

THE CITY OF CITRUS HEIGHTS
REQUEST FOR PROPOSALS FOR:

**Professional Services for the
On Call Solid Waste Consulting Services
City Project No. GS 2024 13**

The City of Citrus Heights is soliciting proposals from qualified firms to provide professional on call solid waste consulting services, including, but not limited to assistance with Senate Bill 1383 (SB 1383) compliance, documentation and reporting, including policy and ordinance updates; assistance with SB 1383 Edible Food Recovery compliance; support for coordination with and between various staff working groups, hauler representatives and CalRecycle staff; support for managing commercial and residential franchise agreements and related programs; administration of a residential franchise agreement procurement process, and related actions.

Interested parties can download the Request for Proposals (RFP) at the City's website: <http://www.citrusheights.net/Bids.aspx>. Proposals shall be submitted in the manner specified in the RFP. Submittal deadline is **4:00 p.m. on Thursday, October 17, 2024**.

The firm(s) must meet all municipal, state and federal affirmative action and equal employment opportunity practices.

There is no Pre-Proposal Meeting for this project. Questions about the RFP shall be submitted per the instructions in the RFP.

The City of Citrus Heights reserves the right to reject any or all Proposals and to accept any or all Proposals, as deemed to be in the best interest of the City of Citrus Heights.



Amy Van, City Clerk

9/17/2024

Date



**REQUEST FOR PROPOSALS
for
On Call Solid Waste Consulting Services
Project # GS 2024 13**

*The City of Citrus Heights is committed to providing high quality,
economical, responsive services to our community.*

**Proposals Due:
Thursday, October 17, 2024 – 4:00 p.m.**

**CITY OF CITRUS HEIGHTS
GENERAL SERVICES DEPARTMENT
REQUEST FOR PROPOSALS FOR
ON CALL SOLID WASTE CONSULTING SERVICES**

The City of Citrus Heights (City) is soliciting proposals from qualified firms to provide On Call Solid Waste Consulting Services.

This request for proposal (RFP) defines the scope of services and outlines the requirements that must be met by proposers interested in providing such services. Proposers shall carefully examine the entire RFP and any addenda thereto, and all related materials and data referenced in the RFP or otherwise available, and shall become fully aware of the nature and the conditions to be encountered in performing the services.

Table of Contents

I. Project Description.....	1
II. Scope of Work	2
III. Term	4
IV. Proposal Requirements	4
V. Proposers' Questions	5
VI. Proposal Submittal.....	6
VII. Consultant Selection Schedule	7
VIII. Public Records Act	7
IX. Valid Offer.....	7
X. City Rights	7
XI. City of Citrus Heights Web Site Requirements	8
XII. Evaluation.....	8
XIII. Award	9

Appendices

- A. Sample Contract for Professional Services with insurance requirements

I. PROJECT DESCRIPTION

Project Purpose

The City of Citrus Heights General Services Department is soliciting proposals for the professional services of a consulting firm or team (consultant) to provide solid waste consulting services. The City will utilize a combination of City staff and consultants to provide management, oversight and administration of the City's solid waste program. Focus areas include, but are not limited to the following: SB 1383 compliance assistance, including site visits, inspection, record-keeping, and participation in compliance related follow up; contract support for the residential and commercial franchise agreements, including assistance with exclusive and non-exclusive franchise services, monitoring and tracking of franchise fees; public education and outreach assistance; grant administration support; compliance reporting; and development and implementation of new ordinances and programs to comply with State law. Any ordinances, policies, agreements and programs developed or updated are intended to be consistent with those within the Sacramento region to the extent practical.

The City expects that the consultant will be proactive and provide recommendations on best practices related to City policies, programs and ordinances to ensure compliance with State law and also minimize impacts on residents and businesses. While the City will be active in the process, the City may also rely on the consultant to effectively develop program and related implementation materials, and assist with program administration to ensure the City's full compliance with all relevant laws and regulations.

The City also expects the consultant shall maintain electronic and hard copy files of all relevant City solid waste management documents in a complete and organized format that can be effectively accessed by City staff at any time.

Project Background

The City has a need for regular and intermittent assistance with CalRecycle compliance and general solid waste management goals. The City also recognizes that SB 1383 planning and implementation is ongoing during the term of this consulting services agreement. The City expects the consultant to provide knowledge, experience and expertise necessary to assist the City with development and implementation of ordinances, and programs to comply with State law. These ordinances, agreements and programs are intended to be consistent within the Sacramento region to the extent practical.

The City currently contracts with Republic Services for residential waste collection and recycling services through an exclusive franchise agreement that expires on December 31, 2027. Proposers may be required to provide assistance with the procurement process, expected to begin in late 2025.

The City utilizes has a non-exclusive franchise system for front-load commercial, multifamily and debris box services. There are currently six waste management companies holding commercial franchises with the City of Citrus Heights, with the majority of the front-load commercial and multifamily customers serviced by Atlas Disposal, Republic Services and Waste Management, Inc.

The City and the consultant will meet at least once a year separately with each of the three larger commercial haulers as well as with the franchisees as a group. Additional meetings will be scheduled as needed to ensure commercial haulers are meeting contractual obligations and as required under AB 341, AB 1826, SB 1383, amendments and any other CalRecycle adopted legislation and regulations during the term of the proposed agreement. The City and the consultant will meet with the residential hauler as needed to review required program submittals, reports and ensure hauler is meeting contractual obligations and to ensure City and hauler compliance with AB 341, AB 1826, SB 1383, amendments and any other CalRecycle adopted legislation and regulations during the term of the proposed agreement.

Project Requirements

The project shall comply with the following:

- Americans with Disabilities Act (ADA)
- All other applicable City, County, and State guidelines and requirements

Disadvantaged Business Enterprise

It is the policy of the City of Citrus Heights to ensure full and equitable opportunities for Disadvantaged Business Enterprises (DBE). Inclusion of DBEs in the proposal is encouraged.

Business License Required

It is unlawful for any person to furnish supplies or services, or transact any kind of business in the City of Citrus Heights without possessing a City business license. The City is an equal opportunity employer (EOE). Minorities, females, and handicapped (M/F/H) are encouraged to participate.

It is not a requirement to possess a City business license at the time of proposal submittal. Successful Proposers shall be required to possess a City business license prior to award of a contract.

II. SCOPE OF WORK

The intention of this project is to result in on call assistance for professional solid waste consulting services including, but not limited to assistance with policies, ordinances, agreements and materials for the City to meet state compliance requirements under AB 341, AB 1826, SB 1383 and related amendments and/or future legislation. Additionally, the intent is that the selected consultant will be able to provide on-call assistance for procurement and management as requested for commercial and residential franchise services agreements. The intent is to ensure compliance and provide other support services on a not-to-exceed proposal amount. The City is currently utilizing consultant services for an average of 10 hours per month, but has varied between 6 hours to 40 hours each month over an 24 month period. It is expected however that the number of hours necessary to assist with SB 1383 compliance inspections and related activities, the residential procurement process, and program changes to the bulky waste program will require additional consultant time commitment.

The solid waste program includes, but is not limited to the following tasks to ensure City compliance with state recycling requirements and solid waste management goals:

A. Record Keeping and Reporting

- a. Assist with implementation of efficient and effective program management and reporting processes including review and recommendation of models, examples and related checklists to ensure the City achieves and maintains compliance.

B. Community Outreach and Education

- a. Review presentation and education material for City Council, community groups and residents; assist with presentations as requested.

C. Residential Franchise Agreement

- a. Assist with procurement of residential franchise agreement to ensure continued compliance with state regulatory requirements, particularly related to SB 1383 implementation, and including rate projections through the end of the future contract term.
- b. Assist with administration of a Proposition 218 process, if required, for proposed rate adjustments.
- c. Assist with transition to new service provider if needed.

D. Commercial Franchise Agreements

- a. Assist with coordination of quarterly hauler meetings as requested
- b. Assist with evaluation and monitoring of required reports and submittals
- c. Evaluate and prepare amendments to commercial franchise agreements as needed to achieve continued compliance with new and existing State and local laws and regulations

E. Ordinances and Policies

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

F. Edible Food Recovery

- a. Assist with implementation of Edible Food Recovery Program, including inventory of food recovery organizations and services, annual education program for generators, and related monitoring, inspections, site visits, reporting, education and outreach to achieve compliance with SB 1383.

G. Education and Outreach

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

H. Grants

- a. Provide assistance with various grants and funding programs offered by CalRecycle and other funding sources

I. Recovered Waste Procurement

- a. Assist with ongoing implementation and refinement of a recovered waste procurement program including recovered organic waste products, recycled paper products and postconsumer fiber.
- b. Assist with ongoing development and implementation of recordkeeping and reporting processes, including related checklists and report formats.

J. Capacity Planning

- a. Assist with input to Sacramento County's Organic Waste and Edible Food Recovery Capacity planning efforts.

K. Annual Reporting and CalRecycle Coordination

- a. Assist with preparation of AB 939 Electronic Annual Report
- b. Compile tonnage information from commercial and residential haulers for inclusion in the EAR.
- c. Prepare annual report for City review and submittal
- d. Assist with Form 303 Household Hazardous Waste Report
- e. Meet with CalRecycle representatives as necessary to review various programs (HHW, C&D, residential, MCR, MORE, etc.); assist with any necessary reports or information to provide during meeting.

L. Special Projects

- a. Assist with solid waste related administrative activities as requested.

III. TERM

The initial term of the agreement shall be 3 years with the option of two one-year extensions.

IV. PROPOSAL REQUIREMENTS

Proposal responses must adhere to the requirements set forth in this section, both for content and sequence. Failure to adhere to these requirements or the inclusion of conditions or limitations may be cause for rejection of the submittal. Use 8½ x 11 sheets (fold outs are acceptable for charts, etc.) and font size large enough to be easily legible (shall not be smaller than 10 point).

A. Cover Letter

Provide a cover letter and introduction, including the name and address of the organization submitting the proposal, together with the name, address, telephone and email address of the contact person authorized to represent the proposal team. Provide the location of the main office, local office and office nearest to the City of Citrus Heights. The letter must be signed by an individual authorized to bind the firm contractually.

B. Project Understanding

1. Provide information based upon the Consultant's understanding of the goals of the project, potential challenges, considerations and identification of the various functions (e.g. sub-consultants).
2. Provide statement that addresses the firm or consultant team's ability to meet the City's insurance requirements.
3. Provide a statement of willingness to sign the City's Professional Services Agreement. Objections to this agreement must be noted in the Proposal.

C. Project Team:

1. Contact Person: 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 point-of-contact on all matters dealing with the services offered and will handle day-to-day activities through to completion.
2. Brief information about the consulting team/firm background, organization, office structure and location, number of professional personnel, and equipment.
3. Justification for consideration and a summary of the firm's or consultant team's capability and experience in providing services on projects similar to the project set forth in this RFP.
4. An organizational chart showing the proposed relationships between all key personnel and support staff who will be expected to participate on the project. (Note: if the proposal includes more than one firm/entity, please identify the responsibilities and roles of each firm, too.).
5. A brief summary of the qualifications and experience of professional services and management staff, particularly at the project manager level, and the key personnel to be assigned. Include relevant education, licenses, accreditation and certificates.
6. A list of at least four (4) references (non-City of Citrus Heights staff) from similar projects that may be contacted, including at least one reference for each sub-consultant listed.

D. Work Plan:

1. A statement that addresses the challenges that can occur during a project similar to this and any unique experience, abilities, or services that can be provided by the firm or consultant team to solve these challenges. Cite an example where these qualities were used.
2. A detailed description of proposed work plan for performing the required services.
3. 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.
4. Provide a proposed schedule demonstrating your firm's commitment to deliver the project to ensure compliance is achieved within state required timeframes.

E. Cost Proposal:

1. Provide an hourly rate sheet for all project staff and sub-consultants for the three-year term of the contract, as well as the up to two one-year extensions, as well as expected level of participation for all proposed staff.

V. PROPOSERS' QUESTIONS

There will not be a pre-submittal conference for this RFP. Questions regarding this RFP shall be submitted in writing, by US mail or email only, to the General Services Department and must be received no later than **4:00 p.m. on Thursday, October 10, 2024**

Inquiries submitted by U.S. mail shall be clearly marked on the envelope or container **"Question – On-Call Solid Waste Consulting Services"** and sent to:

City of Citrus Heights, General Services Department
6360 Fountain Square Drive
Citrus Heights, CA 95621

Attn: Mary Poole, Operations Manager

Inquiries submitted by email shall be clearly marked in the subject line **“Question – On-Call Solid Waste Consulting Services”** and emailed to:

GSD-Mailbox@citrusheights.net

VI. PROPOSAL SUBMITTAL

Proposer's submittal shall be as follows:

- A maximum of 25 sheets of paper printed double-sided, including cover letter and resumes. The cover page, table of contents, tab dividers, cost proposal, schedule and agreement comments shall not count in the number of sheets stated above.
- One electronic (Adobe PDF) and three bound copies.
- Printed on minimum 30% Post Consumer Content (PCC) recycled paper.
- Proposal must be received (not postmarked) and date stamped by a designated City employee no later than **4:00 PM on October 17, 2024** at the City of Citrus Heights.
- Proposals shall be marked:

“Proposal for On Call Professional Solid Waste Consulting Services”

- All proposals shall be delivered/mailed to:

**City of Citrus Heights
General Services Department
6360 Fountain Square Drive
Citrus Heights, CA 95621
Attention: Mary Poole, Operations Manager**

A Proposer may withdraw its final proposal at any time prior to the opening deadline date and time by submitting a written request for its withdrawal to the City of Citrus Heights General Services Department, signed by an authorized agent of the firm. Proposers may thereafter submit a new or modified proposal prior to the opening deadline date and time. Modifications offered in any manner, oral or written, will not be considered.

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

VII. CONSULTANT SELECTION SCHEDULE

The anticipated consultant selection schedule is as follows:

Request for Proposals advertised..... September 17, 2024
Final Date to Submit Requests for Information4:00 PM, Thursday, October 10, 2024
Responses to Questions Posted.....Monday, October 14, 2024
Closing date for receipt of proposals 4:00 PM, Thursday, October 17, 2024
Consultant Interviews if held (tentative)..... Wednesday, October 23, 2024
Consultant Selection and Contract Negotiations (tentative).....October 24-29, 2024
Contract Award, Execute Contract (tentative)..... November 13, 2024
Start of Project/Begin Work (tentative) December 1, 2024

VIII. 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 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.

IX. VALID OFFER

Proposals shall remain valid for 120 days from the due date. The City reserves the right to negotiate with the successful Proposer any additional terms or conditions not contained in their proposal which are in the best interest of the City or to otherwise revise the scope of this RFP.

This RFP does not constitute a contract or an offer of employment. The cost of preparation of proposals shall be the obligation of the Proposer. All proposals, whether accepted or rejected, shall become the property of the City and will not be returned. Unnecessarily elaborate responses, enclosures and specialized binding are not desired, and may be construed as an indication of Proposer's lack of cost consciousness.

X. CITY RIGHTS

The City reserves the right to:

- Request clarification of any submitted information
- Waive any informalities or irregularities in any proposal
- Not enter into any agreement
- Not select any consultant
- Cancel this process at any time
- Amend this process at any time

XI. CITRUS HEIGHTS WEB SITE REQUIREMENTS

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. All available RFP's and related addenda can be found at:

<http://www.citrusheights.net/Bids.aspx>

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".

XII. EVALUATION

In order to receive consideration of selection, all proposals received must address all aspects of this RFP. The following criteria will be used to evaluate proposals:

- Demonstrated understanding of issues raised by the City in this RFP.
- Experience and qualifications of key staff, including unique experience and approach of consultant firm that may enhance the services provided.
- References from municipal agencies and similar engagements.
- Key consultant personnel accessibility to City staff.
- Demonstrated ability to meet deadlines.
- Cost proposal

The items are not listed in order of importance. Proposals will be evaluated on their overall response to the specific needs of this RFP. Generalized information related to other matters should not be included in your proposal.

A review panel will review and score the initial proposals based upon standardized selection criteria, and top consultant teams may be selected for interviews. The City may conduct a final interview of the top-ranked firm before final selection is made. Upon City Council approval, the City Manager will execute the Professional Services Contract with the selected consultant.

Submission of a proposal implies consultants' acceptance of the criteria. The City reserves the right to reject any and all proposals, to waive any irregularities in any proposal, sit and act as sole judge of the merit and qualifications of services offered, and to accept the proposal which is deemed to be in the best interest of the City of Citrus Heights. The City will award any agreement based on the most responsive proposal, which includes the most advantageous pricing, quality and suitability of services for the City's particular needs. Additionally, the City may, for any reason, determine not to award an agreement as a result of this RFP.

XIII. AWARD

Award shall be recommended to the Proposer whose proposal best meets the needs of the City. The City reserves the right to reject any or all proposals, and to solicit additional proposals if deemed in the best interest of the City to do so. The decision of the City Council shall be final in making such determination.

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". Any reference in this Request for Proposal to specific terms of the agreement are for illustrative purposes only and shall not limit the scope of the obligations to be assumed by the successful Proposer under the agreement. In the event of any conflict between a provision of this Request for Proposal and the provisions of the agreement attached, the terms of the agreement shall govern.

Receipt of the fully executed agreement will serve as Proposer's notice to proceed with services.

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF CITRUS HEIGHTS AND
[NAME OF CONSULTANT]
(Standard Agreement)**

THIS Agreement (“Agreement”) for consulting services is made by and between the City of CITRUS HEIGHTS (“City”) and _____ (“Consultant”) (together referred to as the “Parties”) as of _____, 20__ (the “Effective Date”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on _____ or the date the Consultant completes the services specified in Exhibit A, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.

1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, requests in writing the reassignment of any such persons to ensure Consultant performs services in accordance with the Standard of Performance, Consultant shall, immediately upon receiving City’s request, reassign such persons.

1.4 Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided herein above and to satisfy Consultant’s obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed _____ \$(_____), as set forth in Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant’s estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the

costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless waived by the City Manager, or his or her designee:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall pay undisputed invoices that comply with the above requirements within 30 days from the receipt of the invoice.

2.3 Final Payment. Consultant shall submit its final invoice within 60 days of completing its services. Consultant's failure to submit its final invoice within this 60 day period shall constitute Consultant's waiver of any further billings to, or payments from, City.

2.4 Reimbursable Expenses. Reimbursable expenses, if any, are specified in Exhibit B and included in the total compensation referenced in Section 2. Expenses not listed in Exhibit B are not chargeable to, or reimbursable by, City.

2.5 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.6 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this

Agreement until receipt of a written authorization from the City Manager, or his or her designee.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall be fully responsible for the acts and omissions of its subcontractors or other agents.

4.1 Workers' Compensation. Consultant shall, at its 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 in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.

- b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and non-contributing.
- d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- e. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its 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 \$1,000,000 per occurrence or claim covering the Consultant's errors and omissions.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.

- c. 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 purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Submittal Requirements. Consultant shall submit the following to City prior to beginning services:

- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

4.4.2 Acceptability of Insurers. All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.3 Deductibles and Self-Insured Retentions. Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than \$100,000.

4.4.4 Wasting Policies. No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant 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, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.4.7 Excess Insurance. If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 General Requirement. To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney's fees, costs and fees of litigation, (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services under this Agreement, or its failure to comply with any of its obligations contained in this Agreement, or its failure to comply with any applicable law or regulation, except such Liability caused by the sole negligence or willful misconduct of City.

Acceptance by City 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 to any damage or claims for damages whether or not such insurance policies shall be determined to apply.

5.2 PERS Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as

well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City.

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

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. Consultant shall also, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.

7.3 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

7.4 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the

provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Upon ten days' prior written notice, City may cancel this Agreement at any time and without cause upon such written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City 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.
- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by the parties hereto.
- 8.3 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City Manager, or his or her designee. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the City Manager, or his or her designee.
- 8.4 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant, including but not limited to the provisions of Section 5, shall survive the termination of this Agreement.
- 8.5 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.5.1** Immediately terminate the Agreement;

- 8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- 8.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.5.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.
- 8.5.5 The remedies mentioned in this Agreement are not exclusive of any other right, power or remedy permitted by law. The City's failure or delay in exercising any remedy shall not constitute a waiver of such remedy or preclude the further exercise of City's rights.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All final versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement, and the City may use, reuse or otherwise dispose of the documents without Consultant's permission. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential drafts and will not be released to third parties by Consultant without prior written approval of City.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the

examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Sacramento County or in the United States District Court for the Eastern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 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.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 10.7 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

- 10.8 Notices.** Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, or (ii) certified United States mail, postage prepaid, return receipt requested,. Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Consultant : _____

City: City of Citrus Heights
6360 Fountain Square Drive
Citrus Heights, CA 95621
ATTN: City Manager

- 10.9 Professional Seal.** Where applicable in the determination of the City Manager, or his or her designee, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility."

- 10.10 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent there are any inconsistencies between this Agreement, the Exhibits, and Consultant's proposal, the Agreement shall control. To the extent there are any inconsistencies between the Exhibits and the Consultant's Proposal, the Exhibits shall control.

Exhibit A Scope of Services
Exhibit B Compensation Schedule

- 10.11 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

- 10.12 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.13 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date.

CITY OF CITRUS HEIGHTS

CONSULTANT

Ashley J. Feeney, City Manager

[NAME, TITLE]

Attest:

Amy Van, City Clerk

Approved as to Form:

Ryan R. Jones, City Attorney

EXHIBIT A
SCOPE OF SERVICES

SAMPLE

EXHIBIT B
COMPENSATION SCHEDULE

SAMPLE

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT

By: _____

Title: _____

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