

## ITEM 4.14

### **CITY MANAGER'S REPORT MAY 13, 2024 CITY COUNCIL REGULAR MEETING**

**ITEM:** **APPROVE SERVICE CONTRACT WITH FRANK M. BOOTH INC. TO PROVIDE ON-CALL HVAC SYSTEMS SERVICES**

**RECOMMENDATION:** **Adopt a Resolution Approving a Service Contract With Frank M. Booth Inc. to Provide On-Call HVAC Systems Services, Terminating no Later Than June 30, 2025**

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#### **SUMMARY:**

Frank M. Booth (FMB), has been providing both preventative maintenance and on-call heating, ventilation, and air conditioning (HVAC) services for all City facilities for over fifteen (15) years. FMB is familiar with the City's building and HVAC infrastructure and conducts quarterly maintenance on all City HVAC equipment to ensure the functionality and efficiency of the equipment in offices and common areas, including rooms that use specialized computer systems at all sites. This ensures that the critical technology infrastructure has a clean and cooling environment for optimal system operation, ultimately extending the life of the equipment.

The existing agreement for on-call services is expired and depleted in funds however on-going services and repairs are required. Staff reached out to four (4) other vendors in the area, but none of them are willing to submit proposals for the required services that FMB has provided to the City for years due to prevailing wage requirements. Staff is requesting City Council to approve a new service contract with FMB to provide additional on-call HVAC systems services for a sum not to exceed \$60,000 for the fiscal year 24-25. These expenses will be funded by the budget for each facility requiring services.

#### **BACKGROUND:**

For over fifteen (15) years, FMB has provided excellent service and when appropriate depending on the air quality requirements, especially during fire season when the air is most contaminated by smoke, FMB utilizes high-grade, special air filters to filter out more contaminants and provide cleaner air for the staff and the public inside the City's facilities, as well as computer room systems at all sites. This ensures that the critical technology infrastructure has a clean cooling environment for optimal system operation, ultimately extending the life of the equipment.

The on-call HVAC support services agreement allows for the City to contact the FMB when a HVAC issue is occurring and have it addressed immediately. In between the quarterly planned maintenance, the equipment may require additional services or repair to ensure functionality. When an HVAC unit malfunctions FMB, is able to troubleshoot and rectify the issue before the HVAC unit malfunction has an impact on staff and visitors.

**APPROVE SERVICE CONTRACT WITH FRANK M. BOOTH INC. TO PROVIDE ON-CALL HVAC SYSTEMS SERVICES**

FMB is able to promptly provide the specialized filters and is the only vendor willing to ensure the functionality of the HVAC system. Staff reached out to four (4) other vendors in the area, but none of them are willing to submit proposals for the required services that FMB has provided to the City for years. These vendors are not willing to submit proposals to the City due to prevailing wage requirements.

To minimize equipment failures and reduce costs for on-call services, additional coil cleaning has been added to the planned maintenance scope of work. This will help decrease the need for on-call services caused by equipment malfunctioning due to dirty coils.

To ensure the functionality of City HVAC equipment and create a comfortable and healthy work environment with clean air for employees and visitors, as well as computer room systems at all sites, staff is requesting City Council to approve a service contract with an amount not to exceed of \$60,000 for the fiscal year 24-25.

**REASON FOR RECOMMENDATION:**

Ensuring the functionality of the City's HVAC systems when malfunctions occur will provide a comfortable and healthy environment that supports employee productivity, enhances the experience for visitors, and ensures the sustained performance of critical technological systems, ultimately resulting in long-term cost savings and operational efficiency.

**FISCAL IMPACT:**

This agreement will be funded by the budget of each facility requiring services. Each facility has sufficient funds to support services to the HVAC system.

**ATTACHMENTS:**

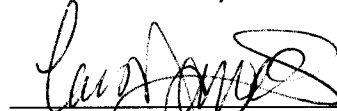
- A. A Resolution Approving Service Contract with Frank M. Booth Inc. to Provide On-Call HVAC Systems Services
- B. Service Contract with Frank M. Booth Inc. to Provide On-Call HVAC Systems Services

APPROVE SERVICE CONTRACT WITH FRANK M. BOOTH INC. TO PROVIDE ON-  
CALL HVAC SYSTEMS SERVICES

APPROVALS:

  
\_\_\_\_\_  
Tony Fernandes  
Information Systems Director

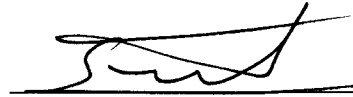
5-6-2024  
Date

  
\_\_\_\_\_  
Cari James  
Finance Director

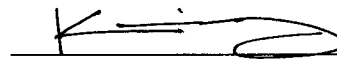
5/6/2024  
Date

  
\_\_\_\_\_  
Michael King  
Assistant City Manager

5.7.2024  
Date

  
\_\_\_\_\_  
Salvador Navarrete  
City Attorney

5.6.2024  
Date

  
\_\_\_\_\_  
Stephen J. Salvatore  
City Manager

5.8.2024  
Date

**RESOLUTION NO. 24 -**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP TO APPROVE SERVICE CONTRACT WITH FRANK M. BOOTH TO PROVIDE ON-CALL HVAC SYSTEMS SERVICES**

**WHEREAS**, Frank M. Booth (FMB), has been providing both preventative maintenance and on-call heating, ventilation, and air conditioning (HVAC) services for all City facilities for over fifteen (15) years; and

**WHEREAS**, this ensures that the critical technology infrastructure has a clean and cooling environment for optimal system operation, ultimately extending the life of the equipment; and

**WHEREAS**, the existing agreement for on-call services is expired and depleted in funds however on-going services and repairs are required; and

**WHEREAS**, staff reached out to several other HVAC repair vendors in the area, and no other vendors are willing to submit proposals to service the HVAC equipment due to prevailing wage requirements; and

**WHEREAS**, to ensure the functionality of the City HVAC equipment and create a comfortable and healthy work environment with clean air for employees and visitors, as well as computer room systems at all sites, staff is requesting City Council approve a new service contract with a sum not to exceed \$60,000.

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Lathrop does hereby approve Service Contract with Frank M. Booth Inc. to provide HVAC systems on-call services for an amount not to exceed \$60,000.

The foregoing resolution was passed and adopted this 13<sup>th</sup> day of May 2024, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Sonny Dhaliwal, Mayor

**ATTEST:**

\_\_\_\_\_  
Teresa Vargas, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Salvador Navarrete, City Attorney

**SERVICE CONTRACT BETWEEN THE CITY OF LATHROP AND FRANK M. BOOTH, INC. PROVIDE ON-CALL HVAC SYSTEMS SUPPORT SERVICES**

**THIS SERVICE CONTRACT** (hereinafter "Contract") is made on **May 13<sup>th</sup>, 2024** by and between the **City of Lathrop**, a municipal corporation of the State of California (hereinafter "City") and **Frank M. Booth, Inc.** (hereinafter "Contractor"), whose Taxpayer Identification Number is 94-1257060.

For and in consideration of the following covenants, terms and conditions, City and Contractor (the parties) agree:

**SCOPE OF WORK**

Contractor agrees to provide on-call HVAC support services in accordance with the scope of work and fee proposal provided by the Contractor, attached hereto as Exhibit "A" and incorporated herein by reference. Contractor agrees to diligently perform these services in accordance with the upmost standards of its profession and to City's satisfaction.

**CONTRACT PRICE**

The City agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done based on time and materials basis not to exceed **\$60,000** set forth in Exhibit "A" to provide on-call HVAC system services.

**TIME FOR PERFORMANCE**

The Contractor shall commence work within five (5) working days of the Notice to Proceed, and diligently prosecute the work to completion. The effective date of this contract is May 13<sup>th</sup>, 2024, and shall terminate no later than June 30, 2025.

**PERMITS; COMPLIANCE WITH LAW**

The Contractor shall, at its expense, obtain all necessary permits, licenses, easements, etc., for the construction of the project, give necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health and safety.

**INSPECTION BY CITY**

The Contractor shall at all times maintain proper facilities and provide safe access for inspection by the City to all parts of the work, and to the shops wherein the work is in preparation. Where the Specifications require work to be specially tested or approved, it shall not be tested or covered up without timely, written approval by the City.

**SERVICE CONTRACT  
FRANK M. BOOTH, INC – PROVIDE ON-CALL HVAC SYSTEM SUPPORT SERVICES**

Should any such work be covered up without such notice, approval, or consent, it must, if required by City, be uncovered for examination at the Contractor's expense.

**NOTICE**

Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner.

- (a) If the notice is given to the City, by personal delivery thereof to the City's Director of Public Works, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to the City's Director of Public Works, postage prepaid and certified;
- (b) If the notice is given to the Contractor, by personal delivery thereof to said Contractor or to its duly authorized representative at the site of the project, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to the Contractor at the address set forth in the Contractor's Bid postage prepaid and certified; or
- (c) If the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to such surety or other person, as the case may be, at the address of such surety or person last communicated by it to the party giving the notice, postage prepaid and certified.

**ACCIDENT PREVENTION**

Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Occupational Safety and Health Standards Board of the State of California.

**CONTRACTOR'S WARRANTY**

The City shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to said building, work, or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. Contractor unqualifiedly warrants all work and materials to be free of defects whether performed or installed by it or by any subcontractor or supplier in the project which is the subject of this Contract.

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**APPRENTICES**

- (a) The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under him. In addition, Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code.
- (b) Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- (c) Knowing violations of Section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100) for each calendar day of non-compliance pursuant to Section 1777.7.

**HOURS OF WORK**

Eight (8) hours of work in any calendar day shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the City, twenty-five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.

**PAYROLL RECORDS**

Pursuant to Labor Code section 1776, as amended from time to time, the Contractor and each subcontractor shall keep records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the work.

The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- (a) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.



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- (b) A certified copy of all payroll records shall be made available for inspection or furnished upon request, or as required by Labor Code section 1771.7 to the City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (c) A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that if request by the public shall be made through either the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, if as requested, payroll records have been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractors and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) calendar days after receipt of a written request. Any copy of records made available for inspection as copies and furnished upon request to the public or the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or any subcontractor performing work on the Project shall not be marked or obliterated.

The Contractor shall inform the City of the location of the payroll records, including the street address, city and county, and shall, within five (5) calendar days, provide a notice of a change of location and address.

In the event of noncompliance with the requirements of this section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after such ten (10) calendar day period, the Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated.

Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld from payments due Contractor.

**PREVAILING WAGES**

- (a) The Contractor is aware of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, section 16000 *et seq.* ("Prevailing Wage Laws") which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Contract involves an applicable "public works" or "maintenance" project,

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as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at <http://www.dir.ca.gov/dlsr/PWD/index.htm>. In the alternative, the City shall provide Contractor with a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site.

Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

- (b) The Contractor and each subcontractor shall forfeit as a penalty to the City not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

**INSURANCE**

On or before beginning any of the services or work called for by any term of this Agreement, CONTRACTOR, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to the CITY the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the CITY.

CONTRACTOR shall not allow any subcontractor to commence work on any subcontract until all insurance required of the CONTRACTOR has also been obtained for the subcontractor. Verification of this insurance shall be submitted and made part of this Agreement prior to execution.

- (a) Workers' Compensation. CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CONTRACTOR. Said Statutory Workers' Compensation Insurance

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and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000). In the alternative, CONTRACTOR may rely on a self-insurance program to meet these requirements provided that the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the CONTRACTOR, if a program of self-insurance is provided, shall waive all rights of subrogation against the CITY for loss arising from work performed under this Agreement.

- (b) Commercial General and Automobile Liability Insurance. CONTRACTOR, at CONTRACTOR'S own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than one million dollars per occurrence (\$1,000,000), combined single limit coverage for risks associated with the work contemplated by this Agreement. If Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

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

- (i) CITY, its officers, employees, and volunteers are to be covered as insured with respect to each of the following: liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents, or volunteers.
- (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.

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- (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the CITY will be called upon to contribute to a loss under the coverage.
  - (iv) Any failure of CONTRACTOR to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
  - (v) Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A: VII.
  - (vi) Notice of cancellation or non-renewal must be received by CITY at least thirty days prior to such change.
- (c) Deductibles and Self-Insured Retentions. CONTRACTOR shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, upon express written authorization of CITY Manager, CONTRACTOR may increase such deductibles or self-insured retentions with respect to CITY, its officers, employees, agents, and volunteers. The CITY Manager may condition approval of an increase in deductible or self-insured retention levels upon a requirement that CONTRACTOR procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
- (d) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the Agreement is reduced, limited, or materially affected in any other manner, CONTRACTOR shall provide written notice to CITY at CONTRACTOR'S earliest possible opportunity and in no case later than five days after CONTRACTOR is notified of the change in coverage.
- (e) In addition to any other remedies CITY may have if CONTRACTOR fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:
  - (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - (ii) Order CONTRACTOR to stop work under this Agreement or withhold any payment which becomes due to CONTRACTOR

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hereunder, or both stop work and withhold any payment, until CONTRACTOR demonstrates compliance with the requirements hereof;

- (iii) Terminate this Agreement.

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

**INDEMNIFICATION**

Contractor agrees to protect, defend, indemnify and hold City, its City Council members, officers, employees, engineer, and consultants harmless from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments, arising in whole or in part, directly or indirectly, at any time from any injury to or death of persons or damage to property as a result of the willful or negligent act or omission of Contractor, or which results from Contractor's noncompliance with any Law respecting the condition, use, occupation or safety of the Project site, or any part thereof, or which arises from Contractor's failure to do anything required under this Contract or for doing anything which Contractor is required not to do under this Contract, or which arises from conduct for which any Law imposes strict liability on Contractor in the performance of or failure to perform the terms and conditions of this Contract, except as may arise from the sole willful or negligent act or omission of City or any of its City Council members, officers, employees.

This indemnification shall extend to any and all claims, demands, or liens made or filed by reason of any construction, renovation, or remodeling work performed by Contractor under this Contract at any time during the term of this Contract, or arising thereafter.

**SEVERABILITY**

Nothing contained in the Contract shall be construed so as to require the commission of any act contrary to law. Should a conflict arise between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract or act, the latter shall prevail and the provision of this Contract which is affected shall be curtailed and limited but only to the extent necessary to bring it within the requirements of the law. If such curtailment or limitation is not possible, the affected provision shall be of no force and effect. Except as aforesaid, such illegality shall not affect the validity of this Contract.

**COMPLETE AGREEMENT**

This Contract supersedes any and all agreements, either oral or in writing, between the Parties with respect to the subject matter herein. Each party to this Contract acknowledges that no representation by any party which is not embodied herein or any

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other agreement, statement, or promise not contained in this Contract shall be valid and binding.

**INTERPRETATION**

- (a) The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Contract with legal counsel, and/or has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract.
- (b) In the event of a controversy or dispute between the parties concerning the provisions herein, this document shall be interpreted according to the provisions herein and no presumption shall arise concerning the draftsmanship of such provision.

**APPLICABLE LAW**

- (a) The parties hereto understand and agree that the terms of this Contract, and its Exhibits, have been negotiated and executed within the State of California and shall be governed by and construed under the laws of the State of California.
- (b) In the event of a dispute concerning the terms of this Contract, the parties hereto expressly agree that the venue for any legal action shall be with the appropriate court in the County of San Joaquin, State of California.

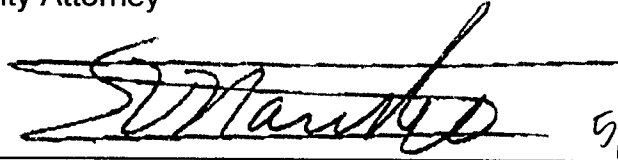
**SIGNATURES**

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

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Approved as to Form:

City of Lathrop  
City Attorney



Salvador Navarrete

5/8/24

Date

Recommended By:

City of Lathrop

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Tony Fernandes  
Director of Information Systems

Date

Approved By:  
Resolution \_\_\_\_\_

City of Lathrop  
390 Towne Centre Drive  
Lathrop, CA 95330

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Stephen J. Salvatore  
City Manager

Date

Contractor:

Frank M. Booth, Inc.  
4220 Douglas Blvd.  
Granite Bay, CA 95746

Fed ID # **94-1257060**  
Business License # **40098**

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Signature

Date

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Print Name and Title



OUR PERFORMANCE BUILDS RELATIONSHIPS®

4230 Douglas Blvd  
Granite Bay CA 95746  
(916) 878.3808 Tele

**Labor Rates:**

**\$145.00 Regular Time (Business hours M-F, 7:00AM-4:00PM)**

**\$195.00 Over Time (Before or after regular business hours, including Saturday)**

**\$245.00 (Sundays and holidays)**