



REQUEST FOR PROPOSALS

PROFESSIONAL CONSULTING SERVICES FOR DEVELOPMENT OF PROJECT INITIATION DOCUMENT (PID)

FOR

Roth Road and Interstate 5 Interchange Project (CIP PS 14-04)

Date Issued: October 2, 2023

Response Due Date: October 27, 2023 (by 4:00 PM)

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Mailing Address: City of Lathrop
Public Works Department
ATTN: Angel Abarca
390 Towne Centre Drive
Lathrop, California 95330

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GENERAL INFORMATION AND BACKGROUND

Roth Road is an east-west freight corridor providing access from Interstate 5 (I-5) to State Route 99 via Airport Way and French Camp Road. Roth Road crosses both the Union Pacific Railroad (UPRR) Tracy and Fresno Subdivisions at-grade crossings. It provides access to UPRR's Lathrop Intermodal Facility, the Sharpe Facility of Defense Distribution Depot San Joaquin, and several distribution facilities. Roth Road corridor is surrounded by a mix of land uses ranging from agriculture and rural residential homes to goods movement related businesses and light industrial uses.

The City of Lathrop (City) is requesting proposals from consultants to provide professional and technical planning services to complete the Project Initiation Document (PID) phase for the **Roth Road and I-5 Interchange Capital Improvement Project (CIP) PS 14-04 (Project)**. This Request for Proposals (RFP) defines the scope of services and outlines the requirements that must be met by Consultants interested in providing such services.

The PID phase will include the technical studies needed to support the development of Project Study Report-Project Development Support (PSR-PDS) (i.e. traffic studies, environmental studies, etc.) that will review feasible design alternatives and develop programming documents for the interchange. Coordination with the Department of Transportation Caltrans (Caltrans) will be required.

All federal, state, and local laws regarding competitive bidding, anti-competitive practices, and conflict of interest shall be applicable to this RFP. Consultant shall not discriminate against any sub-consultant, employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.

SCOPE OF WORK

The following Scope of Work defines project tasks and assigns each to their respective responsible parties. The Consultant, under the supervision of, and in coordination with the City's project manager, shall be responsible for the tasks and program/document requirements as per the following sections:

TASK 1: PROJECT MANAGEMENT

1.1 Project Management

The Consultant will furnish a Project Manager to coordinate all Consultant operations with City, Caltrans and other agencies as needed, including but not limited to, tracking progress of the work and administering subcontracts. The Project Manager will provide overall Project management, coordination, and supervision of Project staff to facilitate the performance of the work in accordance with the standards and requirements of the City and other applicable agencies.

Deliverables: *Monthly Status Report and Invoice; Updated Project Fact Sheet*

1.2 Coordination and Meetings

The Consultant's Project Manager will conduct meetings and oversee coordination with other stakeholders, including Caltrans, City, and other agencies, in monthly Project Development Team (PDT) meetings. Consultant's Project Manager will be responsible for preparation of agendas and meeting minutes, review project status, communication and distribution of Project records and information, and responses to all internal requests for information about the Project.

The Consultant may use video or audio-conferencing software to conduct these meetings as needed.

Deliverables: *Monthly Project Management Status Meetings; Meeting Agendas; Project Status Reports; Meeting Minutes and Action Items; Monthly Status Report and Invoice.*

1.3 Scheduling and Administration

The Consultant will develop and maintain a Work Plan to identify each sub-task and deliverable. Provide regular reporting on the Project status, including, but not limited to, schedule, contract budget, and general progress on Project tasks. The Project Manager will be responsible for adherence to all applicable City and Caltrans administrative policies and procedures.

Deliverables: *Project Schedule; Work Plan, Communication Management Plan; Risk Management Plan*

1.4 Quality Control / Quality Assurance (QA/QC)

The Consultant will conduct Quality Control reviews on all submittals to the City and Caltrans. The Consultant will develop and maintain a Quality Assurance Plan (QAP) during the life of the project and ensure the processes are adhered to by Consultant and corresponding subconsultants.

Deliverables: QA/QC Plan; QA Certifications

1.5 Public Information Coordination

Assist the City with responding to public inquiries (letters and emails). Prepare a fact sheet with basic information containing Project Vicinity Map, Project Description, Purpose/Need, Project Estimates, Issues, Project Contact Information.

Deliverables: Responses to Request for Information/Inquiries; Project Fact Sheet

TASK 2: PROJECT STUDIES

2.1. Environmental Studies

Prepare a Preliminary Environmental Analysis Report (PEAR) document for the Roth Road and I-5 Interchange and evaluate the proposed roadway improvements. The PSR will evaluate up to three build alternatives. Baseline information for the project area will be collected and summarized in each environmental issue area in order to determine which technical studies will be required (i.e. biological, paleontological, and cultural resources).

Deliverables: Draft and Final Roth Road and I-5 Interchange – PEAR

2.2. Traffic Studies

The Consultant will review available sources of multimodal volume data in the vicinity of I-5 with Roth Road, Lathrop Road, and Louise Avenue interchanges (including ramp terminal and local intersections).

The Consultant will use the City of Lathrop, Manteca, and Ripon Travel Demand Model (Three City Model) to develop future year traffic forecasting. The Consultant will collaborate with the project team to develop and refine alternatives including partial cloverleaf and diverging diamond interchange. Build alternatives will include elements such as improved on- and off-ramps, new roadway connections, and upgraded intersection control devices.

The results of the traffic analysis will be documented in a Traffic Engineering Performance Assessment (TEPA) and will be submitted to Caltrans for review. The TEPA will also include a preliminary scope of work for the traffic engineering studies to be completed in the PA&ED phase. The preliminary scope of work will be developed in consultation with Caltrans. This deliverable will also include completion of the new VMT Decision Document required by Caltrans Headquarters and District 10.

Deliverables: *Draft and Final TEPA*

2.3 Hydraulic Studies

The Consultant will perform preliminary Hydraulics/Hydrology studies to analyze on-site and off-site storm water flows for the Project build alternative. The Consultant will identify requirements for hydraulic and storm water treatment design features as part of this task. This task will consist of a Caltrans Storm Water Data Report (SWDR) for the PID phase.

Deliverables: *Caltrans - Storm Water Data Report (SWDR)*

TASK 3: RIGHT OF WAY REQUIREMENTS

3.1 Utility Needs

The Consultant will perform the work necessary to verify and document the right of way and utility needs presented in the Project Report, prepare maps and data sheets for use in the right of way process for the ultimate build alternatives. The resulting information will be included in a Right of Way Data Sheet that will be included within the PSR-PDS.

Deliverables: *Right of Way Maps; Data Sheets; Utility Conflicts Map*

3.2 Base Maps and Plan Sheets

The Consultant will prepare base maps and plan sheets for City preliminary build alternatives. These maps will include horizontal and vertical alignments, cross sections, and typical sections.

Deliverables: *Base Maps and Plan Sheets; Draft Preliminary Design Concepts*

TASK 4: COMPLETION OF PID - PSR

4.1 Prepare Draft Project Study Report- Project Development Support

The Consultant will prepare supporting documentation required for the PSR-PDS based upon the requirements of the Caltrans Project Development Procedures Manual (PDPM).

Deliverables: *Draft PSR - PDS*

4.2 Prepare Final Project Study Report- Project Development Support

Following Caltrans and external reviews of the Draft PSR-PDS, the Consultant will coordinate with the PDT to address any new significant issues affecting the project's cost, scope or schedule and revise the PID accordingly.

Deliverables: *Final PSR - PDS*

SUBMITTAL REQUIREMENTS

A. Due Date: October 27, 2023 (by 4:00 PM). Late proposals will not be accepted.

B. Submit Proposals To:

City of Lathrop
Public Works Department
ATTN: Angel Abarca
390 Towne Centre Drive
Lathrop, California 95330

C. Format: Interested Proposer shall submit three (3) hardcopies and one (1) electronic copy in PDF format on a USB drive. Proposals shall be 20 (twenty) pages maximum, excluding cover letter. The cover letter of the proposal shall be signed by an officer or owner of the submitting firm and shall state that the proposal is valid for a period of 120 days from submittal.

D. Statement of Understanding: A written statement (included in cover letter) that the contractual form, conflicts of interest provisions, and insurance provisions are understood. Any requested modifications to the contract and insurance provisions must be submitted with this proposal.

E. Statement of Qualifications: Provide a brief history of the firm including size of firm and past firm experience in similar projects. Please provide information related to your firm's capability to perform and complete the work. Similar information is to be provided for each sub consultant, if any.

F. Project Experience: Provide a listing of similar projects where professional engineering consulting services have been provided by your firm, your project manager and your sub consultants:

- a. Project Title
- b. Client/Contact Person/Telephone No./Location of Project
- c. Duration of projects
- d. A very brief description of each project

- G. Team Organization:** Describe how the consulting team will be organized. Provide an organization chart identifying all key personnel including sub consultants, if any.
- H. Scope of Work:** The proposal shall include a proposed Scope of Work, which includes the items listed in this RFP. Consultant may propose alternate and more detailed scope of work items that best complete the project.
- I. Milestone Schedule:** This section should include a milestone schedule showing major activities and key submittals and a discussion of how the consultant proposes to deliver the environmental documents and prelim design in accordance with the schedule.
- J. Fee Proposal:** A fee for the proposed Scope of Work shall be submitted. Include detailed breakdown of tasks, hours, and cost.
- K. Insurance Requirements:** The City requires \$1,000,000 each for general liability, auto liability and professional liability insurance, as well as current workers' compensation insurance. The City of Lathrop must be named as an additional insured.
- L. Conflicts of Interest:** Consultants submitting a proposal must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the firm, management, or employees of the firm relative to the services to be provided under the Agreement. Consultant must disclose any real or apparent conflict of interest associated with this project or with working for the City of Lathrop. If a Consultant has no conflicts of interest, a statement to that effect shall be included in the Proposal.
- M. Proprietary Information:** Consultants submitting a proposal in response to this RFP must provide a statement that nothing contained in the submitted proposal will be proprietary. All proposals shall become the property of the City once submitted.
- N. City Business License.** The successful Proposer will be required to obtain and keep current a City Business License.
- O. Other Information:** The successful Proposer must disclose any real or apparent conflict of interest with current developers or landowners in the City of Lathrop. In addition, the City of Lathrop is not responsible for any costs incurred by Proposers in the preparation of this proposal. The City reserves the right to waive minor discrepancies for proposals received.

SELECTION PROCESS AND CRITERIA

All proposals meeting the criteria specified in this RFP will be reviewed by a staff committee. After committee review, the City may request interviews of the consulting firms if deemed necessary by the review committee.

The following criteria will be used to rank the proposals:

- Understanding of Project Scope (25 possible points)
- Experience with Similar Work (20 possible points)
- Familiarity with State and Federal Procedures..... (20 possible points)
- Qualifications of Staff (15 possible points)
- Financial responsibility (10 possible points)
- Demonstrated Technical Ability..... (10 possible points)

Contract Award Schedule

- RFP Due..... October 27, 2023
- Select Consultant November 3, 2023
- Council Award Contract..... November 13, 2023
- Notice to Proceed December 4, 2023

In addition, we require a written agreement for consulting services using the format of the City's Professional Consulting Services Agreement (attached as Attachment A).

Direct RFP submissions and all inquiries regarding the RFP process to:

Angel Abarca
Assistant Engineer
Phone: (209) 941-7498
Fax: (209) 941-7449
Email: aabarca@ci.lathrop.ca.us

ATTACHMENTS

- A. Sample Professional Consulting Services Agreement

CITY OF LATHROP

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES WITH [CONSULTANT]

TO PROVIDE PROFESSIONAL AND TECHNICAL PLANNING SERVICES FOR DEVELOPMENT OF PROJECT INITIATION DOCUMENT (PID) FOR ROTH ROAD AND INTERSTATE 5 INTERCHANGE PROJECT, CIP PS 14-04

THIS AGREEMENT, dated for convenience this ____ day of _____ 2023, 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 Engineering 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 Professional Engineering 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 Professional 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 represents it is prepared to and can diligently perform these services in accordance with the upmost standards of its profession and to CITY’S satisfaction. The fee proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved of in advance and in writing, by the CITY.

(2) Compensation.

CITY hereby agrees to pay CONSULTANT a sum not to exceed \$_____, for the Professional Engineering Consulting Services set forth in Exhibit “A”. 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.

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(3) Effective Date and Term.

The effective date of this Agreement is _____, **2023** and it shall terminate no later than _____, **20**__.

(4) Independent Contractor Status

It is 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 _____, 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.

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(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;

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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 One Million Dollars (\$1,000,000) 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

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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

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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 defend shall be governed by Section 2782 of the California Civil Code and in no event shall the cost to defend charged to CONSULTANT exceed CONSULTANT'S proportionate share of fault. 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

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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

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any delay 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

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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.

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Approved as to Form:

City of Lathrop
City Attorney

Salvador Navarrete

Date

Recommended for Approval:

City of Lathrop
Assistant City Manager

Michael King

Date

Accepted By:

City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

Stephen J. Salvatore
City Manager

Date

CONSULTANT:

Fed ID # _____
Business License # _____

Signature

Date

Representative / Title

itle)