall be compensated for Services performed prior to notice of such suspension. When the Project is resumed, the Service Provider's compensation shall be equitably adjusted by City to provide for expenses incurred by the interruption of the Services. In this regard, Service Provider shall furnish to City such financial information that, in the judgment of the City Manager, is necessary to determine the reasonable value of the Services rendered by Service Provider during the period when Services were suspended.

If the Parties are unable to agree upon the amount of extra compensation which is due to Service Provider within thirty (30) days of Service Provider resuming Services, the amount of such additional compensation, if any, that is required to appropriately compensate the Service Provider for its expenses incurred by the interruption of Services may, upon the request of either Party, be determined by arbitration conducted in accordance with the "Arbitration of Disputes" section of this Agreement. Such arbitration shall be commenced by the Service Provider no later than sixty (60) calendar days following the event which entitles the Parties to pursue arbitration unless the Parties agree in writing to an extended time period for commencement of arbitration. Unless otherwise agreed in writing, all Parties shall carry on the Services and perform their duties during any arbitration proceedings, and City shall continue to make payments for the Services in progress as required by this Agreement.

18. Ownership of Work Product. ~~*Intentionally Omitted* Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes, Service Provider or technical information or data, photographs, notes, letters, emails or any original works of authorship created by Service Provider or its subcontractors or subcontractors in connection with Services performed under this Agreement (“Products”) shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of City. In the event it is ever determined that any Product created by Service Provider or its subcontractors, or subcontractors under this Agreement, are not works for hire under U.S. law, Service Provider hereby assigns all copyrights to such Products to City. With the prior written approval of City's point of contact for the Project, Service Provider may retain and use copies of such Products for reference and as documentation of its experience and capabilities.~~

~~All Products shall become the property of City irrespective of where located or stored, and Service Provider agrees to deliver all such documents and information to City, without charge and in whatever form it exists, on the completion of the Service Provider's Services hereunder. Service Provider shall have no ownership interest in such Products.~~

~~All work product of Service Provider under this Agreement, including written information which City will cause to be distributed for either internal or public circulation, including both preliminary and final drafts, shall be delivered to City in both printed and electronic form, or as may be specified in **Exhibit A**.~~

~~When this Agreement is terminated, Service Provider agrees to return to City all documents, drawings, photographs and other written or graphic material, however produced, that it received from City, its contractors or agents, in connection with the performance of its Services under this Agreement. All materials shall be returned in the same condition as received.~~

19. Termination of Work by City for Its Convenience. City shall have the right to terminate this Agreement at any time for its convenience by giving a 90 day notice of such termination to Service Provider. In the event City shall give such notice of termination, Service Provider shall cease rendering Services upon receipt of said notice given as required in this Agreement. If City terminates this Agreement:

(a) Service Provider shall deliver copies of all Products prepared by it pursuant to this Agreement.

(b) If City terminates this Agreement for convenience before City issues the Notice to Proceed to Service Provider or before Service Provider commences any Services hereunder, whichever last occurs, City shall not be obligated to make any payment to Service Provider. If City terminates this Agreement after City has issued the Notice to Proceed to Service Provider and after Service Provider has commenced performance under this Agreement, City shall pay Service Provider the reasonable value of the Services rendered by Service Provider pursuant to this Agreement prior to termination of this Agreement. City shall not in any manner be liable for Service Provider's actual or projected lost profits had Service Provider completed the Services. Service Provider shall furnish to City such financial information that, in the judgment of the City

Manager, is necessary to determine the reasonable value of the Services rendered by Service Provider prior to termination. In the event of a dispute as to the reasonable value of the Services rendered by Service Provider prior to termination and the Parties are unable to agree upon said amount within sixty (60) calendar days following the date of the notice of termination by City, such dispute may, upon the request of either Party, be resolved by arbitration conducted in accordance with the "Arbitration of Disputes" section of this Agreement.

(c) Except as provided in this Agreement, in no event shall City be liable for costs incurred by or on behalf of Service Provider after the date of the notice of termination.

20. Assurance of Performance. If, at any time, City believes Service Provider may not be adequately performing its obligations under this Agreement or may fail to complete the Services as required by this Agreement, City may submit a written request to Service Provider for written assurances of performance and a plan to correct observed deficiencies in Service Provider's performance. Failure to provide written assurances subsequent to such written request, constitutes grounds to declare a breach under this Agreement.

21. Cancellation for Breach by Either Party. Should either Party fail to substantially perform its obligations in accordance with the provisions of this Agreement, the other Party shall thereupon have the right to cancel the Agreement by giving written notice and specifying the effective date of such cancellation. If City cancels this Agreement for breach and it is subsequently determined that Service Provider did not fail to substantially perform its obligations in accordance with this Agreement, then cancellation for breach by City shall be deemed, and treated, as termination for convenience.

Neither Party waives the right to recover damages against the other for breach of this Agreement, including any amount necessary to compensate City for all detriment proximately caused by Service Provider's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. City reserves the right to offset such damages against any payments owed to Service Provider.

City shall not in any manner be liable for Service Provider's actual or projected lost profits had Service Provider completed the Services required by this Agreement.

22. Non-Discrimination. In its performance of the Services, Service Provider shall adhere to City's EEO Policy which states, "The City is committed to ensuring that all qualified individuals have a full and fair opportunity to compete in all phase of the hiring process and promotion, and to enjoy the benefits of employment with the City. All employees and applicants shall receive equal consideration and treatment in employment without regard to race, color, religion, gender, sexual orientation, national origin, age, disability, genetic information, marital status, amnesty, or status as a covered veteran in accordance with applicable federal or state statutes, the City's ordinances, resolutions, rules or regulations."

In addition, all agreements with sub-contractors will include language as required by the Office of Federal Contract Compliance Programs (OFCCP) that requires sub-contractors to maintain equal employment opportunity policies, and, as necessary, affirmative action policies.

23. Arbitration of Disputes. All claims, disputes, and other matters in question between City and Service Provider arising out of or relating to this Agreement or the breach thereof, including claims of Service Provider for extra compensation for Services related to the Project, shall be decided by arbitration before a single arbitrator in accordance with the provisions of Sections 1281 to 1284.2 of the California Code of Civil Procedure (the "Arbitration Laws") unless the Parties mutually agree otherwise. The provisions of Section 1283.05 of the Arbitration Laws apply to any arbitration proceeding except as otherwise provided in this Agreement. The arbitrator shall have authority to decide all issues between the Parties including, but not limited to, claims for extras, delay and liquidated damages, if any, provided for in this Agreement, matters involving defects in the work product of the Service Provider, rights to payment, and whether the necessary procedures for arbitration have been followed. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

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

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

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

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

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

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

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

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

24. Insurance Coverage. During the Term, the Service Provider shall maintain in full force and effect policies of insurance set forth herein, which shall be placed with insurers with a current A M Best's rating of no less than A VII and will provide City with written proof of said insurance. Service Provider shall maintain coverage as follows:

24.1 General Liability. Service Provider shall carry general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or another form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate shall be Four Million Dollars (\$4,000,000.00).

24.2 Workers' Compensation Insurance and Employer's Liability. Service Provider shall carry workers' compensation insurance as required by the State of California under the Labor Code. Service Provider shall also carry employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) per accident, with a One Million Dollars (\$1,000,000.00) policy limit for bodily injury by disease, and a One Million Dollars (\$1,000,000.00) limit for each employee's bodily injury by disease.

24.3 Errors and Omissions Liability. If Service Provider utilizes any personal or consultants that require professional licenses, Service Provider shall carry errors and omissions liability insurance in the amount of no less than Two Million Dollars (\$2,000,000.00) per claim. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to City, its elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents"); or the Service Provider shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claims administration and defense expenses.

24.4 Commercial Automobile Liability. Service Provider shall carry commercial automobile liability insurance in the amount of Two Million Dollars (\$2,000,000.00) or greater per occurrence for owned, leased, hired, and borrowed automobiles.

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

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

25. Additional Insurance Requirements. Within five (5) days of the Effective Date, Service Provider shall provide City with certificates of insurance for all of the policies required under this Agreement ("Certificates"), excluding the required workers' compensation insurance. Such Certificates shall be kept current for the Term of the Agreement and Service Provider shall be responsible for providing updated copies and notifying City if a policy is cancelled, suspended, reduced, or voided. With the exception of the workers' compensation insurance, all of the insurance policies required in this Agreement shall: (a) provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days' prior written notice to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; (b) name City, and City's Agents as additional insureds with respect to liability arising out of Services, work or operations performed by or on behalf of Service Provider; (c) cover products and completed operations of Service Provider, premises owned, occupied, or used by the Service Provider, or automobiles owned, leased, or hired or borrowed by the Service Provider; contain no special limitations on the scope of protection afforded to City; (d) be primary with respect to any insurance or self-insurance programs covering City or City's Agents and any insurance or self-insurance maintained by City or City's Agents shall be in excess of Service Provider's insurance and shall not contribute to it; (e) contain standard separation of insured provisions; and (f) state that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to City.

26. Indemnifications.

26.1 Indemnification for Professional Liability. When the law establishes a professional standard of care for any portion of the Services provided under this Agreement, to the fullest extent permitted by law. Service Provider shall defend with legal counsel reasonably acceptable to City, indemnify and hold harmless City and City's Agents from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Service Provider or its subcontractors), expense and liability of every kind, nature and description that arise out of, pertain to, or relate to acts or omissions of Service Provider, or any direct or indirect subcontractor, employee, contractor, representative or agent of Service Provider, or anyone that Service Provider controls (collectively "Liabilities"). Such obligations to defend, hold harmless, and indemnify City and City's Agents shall not apply to the extent that such Liabilities are caused in whole by the sole negligence, active negligence, or willful misconduct of City or City's Agents, but shall apply to all other Liabilities. With respect to third party claims against the Service Provider, the Service Provider waives any and all rights of any type of express or implied indemnity against City and City's Agents.

26.2 Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Service Provider shall indemnify, defend, and hold harmless City and any and all of its elective and appointive boards, officers, officials, agents, employees or volunteers from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Service Provider or by any individual or agency for which Service Provider is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of Service Provider.

27. Liability of City. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

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

29. Service Provider Not Agent. Except as City may specify in writing, Service Provider shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Service Provider shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

30. Payment of Taxes and Other Expenses. Payment of any taxes, including California sales and use taxes, levied upon this Agreement, the transaction, or the Services or goods delivered pursuant hereto, shall be the obligation of Service Provider.

31. Notices. All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below.

If to City:

**City of Turlock
Attn: Katie Quintero**

156 S. Broadway, Suite 120
Turlock, California 95380-5461

With courtesy copies to:

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

If to Service Provider:

Attn: _____

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

Katie Quintero
Development Services Director
156 S. Broadway, Suite 120
Turlock, California 95380-5456
Telephone: (209) 668-5640
E-mail: kquintero@turlock.ca.us

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

34. Use of City Project Number. *{Intentionally Omitted}*.

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

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

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

38. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on

behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by state or federal law in order to enter into the Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

39. Drafting and Ambiguities. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting Party does not apply in interpreting this Agreement.

40. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California.

41. Venue. Venue for all legal proceedings shall be in the Superior Court of the State of California, in and for the County of Stanislaus.

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

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

44. Audit. City shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Service Provider's charges to City under this Agreement.

45. Entire Agreement. This Agreement, together with its specific references, attachments, and exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof and supersedes any and all prior negotiations, understanding, and agreements with respect hereto, whether oral or written.

46. Supersedes Prior Agreement. It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, whether written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

47. Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory. "May" and "can" are permissive.

48. **Successors and Assigns.** All representations, covenants, and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of, any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

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

50. **Attorney's Fees and Costs.** If any action at law or in equity not resolved pursuant to the "Arbitration of Disputes" section of this Agreement, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

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

52. **Time is of the Essence.** Time is of the essence in this Agreement for each covenant and term of a condition herein.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by and through their respective officers thereunto duly authorized.

SERVICE PROVIDER

CITY

**We Care Program-Turlock,
a California nonprofit public benefit
corporation**

**City of Turlock, a California
municipal corporation**

By: _____

By: _____
Reagan M. Wilson, City Manager

Print Name: _____

Title: _____

Date: _____

Date _____

APPROVED AS TO SUFFICIENCY:

By: _____
Katie Quintero, Development Services Director

APPROVED AS TO FORM:

By: _____
George A. Petrulakis, City Attorney

ATTEST:

By: _____
Julie Christel, City Clerk

Scope of Work

We Care will lease the building at 275 S. Broadway-Third Street to operate a day use navigation center for people who are 18 years old or older. The center will operate a minimum of 7.5 hours a day, five days a week between Monday and Friday. The City and We Care will work together to expand operational days and hours if and when such expansion becomes feasible. Animals will not be allowed.

The program will operate for six-months as a pilot program. Data on the number of individuals utilizing the services will be tracked and reported to the City on a monthly basis.

The following services will be provided at the site:

- Housing navigation services
- Supportive case management and counseling
- Rapid rehousing
- Day center use
- On-site security will be provided