

REQUEST FOR PROPOSALS



**Solid Waste Professional Consulting Services for Mandatory
Waste Reduction, Commercial and Organics Recycling
Programs**

September 3, 2020

**CITY OF LATHROP
PUBLIC WORKS DEPARTMENT**
390 Towne Centre Drive
Lathrop, CA 95330
Phone: (209) 941-7430
Fax: (209) 941-7449
<https://www.ci.lathrop.ca.us>

Approved:



Michael King, P.E.
Public Works Director

9/3/2020
Date

I. GENERAL INFORMATION

The City of Lathrop is seeking Proposals from qualified consulting firms to assist with planning and implementation of programs associated with compliance requirements of the Short-Lived Climate Pollutant Reduction Act (SB 1383), Mandatory Commercial Recycling (AB 341) and Mandatory Organics Recycling (AB 1826) and consulting services on an on-call/as-needed basis to assist with recycling/diversion programs (composting, residential and commercial recycling programs, recyclable processing contracts and related services).

SB 1383 establishes aggressive targets for organic waste disposal reduction. This includes a 50% reduction in statewide organic waste disposal, from the 2014 level, by 2020 and a 75% reduction by 2025. SB 1383 provides CalRecycle enforcement authority needed to incentivize achievement of these targets, including use of monetary penalties. SB 1383 is more stringent than AB 1826 and AB 341; assistance will be needed for compliance with all three mandates. The selected firm will assist in developing and adopting compliance strategies and assist City of Lathrop staff with implementation of those strategies.

II. BACKGROUND

The City of Lathrop was incorporated in 1989. The City of Lathrop (City) is located in San Joaquin County at the interchange of three major freeways: Interstate 5 (I-5), Interstate 205 (I-205), and State Route 120 (SR-120). The City has an area of 22 square miles of level terrain and a population of approximately 26,800. Historically, Lathrop has been an agriculturally based community; however, the continuing dynamic outward growth of the San Francisco Bay Area has pushed industrial, warehousing, and logistics growth into the Northern San Joaquin Valley, which is benefiting Lathrop's strategic location. While the existing community is developed primarily east of Interstate 5, new developments are in various stages of planning, design, and construction in the area west of Interstate 5.

The City of Lathrop is responsible for managing the solid waste, green waste, recycling, and household hazardous waste (HHW) programs within its jurisdiction, including developing and implementing programs that meet related State mandates. The City's franchise hauler, provide collection services. The hauler offers residential curbside recycling collection services and is required to deliver the solid waste, recyclables, and green waste collected to the appropriate facilities.

The City disposed of nearly 37,997 tons of solid waste in 2018, primarily at the Forward Landfill facility in Manteca, CA, which is owned by Republic Services. There are two other landfill facilities used by Republic Services for the City of Lathrop's garbage disposal needs; North County Recycling Center and Foothill Sanitary Landfill Facility. North County Recycling Center is located in Lodi, CA, and Foothill Sanitary Landfill Facility, located in Linden, CA, both owned by San Joaquin County. There are no surcharges tied to tipping fees (rates are based on actual costs for each waste type), and therefore no funding is available for the new mandates.

III. ANTICIPATED SCOPE OF SERVICES

This project intends to result in a comprehensive implementation program including, but not limited to, related policies, ordinances, agreements, and materials for the City to meet state compliance requirements under AB 341, AB 1826, and SB 1383. Consultants are requested to provide a recommended approach and level of effort based on their experience and understanding of the project and the City's needs. It is anticipated that the scope of services will include, but not be limited to, the following tasks:

1. Record Keeping and Reporting

- a. Assist with the development of efficient and effective program management and reporting processes, including development of a guidance document and related checklists to ensure the City achieved and maintains compliance.

Deliverables:

- Guidance document with transparent procedures, checklists and forms to facilitate city compliance with state mandates under AB 341, AB 1826, and SB 1383 through 2025.

2. Community Outreach and Education

- a. Develop presentation and education material for City Council, community groups, and residents; assist with presentations.
 - i. Assistance with a study session with the City Council at a future upcoming City Council meeting.

Deliverables:

- PowerPoint Presentation that can be modified for target audiences.
- Presentation to City Council at up to three City Council meetings.

3. Residential Franchise Agreement

- a. If applicable, assist with the renegotiation of current residential franchise agreement to ensure compliance with state regulatory requirements, particularly related to SB 1383 implementation, and including rate projections through the end of the current contract term.
- b. If applicable, assist with administration of a Proposition 218 process, if required, for proposed rate adjustments.

Deliverables:

- Recommendations related to a Negotiated Amendment to the current residential franchise agreement.
- Documentation of rate projection analysis with a summary document.
- If required, Proposition 218 notice, assistance with processing responses, and related materials for public hearing and presentation, including PowerPoint presentation.

4. Ordinances and Policies

- a. Development of ordinances and policies, including enforcement and penalties.
- b. Develop initial and assist with ongoing contamination monitoring, education, and compliance enforcement program for all generators.
- c. Development of initial City facilities Recycling/Food Waste Collection Program, compliance monitoring, and reporting.
- d. Development of initial recycled content procurement program and related record-keeping and reporting requirements.

Deliverables:

- Ordinances and policy documents including enforcement processes, penalties, and administrative process guide.
- Guidance document for initial and ongoing contamination monitoring, education and compliance enforcement program for all generators, including relevant notices and tracking systems.
- Guidance document for City facilities Recycling/Food Waste Collection Program, compliance monitoring, and reporting.
- Guidance document for recycled content procurement program and related record-keeping.

5. Edible Food Recovery

- a. Development of an Edible Food Recovery Program, including inventory of food recovery organizations and services, annual educational program for generators, and related monitoring, reporting, education and outreach to achieve compliance with SB 1383.

Deliverables:

- Inventory of food recovery organizations and food recovery services.
- Food Recovery Program guidance document including education materials for commercial edible food generators.
- Document outlining program and related checklists for required annual education and outreach to commercial edible food generators.

6. Education and Outreach

- a. Assist with the development of Education and Outreach Program to provide ongoing annual education to generators, including material in languages as required by SB 1383.

Deliverables:

- Annual education program including written materials, website and social media materials, interactive online surveys, videos, webinars or similar engagement materials.

7. Procurement

- a. Assist with the development of a recovered waste procurement program including recovered organic waste products, recycled paper products and postconsumer fiber.
- b. Assist with the development of recordkeeping and reporting process, including annual checklist and guidance document.

Deliverables:

- Guidance document, including training materials and related policy and ordinance amendment recommendations.
- Initial procurement record-keeping document.

8. Capacity Planning

- a. Assist with collaborating with San Joaquin County's Organic Waste and Edible Food Recovery Capacity planning efforts.

Deliverables:

- Provide review and input as requested for San Joaquin County's Capacity Planning efforts on behalf of the City.

9. Assistance with Regulatory Reporting

- a. Assist with annual reporting to CalRecycle or any other entity particularly related to SB 1383 compliance.

Deliverables:

- Provide review and input as requested for CaRecycle and other related entities particularly for SB 1383 annual reporting compliance.

IV. TERM

The initial term shall be for a one (1) year period from the effective date of the agreement. The agreement may be renewed annually for up to four (4) consecutive years after the initial agreement period, at the discretion and approval of the City. The City shall notify the Consultant in writing of the intent to extend the agreement, 30 days prior to the expiration of the term.

V. PROPOSAL ORGANIZATION AND CONTENT

Proposals shall contain a scope of work describing all work tasks provided by the Consultant and as described in Section III - Anticipated Scope of Services, including any proposed changes, additions or recommendations. The proposal shall include, but not be limited to, the following minimum information:

1. Description of firm and information on major types of consulting services that the firm performs. Provide information on the firm's current work load, facilities, resources, and solid waste and recycling resources project experience.

2. Provide a work history of the firm. Include examples of previous work done on projects of similar type, size and scope within the past five (5) years. Projects must note the specific individuals who completed such project(s). Include a list of client references with contacts and phone numbers. Examples and Client references should include at least one for each Category listed in this RFP.
3. The ability of the Proposer to Perform: Provide a detailed description of the proposer and his/her qualifications, including names, titles, brief professional resumes and past experience in similar work efforts/products of key personnel who will be involved with the project. Name of the principal or project manager in the firm/entity who will have direct and continued responsibility for the services provided to the City. This person will be the City staff's first contact on all matters dealing with the services offered and will handle day to day activities through completion. Indicate the composition of sub-consultants and number of project staff, number of years in the business, facilities available, location where the work will be performed, and experience of your team as it relates to this project. If two or more firms are involved in an association or a joint venture for this Project, provide information concerning past associations and outline the working relationship between the firms, e.g., indicate where management responsibility resides and where quality control and production coordination will be performed.
4. Organization and Project Management Approach: Describe your project and management approach. Identify the role and responsibility of each member of the project team. Include the amount of time key personnel will be involved in the respective portions of the assignment. Include descriptions of their assigned duties and projected involvement in the project. Provide a detailed description of how the team and scope of work will be managed. Provide an organizational chart showing the proposed relationships between all key personnel and support staff who will be expected to participate.
5. Work Plan: Describe the proposed methodology to the project. Provide an estimated project schedule to ensure compliance is achieved within state required timeframes and include the proposed work tasks, personnel and resources allocated to each task. Provide a statement that addresses how the firm or consultant team will demonstrate their commitment to be responsive and accessible to City staff in a timely manner. Provide a statement that addresses the challenges that can occur during a project similar to this and any unique experience, abilities, or services provided by the firm or consultant team to solve these challenges.
6. Cover Letter: All proposals shall include a cover letter which states that the proposal shall remain valid for a period of not less than ninety (90) days from the date of submittal. If the proposal contemplates the use of sub-consultants, the sub-consultants shall be identified in the cover letter. If a business entity submits the proposal, the cover letter shall be signed by an officer authorized to bind the business entity contractually. With respect to the business entity, the cover letter shall include the identification of the business entity, including the name. If the proposal is submitted by a business entity, the cover letter shall be signed by an officer authorized to contractually bind the business entity. With respect to the

business entity, the cover letter shall also include: the identification of the business entity, including the name.

7. **Cost Proposal:** Provide a cost proposal that shall consist of a "not to exceed" price quotation along with a current fee schedule and applicable hourly rates, and shall be bound as part of the proposed scope of services. The cost proposal shall be provided in a table format that identifies the key project team member(s) proposed for each task and sub-task, the number of hours for management, drafting, support personnel hours, sub-consultants and cost envisioned for each task.
8. Suggestions for optional services to better accomplish the City's objectives will be considered but should be priced separately from the price provided for the Basic Services described in this RFP.
9. Please include any exceptions your business has to the terms in the City's standard, *Agreement for Professional Consulting Services, Exhibit A*, and/or insurance requirements.

FORMAT AND DELIVERY OF RESPONSE

Respondents are asked to submit five (5) hard copies and one (1) electronic .pdf copy (via email) of their proposals in sufficient detail to allow for a thorough evaluation and comparative analysis. The proposal should include, at a minimum, the information in sectionalized format addressing all phases of the work in the RFP.

Format: Limit your proposal to 30 typed 8.5" X 11" pages, or fewer, on minimum 30% Post Consumer Content (PCC) recycled paper (excluding cover letter and attachments). You may attach a firm brochure if you wish, but it must be as a separate attachment and independent from the required elements noted above.

1. Use a conventional typeface with a minimum font size of 12 points. Use a 1" margin on all borders.
2. Organize your submittal in the order described above.
3. Prominently label the package: "Proposals for Mandatory Organics Recycling Compliance Program" and include the name of the primary contact for the respondent.

Deliver the RFP submittal on or before **5:00 pm, October 7, 2020** to:

City of Lathrop
Department of Public Works
390 Towne Centre Drive
Lathrop, CA 95330
Phone: (209) 941-7430
Email: rmartinez@ci.lathrop.ca.us

Proposals submitting less than the required number of copies of their proposals will be rejected and considered “non-responsive”. Proposals received beyond the deadline will not be considered, and will be returned unopened.

For questions regarding the RFP, only the authorized project representative should submit a written request for interpretation to Rosemary Martinez, rmartinez@ci.lathrop.ca.us by **September 14, 2020**. Response to questions will be e-mailed to all recipients of this RFP. It is imperative that firms interested in submitting a proposal contact the Public Works Department with the name of the project representative and e-mail address by **September 14, 2020** to ensure full dissemination of responses.

VI. CONSULTANT SELECTION SCHEDULE

The anticipated consultant selection schedule is as follows:

ACTION	DATE
Release Request for Proposal	September 3, 2020
Deadline for questions/clarification	September 14, 2020 EOD
Answers to questions(final addenda) released	September 16, 2020
RFP Submittal Deadline	October 7, 2020 @ 6 pm
Successful Submittal Notification	October 12, 2020
Review and Rank Proposals *	October 12, 2020 – October 15, 2020
Conduct Interviews*	October 19, 2020 – October 23, 2020
Negotiate Scope and Contract *	October 23, 2020 – October 30, 2020
City Council Review *	November 9, 2020
Contract Award *	November 9, 2020
Notice To Proceed *	November 9, 2020

Tentative Dates *

VII. PUBLIC RECORDS ACT

All proposals shall become public information at the conclusion of the selection process, with the exception of those portions of a proposal that are identified at the time of submittal by the Proposer as trade secrets and/or which are deemed by the City as not being public

documents that must be disclosed under the Public Records Act, or other appropriate statutes and regulations. Pricing and service elements of the successful proposal will not be considered proprietary information. Proprietary information shall be submitted in a separate sealed envelope clearly labeled as proprietary with the project number on the outside of the envelope. All materials submitted and retained by the City in response to this Request for Proposal shall become the property of the City and will not be returned.

VIII. REVISION TO THE RFP

The City reserves the right to revise the RFP prior to the date that proposals are due. The City reserves the right to extend the date by which the proposals are due. It is the proposer's responsibility to monitor the city's website for possible addenda to this RFP to inform him/herself of the most current specifications, terms, and conditions, and to submit his/her proposal in accordance with the original proposal requirements and all addenda. Revisions and extensions to the RFP shall be faxed and/or e-mailed to all potential consultants whom we have information for. Additionally, all available RFP's and related addenda can be found at:

<https://www.ci.lathrop.ca.us/rfps>

Failure of Proposer to obtain this information shall not relieve him/her of the requirements contained therein. Those proposers not acknowledging and returning Addenda as required will not be considered and will be rejected as "non-responsive".

The City also reserves the right to reject any or all of the proposals, and re-initiate the RFP process.

IX. QUALIFICATIONS & CRITERIA

- A. **Qualifications:** The City will select one firm for all of the outlined Scope of Service on the basis of qualifications, experience, and cost.

- B. **Evaluation Criteria:** The City will conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. All proposals received will be reviewed and evaluated by a committee of qualified personnel. The name, information, or experience of the individual members will not be made available to any proposer. The Evaluation Committee will first review and screen all proposals submitted according to the minimum qualifications set forth above. The following criteria will be used in reviewing and comparing the proposals and in determining the highest scoring bid:
 - 1. Competence, Past Performance, Financial, Stability, Quality: Level of the Firm's previous projects of comparable complexity, scale and nature; training and proven expertise in the area of work required; Efficiency and timeliness in completion of projects. Experience in projects completed for public entities. Review of sub-consultants.

2. **Staffing Capability to meet project time lines:** The capability to perform the work within the desired time frame. The ability and past experience in assembling a highly qualified team of sub-consultants.
3. **Quality Control:** The Consultant's listed work shall be such as to ensure that the distinctive goals established for each component are met. Brief descriptions of previous project experiences should be used as examples of how quality control was achieved with former clients.
4. **Cost of Services, Cost Control and Reporting:** The Consultant's overall operation should encourage cost effective work and services. Cost control, performance within budget allocations, prudent accounting practices, management and clear communication with City staff are essential to the success of this project. A brief description of previous project experiences should be used as examples of how this was achieved with former clients. Proposal shall include key examples of the firm's accuracy in cost estimating.

A Proposal Scoresheet will be used to evaluate and rank the proposals. The proposals should address the issues shown in the listed categories. A Group Proposal Evaluation Form will be used to compile all the scores and totaled to determine the most qualified firm.

Consultant Selection Process: All proposals will be evaluated by a review group selected for this project. Each member will assess and rate each proposal based on the information submitted. Each firm will be interviewed to assess their approach and capability. The review group will score the firms and the highest ranking firm will be notified to begin agreement negotiations and enter into an agreement. If an agreement cannot be reached, the City will begin negotiations with the second highest ranking firm.

The City reserves the right to invite any number of firms for oral interviews.

X. AGREEMENT AWARD AND EXECUTION

Selection of a proposer or proposers with whom the City enters into agreement negotiations with or a recommendation of an award by the Evaluation Team or any other party does not constitute an award of agreement.

The City may negotiate with the selected Proposer to acquire the combination of functionality that best meets the City's needs. Alternatively, the City reserves the right to enter into an agreement without further discussion of the submitted proposal. Therefore, the Proposal should be initially submitted on the most favorable terms the proposing party can offer. The City's standard Agreement for Professional Consulting Services is provided in Exhibit A.

Please review the Agreement prior to submitting a proposal. The City intends to use the Agreement as the baseline agreement with the successful proposer(s). The foregoing should not be interrupted to prohibit either party from proposing additional agreement terms and conditions during the negotiation of the final agreement.

No oral explanation or instruction of any kind or nature whatsoever given before the award of an Agreement to a Vendor shall be binding. The City shall not be bound, or in any way obligated, until the City has awarded the Agreement and all documents have been executed. The proposing party may not incur any chargeable costs prior to final Agreement execution.

The RFP document and the successful party or parties' proposal response, as amended by agreement between the City and the successful party or parties, may become part of the Agreement documents. Additionally, the City may verify the successful party or parties' representation that appear in the proposal. Failure of the successful party or parties to perform as represented may result in elimination of the successful party or parties from further negotiation or in Agreement cancellation or termination.

This RFP does not commit the City to award a contract, to reimburse for costs incurred in the preparation of a proposal pursuant to this RFP or to procure or contract for work.

The City reserves the right to reject any and all proposals, or to negotiate separately with any source whatsoever in any manner necessary to serve the best interests of the City. Non-acceptance of any proposal does not imply any criticism of the proposal or imply that the proposal was deficient.

When the City has negotiated a price for the work with a chosen Consultant, it will recommend selection of that Consultant to the City Council. Confirmation and approval of the Consultant recommended by the City is subject to approval by the City Council.

The successful proposer will receive a written Notification of Intent to Award, along with instructions for finalizing the agreement documents. The successful proposer will be required to enter into an agreement for services with the City substantially similar in form to that included in the Appendices, marked "SAMPLE". Receipt of the fully executed agreement and a Notice to Proceed will direct proposer to proceed with services.

ATTACHMENTS:

1. EXHIBIT A – City Of Lathrop Standard Agreement for Professional Consulting Services - Sample

CITY OF LATHROP

AGREEMENT FOR PROFESSIONAL SOLID WASTE AND RECYCLING CONSULTING SERVICES WITH COMPANY

TO ASSIST IN CREATING MANDATORY SOLID WASTE REDUCTION, COMMERCIAL AND ORGANICS RECYCLING PROGRAMS

THIS AGREEMENT, dated for convenience this _____ day of Month 2020, is by and between ("CONSULTANT") and the City of Lathrop, a California municipal corporation ("CITY");

RECITALS:

WHEREAS, CONSULTANT is specially trained, experienced, and competent to perform Professional Consulting Services, which are required by this agreement; and

WHEREAS, CITY selected the CONSULTANT pursuant to said qualifications; and

WHEREAS, CONSULTANT is willing to render such Consulting Services, as hereinafter defined, on the following terms and conditions;

NOW, THEREFORE, CONSULTANT and the CITY agree as follows:

AGREEMENT

(1) **Scope of Service.**

CONSULTANT agrees to perform Consulting Services in accordance with the scope of work and fee proposal provided by CONSULTANT, attached hereto as Exhibit "A" and incorporated herein by reference. CONSULTANT agrees to diligently perform these services in accordance with the upmost standards of its profession and to CITY'S satisfaction.

(2) **Compensation.**

CITY hereby agrees to pay CONSULTANT a sum not to exceed \$, for the Consulting Services set forth in Exhibit "A", at rates detailed therein. CONSULTANT shall be paid any uncontested sum due and payable within thirty (30) days of receipt of billings containing all information pursuant to Paragraph 5 below. Compensation for any task

must be equal to or less than the percentage of task complete. In no event shall CONSULTANT be entitled to compensation for work not included in Exhibit "A", unless a written change order or authorization describing the extra work and payment terms has been executed by CITY's authorized representative prior to the commencement of the work. Payment is made based on a time and materials basis.

(3) Effective Date and Term.

The effective date of this Agreement is **TBD _____, 2020**, and it shall terminate no later than **June 30, 2022**.

(4) Independent Contractor Status

It is expressly understood and agreed by both parties that CONSULTANT, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of the CITY. As an independent contractor, CONSULTANT is responsible for controlling the means and methods to complete the scope of work described in Exhibit "A" to City's satisfaction. CONSULTANT expressly warrants not to represent, at any time or in any manner, that CONSULTANT is an employee of the CITY.

(5) Billings

CONSULTANT'S bills shall include a list of all tasks, a total amount due, the amounts previously billed, and the net amount due on the invoice. Except as specifically authorized by CITY, CONSULTANT shall not bill CITY for duplicate services performed by more than one person. In no event shall CONSULTANT submit any billing for an amount in excess of the rates or the maximum amount of compensation provided in section (2) for either task or for the entire Agreement, unless modified by a properly executed change order.

(6) Advice and Status Reporting

CONSULTANT shall provide the CITY with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder, and shall furnish to CITY such information as is necessary to enable CITY to monitor the performance of this Agreement.

(7) Assignment of Personnel

CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. If CITY asks CONSULTANT to remove a person assigned to the work called for under this Agreement, CONSULTANT agrees to do so immediately, without requiring the City to process a reason or explanation for its request.

The services shall be performed by, or under the direct supervision, of CONSULTANT's Authorized Representative: **Name**, CONSULTANT shall not replace its Authorized Representative without the prior written approval by the CITY.

(8) Assignment and Subcontracting

It is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONSULTANT. Neither this Agreement nor any interest therein may be assigned by CONSULTANT without the prior written approval of CITY'S authorized representative. CONSULTANT shall not subcontract any portion of the performance contemplated and provided for herein, other than the subcontractors noted in the proposal, without prior written approval of the CITY'S authorized representative.

(9) Insurance

On or before beginning any of the services or work called for by any term of this Agreement, CONSULTANT, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to the CITY the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the CITY. CONSULTANT shall not allow any subcontractor to commence work on any subcontract until all insurance required of the CONSULTANT has also been obtained for the subcontractor. Verification of this insurance shall be submitted and made part of this Agreement prior to execution.

- (a) Workers' Compensation. CONSULTANT shall, at CONSULTANT'S sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CONSULTANT. Said Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars. In the alternative, CONSULTANT may rely on a self-insurance program to meet these requirements provided that the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the CONSULTANT, if a program of self-insurance is provided, shall waive all rights of subrogation against the CITY for loss arising from work performed under this Agreement.
- (b) Commercial General and Automobile Liability Insurance. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit

shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) CITY, its officers, employees, agents, and volunteers are to be covered as insured with respect to each of the following: liability arising out of activities performed by or on behalf of CONSULTANT, including the insider's general supervision of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents, or volunteers.
 - (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.
 - (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the CITY will be called upon to contribute to a loss under the coverage.
 - (iv) Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
 - (v) Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A: VII.
 - (vi) Notice of cancellation or non-renewal must be received by CITY at least thirty days prior to such change.
- (c) Professional Liability. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing

work pursuant to this Agreement in an amount not less than Two Million Dollars (\$2,000,000) per claim made and per policy aggregate covering the licensed professionals' errors and omissions, as follows:

- (i) Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- (ii) Notice of cancellation, material change, or non-renewal must be received by the CITY at least thirty days prior to such change shall be included in the coverage or added as an endorsement to the policy.
- (iii) The policy must contain a cross liability or severability of interest clause.
- (iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:
 - 1. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - 2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - 3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this Agreement, CONSULTANT must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The CITY shall have the right to exercise at the CONSULTANT'S cost, any extended reporting provisions of the policy should the CONSULTANT cancel or not renew the coverage.
 - 4. A copy of the claim reporting requirements must be submitted to the CITY prior to the commencement of any work under this Agreement.
- (d) Deductibles and Self-Insured Retentions. CONSULTANT shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, upon express written authorization of the CITY's authorized representative, CONSULTANT may increase

such deductibles or self-insured retentions with respect to CITY, its officers, employees, agents, and volunteers. The CITY's authorized representative may condition approval of an increase in deductible or self-insured retention levels upon a requirement that CONSULTANT procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

- (e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the Agreement is reduced, limited, or materially affected in any other manner, CONSULTANT shall provide written notice to CITY at CONSULTANT'S earliest possible opportunity and in no case later than five days after CONSULTANT is notified of the change in coverage.
- (f) In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:
 - (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
 - (ii) Order CONSULTANT to stop work under this Agreement or withhold any payment which becomes due to CONSULTANT hereunder, or both stop work and withhold any payment, until CONSULTANT demonstrates compliance with the requirements hereof;
 - (iii) Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for CONSULTANT'S breach.

(10) Indemnification - CONSULTANT'S Responsibility

As to the CONSULTANT'S work hereunder, it is understood and agreed that (a) CONSULTANT has the professional skills necessary to perform the work, (b) CITY relies upon the professional skills of CONSULTANT to perform the work in a skillful and professional manner, and (c) CONSULTANT thus agrees to so perform.

Acceptance by CITY of the work performed under this Agreement does not operate as a release of said CONSULTANT from such professional responsibility for the work performed.

It is further understood and agreed that CONSULTANT is apprised of the scope of the work to be performed under this Agreement and CONSULTANT agrees that said work can and shall be performed in a fully competent manner in accordance with the standard of care applicable to CONSULTANT'S profession.

CONSULTANT shall indemnify, defend, and hold CITY, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused by the willful misconduct or negligent acts or omissions of CONSULTANT, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the negligence or willful misconduct of the CITY, its officers, employees, agents, or volunteers. It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(11) Licenses

If a license of any kind, which term is intended to include evidence of registration, is required of CONSULTANT, its employees, agents, or subcontractors by federal or state law, CONSULTANT warrants that such license has been obtained, is valid and in good standing, and CONSULTANT shall keep it in effect at all times during the term of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

(12) Business Licenses

CONSULTANT shall obtain and maintain a CITY of Lathrop Business License until all Agreement services are rendered and accepted by the CITY.

(13) Termination

Either CITY or CONSULTANT may cancel this Agreement upon 30 days written notification to the other party. In the event of termination, the CONSULTANT shall be entitled to compensation for services performed to the effective date of termination; provided, however, that the CITY may condition payment of such compensation upon CONSULTANT'S delivery to the CITY of any or all documents, photographs, computer software, video and audio tapes, and other materials provided to CONSULTANT or prepared by or for CONSULTANT or the CITY in connection with this Agreement.

(14) Funding

CONSULTANT agrees and understands that renewal of this agreement in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII (B) of the California Constitution and that the Council may determine not to fund this agreement in subsequent years.

(15) Notices

All contracts, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and followed with two (2) Days by delivery of a hard copy of the material sent by facsimile transmission. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

To City: City of Lathrop
City Clerk
390 Towne Centre
Lathrop, CA 95330

Copy to: City of Lathrop
Department of Public Works
390 Towne Centre
Lathrop, CA 95330

MAIN: (209) 941-7430
FAX: (209) 941-7449

To Consultant:

(16) Miscellaneous

- (a) Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

- (b) Controlling Law. The parties agree that this Agreement shall be governed and construed by and in accordance with the Laws of the State of California.
- (c) Definitions. The definitions and terms are as defined in these specifications.
- (d) Force Majeure. Neither party shall be deemed to be in default on account of any or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.
- (e) Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.
- (f) Incorporation of Documents. All documents constituting the Agreement documents described in Section 1 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.
- (g) Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties concerning the Project and Work, and there are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.
- (h) Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- (i) Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- (j) Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.
- (k) Status of CONSULTANT. In the exercise of rights and obligations under this Agreement, CONSULTANT acts as an independent contractor and

not as an agent or employee of CITY. CONSULTANT shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of CITY, and CONSULTANT expressly waives any and all claims to such right and benefits.

- (l) Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.
- (m) Time of the Essence. Time is of the essence of this Agreement and each of its provisions. In the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday or any Day observed as a legal holiday by CITY, the time for performance shall be extended to the following Business Day.
- (n) Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Joaquin or in the United States District Court for the Eastern District of California.
- (o) Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

(17) Notice to Proceed

Prior to commencing work under this agreement, CONSULTANT shall receive a written "Notice to Proceed" from CITY. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay CONSULTANT for any services prior to issuance of the Notice to Proceed.

(18) Signatures

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written.

Approved as to Form: City of Lathrop
City Attorney

Salvador Navarrete Date

Recommended for Approval: City of Lathrop
Public Works Director

Michael King Date

Approved By: City Manager
City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

Stephen J. Salvatore Date

CONSULTANT:

Signature Date

Print Name and Title