



## **REQUEST FOR PROPOSAL (RFP)**

**FOR**

## **BIO-SOLIDS REMOVAL AND DISPOSAL**

### **PROPOSALS DUE**

August 15, 2022 @ 12 p.m.

### **DIRECT QUESTIONS TO**

Kody Tompkins

General Manager of Environmental Services

City of Barstow

E-mail: [ktompkins@barstowca.org](mailto:ktompkins@barstowca.org)

Phone: (760) 255-5157



## CITY OF BARSTOW BIO-SOLIDS REMOVAL AND DISPOSAL RFP

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### SCOPE OF WORK

#### I. **BACKGROUND**

##### Summary

The City of Barstow is currently soliciting proposals for a firm to provide the means of removal and disposal of the City's Wastewater Treatment Plants Bio-solids. Details related to service level requirements are more fully described in *Attachment I – Scope of Services*.

##### About the City of Barstow

Rich in California history and located in the northern Inland Empire region of San Bernardino County, the City of Barstow spans 40 square miles and is centrally located midway between Los Angeles and Las Vegas. The community was founded in 1886 and incorporated as a City in 1947. Today, Barstow is home to around 23,000 residents and blends the best elements of small-town charm with convenient access to big city amenities. As the place where Interstates 15 and 40 intersect with Highways 58 and 247, Barstow truly sits at the crossroads of opportunity, where the best is yet to come.

Barstow's international reputation for being a premier community has attracted an eclectic mix of railroad, military, high technology, and mining employers in town. Burlington Northern Santa Fe Railroad's largest classification yard calls the City home. In addition, the U.S. Army National Training Center at Fort Irwin, the Marine Corps Logistics Base, NASA's Goldstone Deep Space Network, and Molycorp (the only rare earth oxide producer in the Western hemisphere) all have operations based in the greater Barstow area.

##### The Barstow City Organization

Barstow is a general law city operating under the Council-Manager form of government. The City Manager is appointed by the City Council to serve as the organization's Chief Executive Officer and leads a full-time staff of 171 employees and a part-time staff of 54 employees while administering the Fiscal Year 2022/23 Budget of around \$84 million.

As the only full-service city in the Inland Empire's High Desert Region, Barstow coordinates its organization in six departments, including the City Manager's Office, Police Department, Fire Department, Community Development Department, Community Services Department, and the Finance Department. The City organization has recently engaged in an exciting initiative to reinvent itself into a dynamic, innovative, fast-paced, and strategic operation. Employees are being empowered to take calculated risks and there is a growing expectation and commitment to the continuous improvement of all aspects of the municipal operation.



## **II. CONSULTANT REGISTRATION / CONTACT INFORMATION**

In order to ensure that all vendors receive any updates or clarifications issues, all firms planning on submitting a response to this RFP are required to register with the City by providing the information listed below:

- Firm Name
- Contact Person Name
- Contact Person Job Title
- Contact Person Mailing Address
- Contact Person E-Mail Address
- Contact Person Telephone Number
- Contact Person Fax Number

THE REGISTRATION INFORMATION MUST BE FORWARDED VIA E-MAIL TO KODY TOMPKINS ([KTOMPKINS@BARSTOWCA.ORG](mailto:KTOMPKINS@BARSTOWCA.ORG)).

## **III. RFP TIMELINE & RFP RESPONSE FORMAT**

The timeline for this RFP is as follows:

- RFP Issuance Date: July 18, 2022
- Question Submittal Deadline: July 29, 2022
- City's Question Response Deadline: August 4, 2022
- Proposal Deadline: August 15, 2022
- Contract Award Date: September 5, 2022 (Tentative)

Please note that based on the established timeline for this RFP, all final responses are due to the City by 12:00 p.m. on August 15, 2022. Respondents are allowed to submit their response to this RFP via a formal proposal; however, all respondents are required to submit the following documents: Proposals can be submitted via email to [ktompkins@barstowca.org](mailto:ktompkins@barstowca.org) or mail

City of Barstow  
220 East Mountain View Street  
Barstow, CA 92311  
Attn: Kody Tompkins, GM of Environmental Services

- Job titles and key experience of staff expected to work on this project.
- List the quantity and type of equipment available for the performance of this contract. Identify which vehicles would be used as the primary service vehicles.



- The estimated time of arrival for an emergency call-out from time of notification by the City to operator arrival at the scene.
- Sign Attachment 1 (Scope of Services Acknowledgement Form)

#### **IV. PRE-PROPOSAL INQUIRY**

As noted above, firms interested in responding to this RFP will have a pre-proposal inquiry period. Consultants are encouraged to submit in writing via email any clarifying questions or information required to fully respond to the RFP. In order to allow adequate response time, all questions or clarifications are encouraged to be submitted by July 29, 2022. The city of Barstow will respond to all questions no later than August 4, 2022.

Questions should be forwarded via e-mail to:

Kody Tompkins  
[ktompkins@barstowca.org](mailto:ktompkins@barstowca.org)

#### **V. CONSULTANT SERVICES AGREEMENT FORM**

A sample of the City's standard Professional Services Agreement (Agreement) is provided for reference in Attachment 2. If a proposer desires to take exception to any portions of the Agreement, those proposed changes must be clearly identified and submitted along as part of the RFP response package. The exceptions noted by the proposer will be taken into account in evaluating the proposals.

#### **VI. SUBCONTRACTING**

The Consultant selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments, however, the primary Consultant shall assume all responsibility for services required of a subcontractor.

#### **VII. ATTACHMENTS**

The attachments listed below are included with this RFP for review and use:

- Attachment 1 – Scope of Services
- Attachment 2 – Sample Professional Services Agreement

#### **VIII. REVIEW AND SELECTION PROCESS**

The City reserves the right to make the selection based on its sole discretion. A subcommittee of City staff will evaluate the proposals received in response to this RFP, each of which will be rated



based on current organizational needs. Criteria that will be used to evaluate responses will include, but not be limited to, the following:

1. Quality and completeness of the proposal.
2. Ability to schedule and efficiently perform the required work.
3. Cost-effectiveness of the proposal compared to the requested scope of work.

Utilizing the criteria listed above and any additional criteria the City deems necessary, a recommendation of the selected candidate will be made to the City Manager. The City Manager will make a final recommendation to the City Council, which is the governing body that will award the final contract.

## **IX. RFP TERMS AND CONDITIONS**

The following terms and conditions apply to this RFP:

1. All responses shall become the property of the City.
2. Due care and diligence have been exercised in the preparation of this RFP and all information contained herein are believed to be substantially correct. However, the responsibility for determining the full extent of the services rests solely with those making responses. Neither the City nor its representatives shall be responsible for any error or omission in this response, nor for the failure on the part of the respondents to determine the full extent of their exposures.
3. The City reserves the right to select consultants from the responses received; to waive any or all informalities and/or irregularities; to re-advertise with either an identical or revised scope, cancel any requirement in its entirety, or reject any or all proposals received. The City also reserves the right to approve any subcontractors used by submitting firms.
4. A response to this RFP does not constitute a formal bid, therefore, the City retains the right to contact any / all proposing firms after submittal in order to obtain supplemental information and/or clarification in either oral or written form. Furthermore, an explicit provision of this RFP is that any oral communication made is not binding on the City's proposal process.
5. The City will not be liable for, nor pay for any costs incurred by responding firms relating to the preparation of any proposal for this RFP.



# **ATTACHMENT 1**

## **SCOPE OF SERVICES**

### **BIO-SOLIDS REMOVAL AND DISPOSAL**

#### **Summary**

Consultant shall use and furnish at the firm's own expense all labor, equipment, and materials necessary for the satisfactory performance of the removal and disposal of "Class A, Class B, or Class Sub-B Bio-Solids" work set forth herein.

Disposal of bio-solids from the City's Wastewater Treatment Plant located at 2200 E. Riverside Dr., Barstow, CA 92311. The term bio-solids material means the following; municipal sewage sludge resulting from the treatment of wastewater at the plant.

#### **Contractor Representations, Warranties, and Requirements, Contractor shall**

- a. Meet and remain in compliance at all times during this Agreement with all applicable Federal, State, and local laws, permits, and regulations ("Government Regulations") applicable to the Services.
- b. Maintain processing and reuse capacity for the Materials provided by the Customer during the term of this Agreement.
- c. Maintain at all times during this Agreement an accident and emergency spill response plan and provide the Customer with a copy upon request.
- d. Maintain complete and accurate records including weight tickets from certified weigh master scales of the Materials received and provide Customers with any requested reports.
- e. Transportation will pick up during the hours of 6:00 a.m. to 12:00 p.m.
- f. Provide Customers with the facility composting annual report no later than January 15<sup>th</sup> of each year.
- g. Contractor must be registered as a composting facility with the Environmental Protection Agency (EPA) and provide their annual report by the EPA's deadline.

#### **Customer Representations, Warranties, and Requirements, Customer shall**

- a. Provide Contractor with written and/or verbal notification of the quantities, dates, and times for delivery of the Materials to the Contractor.
- b. Hereby warrants that all bio-solids materials delivered to Contractor are non-hazardous as defined by the applicable sections of the California Code of Regulations.
- c. Provide loader and loader operator to fully load Contractor's trucks in a safe manner.
- d. Provide Contractor with the quarterly bio-solids sampling results

#### **Emergency Callouts**

The Consultant shall provide a 24-hour telephone number and/or a list of employees (including their telephone numbers) who are available for 24-hour emergency callout service. Compensation for emergency callout services shall be listed in the Contractor's proposal.

Regular business hours shall be those times from Monday through Friday, 6:00 a.m. to 12:00 p.m. All other times shall be considered after hours for the purpose of determining emergency callout work.



*Consultant certifies that they have read and understood the scope of services required for the BIO-SOLIDS REMOVAL AND DISPOSAL RFP as outlined in Attachment 1 above.*

Signature: \_\_\_\_\_

Name of Signer: \_\_\_\_\_

Title of Signer: \_\_\_\_\_

Date: \_\_\_\_\_

*Consultant certifies that the bid amounts provided above are accurate and submitted in response to the City of Barstow's BIO-SOLIDS REMOVAL AND DISPOSAL RFP. Furthermore, the Consultant certifies that the above-identified costs shall be good for ninety (90) days from the date listed below.*

Signature: \_\_\_\_\_

Name of Signer: \_\_\_\_\_

Title of Signer: \_\_\_\_\_

Date: \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT  
BIO-SOLIDS REMOVAL AND DISPOSAL  
(CITY OF BARSTOW / COMPANY)**

**CITY OF BARSTOW  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Barstow, a municipal organization organized under the laws of the State of California with its principal place of business at 220 East Mountain View Street, Barstow, CA 92311 ("City") and \_\_\_\_\_, a contractor capable of providing BIO-SOLIDS REMOVAL AND DISPOSAL services, with its principal place of business at \_\_\_\_\_ ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

**2. RECITALS.**

**2.1 Consultant.**

The Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing BIO-SOLIDS REMOVAL AND DISPOSAL services to public clients, is licensed in the State of California, and is familiar with the plans of the City involved herein.

**2.2 Project.**

City desires to engage a Consultant to render such services for BIO-SOLIDS REMOVAL AND DISPOSAL services ("Project") as set forth in this Agreement and defined during the RFP Process.

**3. TERMS.**

**3.1 Scope of Services and Term.**

**3.1.1 General Scope of Services.** The Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply BIO-SOLIDS REMOVAL AND DISPOSAL services for the Project ("Services"). The Services are more particularly described in Attachment "1" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the attachments included hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations.



3.1.2 Term. The term of this Agreement shall be in effect for five (5) years, beginning \_\_\_\_\_ and shall last through \_\_\_\_\_ unless extended by written agreement of both parties by no more than two one (1) year extensions. The Consultant shall serve at the pleasure of the City. The Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### **3.2 Responsibilities of Consultant.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. The consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. The City retains a Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. The Consultant shall pay all wages, salaries, and other amounts due to such personnel in connection with their performance of Services under this Agreement and as required by law. The Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. The Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Scope of Services set forth in Attachment "1" attached hereto and incorporated herein by reference. The Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate the Consultant's conformance with the Schedule, City shall respond to the Consultant's submittals in a timely manner.

3.2.3 Conformance to Applicable Requirements. All work prepared by the Consultant shall be subject to the approval of the City. In addition, the Consultant shall purchase a City business license which must be valid for the duration of the project.

3.2.4 Substitution of Key Personnel. The Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, the Consultant may substitute other personnel of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: \_\_\_\_\_.

3.2.5 City's Representative. The City hereby designates Willie A. Hopkins, City Manager, or his designee, Wesley Garrison, Plant Superintendent, to act as its representative for the performance of this Agreement (the "City's Representative"). The City's Representative shall

have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his designee.

3.2.6 Consultant's Representative. Consultant hereby designates \_\_\_\_\_, or his / her designee, to act as its representative for the performance of this Agreement (the "Consultant's Representative"). The Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, Consultants, and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, the Consultant represents that it, its employees, and subcontractors have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, the Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules, and regulations and without giving written notice to the City, the Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify, and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.2.10 Insurance.

3.2.10.1 Time for Compliance. The Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, the Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Agreement by the Consultant, its agents, and representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other forms with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and (3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors, and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$5,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or the Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage

excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A: VIII, licensed to do business in California, and satisfactory to the City.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements affecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms provided by the City if requested. All certificates and endorsements must be received and

approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 **Safety.** Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state, and federal laws, rules, and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3.2.12 Indemnification**

3.2.12.1 **Indemnity by Consultant.** Consultant, its successors and assigns (the "Indemnitors"), agree to indemnify, defend and hold harmless City, its officers, officials, directors, employees, agents and volunteers (the "Indemnitees"), from and against any and all Damages (as defined below) suffered or incurred by the Indemnitees resulting from or related to (i) any breach of Consultant's obligations under this Contract; (ii) any violation by Consultant of any federal, state or local law applicable to Consultant's performance under this Contract, including without limitation, Applicable Environmental Laws; (iii) the failure of Consultant to pay any federal, state or local income, sales, use, payroll or other tax during the term of this Contract; (iv) the failure of Consultant to maintain any insurance coverage required to be maintained by this Contract; and (v) any claim resulting from the negligent or willful acts or omissions of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Notwithstanding the foregoing, the Indemnitors shall not be liable for any damages that arise as a result of the sole negligence or willful misconduct of the Indemnitees.

3.2.12.2 **Definition of Damages.** As used herein, "Damages" shall mean all liabilities, demands, claims, actions, or causes of action, regulatory, legislative, or judicial proceedings, assessments, levies, losses, fines, penalties, damages, costs, and expenses, in each case as awarded by a court or arbitrator, including, without limitation, reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability.

3.2.12.3 **Indemnitee Claims.** Except as set forth in Section 3.2.12.4, in the event that an Indemnitee makes a claim for which the Indemnitee is indemnified pursuant to Section 3.2.12.1, the Indemnitee shall provide written notice of such claim to Indemnitors and Indemnitors shall have thirty (30) days following receipt of such notice to (i) make payment of the claim to Indemnitee; or (ii) if there is a good faith dispute whether such claim is valid, then provide written notice to Indemnitee of the factual and/or legal basis for Indemnitors' dispute of the claim. If Indemnitee and Indemnitors have not agreed on a resolution of the disputed claim within thirty (30) days of notice from Indemnitors, then pending final resolution of the dispute by court,

arbitration, or otherwise, Indemnitors shall either make payment of the full amount of the claim into an escrow account or post a bond for the full amount of the claim.

3.2.12.4 Defense of Third Party Claims. In the event that an indemnification claim hereunder is based in whole or in part upon any claim or legal proceeding asserted by a person or entity which is not a party to this Contract (a "Third Party Claim"), promptly after receipt of notice of the Third Party Claim, the Indemnitees shall notify the Indemnitors of such claim in writing. The Indemnitors shall have a period of 30 days following the receipt of such notice to notify the Indemnitees of whether the Indemnitors elect to assume the defense thereof. If the Indemnitors so notify the Indemnitees that they elect to assume the defense, the Indemnitors thereafter shall undertake and diligently pursue the defense of the Third Party Claim. The Indemnitors shall not consent to entry of the judgment or enter into any settlement agreement, without the consent of the Indemnitees, which does not include a complete and unconditional release of the Indemnitees or which imposes injunctive or other equitable relief against the Indemnitees. The Indemnitees shall be entitled to participate in, but not control, the defense thereof, with counsel of its choice and at its own expense. If the Indemnitors do not give the requisite notice, or fail to assume and diligently pursue the defense of such Third Party Claim, the Indemnitees may defend against such Third Party Claim in such manner as they may deem appropriate, including without limitation, settlement thereof on such terms as the Indemnitees may deem appropriate, and to pursue such remedies as may be available to the Indemnitees against the Indemnitors. Notwithstanding the foregoing, the Indemnitees shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of the Indemnitors, which does not include a complete release of the Indemnitors.

3.2.12.5 Overall Duty to Defend. It is understood that the duty of the Consultant to indemnify and hold harmless includes those duties to defend as set forth in Section 2778 of the California Civil Code. However, such duty shall be limited to claims alleging the Consultant's negligent performance of services. In such an instance, the Consultant's obligations regarding the City's and /or any Indemnitees' defense under this section include the payment of the City's / Indemnitees' reasonable defense costs.

3.2.12.6 Limitations. Consultant shall not be responsible for warranties, guarantees, and fitness for a particular purpose, breach of fiduciary duty, loss of anticipated profits, or economic, incidental, or consequential damages to the City or any third party arising out of breach of contract or termination.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Attachment "2" attached hereto and incorporated herein by reference. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to the City a monthly-itemized statement that indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through

the date of the statement. The City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that the Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Consumer Price Index. Consultant shall not be reimbursed for any changes to the Consumer Price Index (CPI) during the original three (3) year term of the contract per the RFP.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. The Consultant shall allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

### **3.5 General Provisions.**

#### **3.5.1 Termination of Agreement.**

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**City:**

City of Barstow  
220 East Mountain View Street  
Barstow, CA 92311  
Attn: Kody Tompkins, GM of Environmental Services

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first-class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**3.5.3 Ownership of Materials and Confidentiality.**

3.5.3.1 Documents & Data: Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than the Consultant or provided to the Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to the Consultant in connection with the performance of this Agreement shall be held confidential by the Consultant. Such materials shall not, without the prior written consent of the City, be used by the Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in



any magazine, trade paper, newspaper, television or radio production, or another similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

3.5.6 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by writing signed by both Parties.

3.5.7 Governing Law. This Agreement shall be governed by the laws of the State of California. The venue shall be in San Bernardino County.

3.5.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.9 City's Right to Employ Other Consultants. The City reserves the right to employ other Consultants in connection with this Project.

3.5.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.5.11 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest therein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates, or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer.

3.5.12 References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or

service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.15 No Third Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

3.5.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.17 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, or other consideration contingents upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.18 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan, or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. The Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### **3.6 Subcontracting.**

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without the prior written approval of the City.

3.6.2 Subcontractor Agreement. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.6.2.1 Any sub-consultant engaged by the Consultant to assist with services will be required to provide industry-standard errors & omissions insurance coverage amounts subject to approval by the City.

### **3.7 General Provisions.**

3.7.1 City-Provided Information and Services. The City shall furnish Consultant available studies, reports, and other data pertinent to Consultant's services; obtain or authorize Consultant to obtain or provide additional reports and data as required; furnish to Consultant services of others required for the performance of Consultant's services hereunder, and Consultant shall be entitled to use and rely upon all such information and services provided by the City or others in performing Consultant's services under this Agreement.

3.7.2 Access. The City shall arrange for access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform services hereunder.

**CITY OF BARSTOW**

**CONSULTANT**

BY: \_\_\_\_\_  
Willie A. Hopkins Jr.  
City Manager

BY: \_\_\_\_\_  
*Name:*  
*Title:*

BY: \_\_\_\_\_  
*Name:*  
*Title:*

Attest:

By: \_\_\_\_\_  
Andrea Flores  
City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Matthew Summers  
Interim City Attorney