



# **CITY OF LOMITA**

**REQUEST FOR PROPOSAL (RFP)**

**FOR**

**Municipal National Pollutant Discharge Elimination System  
(NPDES) On-Call Consultant**

**2023**

**RFP DEADLINE  
NOVEMBER 16, 2023  
1:00 P.M.**

# TABLE OF CONTENTS

**SECTION I**  
**GENERAL**  
**INFORMATION.....3**

**SECTION II**  
**PROPOSAL REQUIREMENTS.....4**

**SECTION III**  
**SCOPE OF SERVICES.....9**

**SECTION IV**  
**SELECTION OF CONSULTANTS .....11**

**Attachment A – Professional Services Agreement (Sample)**

## **SECTION I GENERAL INFORMATION**

### **A. INTRODUCTION / BACKGROUND**

The City of Lomita is an urban, densely populated 1.97 square miles (total area is 1,261 acres), located at the base of the Palos Verdes Peninsula in the Los Angeles Basin, Los Angeles County, 26 miles south of downtown Los Angeles and bounded by the City of Torrance on the north and west, the Harbor Region of Los Angeles to east, and the City of Rolling Hills Estates on the southwest; and the City of Rancho Palos Verdes and unincorporated Los Angeles County area to the southeast. The City is almost completely developed with mostly residential neighborhoods and commercial units. The City falls within the Machado Lake and Wilmington Drain Watersheds and is a part of the Dominguez Channel Watershed Group.

### **B. PROJECT STUDY DESCRIPTION**

The purpose of this Request for Proposal (RFP) is to seek Consultant qualifications, capabilities and approach to provide full-service stormwater/NPDES/MS4 support. The goal is for the City to retain one or more consulting firms to fulfil the City's needs.

### **C. DESCRIPTION OF WORK, GOALS, ACTIONS AND OBJECTIVES**

The purpose of this RFP is to seek services of a Consultant to provide stormwater support services for permit compliance, regional coordination, and related activities.

### **D. PROJECT DURATION**

The estimated contract duration is three years with two (2) one-year extensions, beginning from the effective contract date.

### **E. PROJECT SCHEDULE**

The tentative schedule follows:

<b>Milestone</b>	<b>Date*</b>
RFP Release	October 20, 2023
Last Day for Questions	November 6, 2023 at 1:00 PM
Issue Addendum (if required)	November 9, 2023
Proposal Submittal Deadline	November 16, 2023 at 1:00 PM
Consultant Interviews (optional)	November 29 – December 6
Expected City Council Approval	December 19, 2023
Kick-off & Notice to Proceed	January 8, 2024

\*(Dates are estimates)

## SECTION II PROPOSAL REQUIREMENTS

### A. GENERAL

The proposal must be concise, well organized and should demonstrate your firm's team qualifications and experience related to this project. The proposal shall be printed on 8½" x 11" pages and include resumes, past experience, graphs, tables, etc. It must include the following:

- I. Cover Letter (one page): The cover letter shall include the name and address of the firm submitting the proposal and a brief introduction of the company and proposed Team. In addition, the cover letter must state the legal name of the firm and acknowledge receipt of any and all addenda issued in association with this RFP.
- II. Qualification and Experience (maximum of 10 pages): The proposed Team shall have experience working with public agencies in similar assignments. It is highly desirable that the key project team members have served public agencies in various capacities, are accustomed to working with governmental agencies, have a good understanding of public agency issues, procedures, and policies. Qualifications and experience to be shown in the proposal shall include, but not be limited to the following:
  - Project organization chart.
  - Identification of experience of principal staff members, including major sub-consultants, if any. Resumes of principal staff should not exceed two pages per person.
  - Identify the availability of your team and the percentage of current workload of staff that would be committed to this project, including sub-consultants.
  - Experience of the firm, the team and subconsultants on similar projects.
- III. Scope of Work and Project Approach (maximum 10 pages): The Consultant shall include in their proposal a detailed scope of work and understanding of the process to undertake such a project and complete it in compliance with all applicable rules, regulations, standards and requirements. Other items to include:
  - Description of your firm's quality/control (Q/C) and quality/assurance (Q/A) procedures that will be used for the Project.
  - Provide a project schedule for various/typical recurring activities by the Team involved and identify the milestones of major tasks of the Project.
  - Discussion of document control.
- IV. **Consultant shall submit a rate schedule in a SEPARATE SEALED ENVELOPE marked "Rate Schedule" along with the Project title.** The

proposed Rate Schedule shall include all tasks that are typically required in this type of municipal engineering project. Any proposed subconsultant shall also be included in the Rate Schedule. The Consultant and all sub-consultants shall not be compensated by the City for any time spent commuting to or from the Project site and other peripheral work not directly performed as a result of the Project.

The City may short-list the firms and interview the top firm(s) for the project.

- V. Prevailing wages will apply if the services to be performed will involve materials sampling and testing, inspection work, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations web site.  
[http://www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html)

**B. EXAMINATION OF PROPOSAL DOCUMENTS**

By submitting a proposal, Consultant represents that it has thoroughly examined and become thoroughly familiar with the work required under this RFP and has the staffing and resources capable of performing quality work to achieve the City's objectives.

**C. ADDENDA**

Any changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. City will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Consultants shall acknowledge receipt of addenda in their proposals.

**D. QUESTIONS AND ADDITIONAL INFORMATION**

Questions relating to this RFP shall be emailed to the City at [publicworks@lomitacity.com](mailto:publicworks@lomitacity.com) no later than **Monday, November 6, 2023 at 1:00 PM.**

**E. PROPOSAL SUBMITTAL**

Proposals are due on or before **1:00 PM, Thursday, November 16, 2023:**

One (1) electronic PDF copy of the proposal shall be emailed to the Public Works Department at: [publicworks@lomitacity.com](mailto:publicworks@lomitacity.com) referenced as "Municipal NPDES On-Call Consultant" in the email title.

The Fee Proposals shall be emailed to the Public Works Department at: [publicworks@lomitacity.com](mailto:publicworks@lomitacity.com) referenced as "Municipal NPDES On-Call Consultant" in the email title.

## **F. INSURANCE REQUIREMENTS**

The successful Consultant shall procure and maintain, for the duration of the contract, insurance policies as listed in Section 17 - Insurance Requirements of the attached sample Professional Service Agreement (PSA).

## **G. SELECTION CRITERIA**

Responses to this RFP will be evaluated using a point rating system, as shown in Section IV. The evaluation will be completed by a selection committee composed of staff from the Public Works Department.

## **H. CHANGES IN THE RFP**

Should any prospective proposer be in doubt as to the true meaning of any portion of this (RFP), or should the proposer find any ambiguity, inconsistency, or omission therein, the Proposer shall make a written request for an official interpretation or correction. Such requests must be received by the Public Works Department not less than five (5) working days prior to the final date of submittal of the proposals.

Such interpretation or correction, as well as any additional RFP provisions that the City may decide to include, will be made only as an official addendum, and will be sent to each firm recorded as having received a copy of the RFP. Any addendum issued by the City shall become part of the RFP and will be incorporated into the proposal. **Addenda will be posted on the City's website.**

## **I. DISCLOSURES**

Under the Freedom of Information Act (Public Act 442), the City is obligated to permit review of its files, if requested by others. All information in a submitter's proposal is subject to disclosure under this provision. This act also provides for a complete disclosure of contracts and attachments thereto.

## **J. POST-SUBMITTAL PROCEDURES**

After reviewing and evaluating the proposals that are received, the City will select one or more firms with whom it will negotiate a Professional Services Agreement (PSA). A sample of the standard PSA is included in Attachment A. Those who wish to submit a proposal to the City are required to carefully review the PSA.

The PSA will include a Scope of Services and Fee Schedule (**not-to-exceed amount**), both of which may be modified by mutual consent during the negotiation phase. The Insurance Requirements outlined in the PSA may not be revised or changed. Prior to its final execution by the selected firm and the City, the PSA must be submitted to, and approved by, City Council and/or the City Manager.

The City reserves the right to award the total proposal, to reject any and all proposals in whole or in part, and to waive any informality or technical defects if, in the City's sole judgment, the best interests of the City will be so served.

#### **K. COST LIABILITY**

The City of Lomita assumes no responsibility or liability for costs incurred by the Consultant prior to the execution of a Professional Services Agreement. The liability of the City is limited to the terms and conditions outlined in the Agreement.

#### **L. INVOICES**

Consultant shall submit invoice(s) at the end of each month for the work performed. Each invoice at a minimum shall include the following information:

Project name;

Period for which invoice is submitted;

Invoice number;

Task name;

Balance remaining and percent completed for each task;

Total project budget and remaining balance;

Each employee's name, hours of work, rate, and total charge,

Invoices must be accompanied by payroll and any other supporting documents that will be necessary to expedite the review and approval process.

#### **M. GUIDELINES DURING PANDEMICS**

Consultants/contractors shall comply with all local, state and federal laws and regulations including, but not limited to, the Governor's and Los Angeles County Health Officer's orders and guidance related to pandemics, social distancing, and best practices.

Consultants/Contractors are required to check with the latest guidelines of the Los Angeles County Public Works and the Los Angeles County Public Health for construction sites during pandemics.

**Disclosure: Consultants shall disclose in their responses to any Request for Proposals whether they have been the subject of any legal investigation by County, State, and/or Federal agencies within the past 5 years. If so, each responding consultant shall identify the agency and contact person, the nature of the investigation and any determination over outcome of said investigation. Non-compliance with this section shall result in rejection of the Proposal, but a consultant's disclosure of any such investigation (even one which resulted in a determination that was adverse to the consultant) will not automatically result in rejection of the Proposal. The occurrence, nature, underlying facts and outcome of any such investigation are not by themselves determinative but are simply**

**included among many factors that will be considered by the City in evaluating Proposals.**



## **SECTION III**

### **SCOPE OF SERVICES**

#### **A. DESCRIPTION**

This RFP is to solicit proposals for stormwater services. The tasks include, but are not limited to:

##### **Task 1 – Project Administration, Compliance Planning, and Reporting**

- Consultant shall provide the City with regular NPDES program status updates and represent City Staff in meetings and correspondence with program stakeholders as requested.
- Consultant shall provide technical assistance, expertise, and information to City staff.
- Consultant shall assess the status of the City's NPDES program and assist and make recommendations for future development of the program, included but not limited to, preparing new program documents, assessing program compliance, and making recommendations for future actions.
- Consultant shall assist with the development and implementation of the City's Watershed Management Program (WMP).
- Consultant shall assist with Total Maximum Daily Load (TMDL) compliance planning, implementation, and reporting, including the preparation of the City's Trash TMDL Daily Generation Rate (DGR) Study.
- Consultant shall assist the City with the preparation of NPDES and TMDL compliance reports as needed.
- Consultant shall assist and QA/QC the City as needed to ensure all applicable projects meet Municipal NPDES requirements.
- Consultant shall assist with other Municipal NPDES services not listed within this scope of work as directed by the City.
- Consultant shall provide records and documentation of all work, inspections, databases performed on behalf of the City.
- Consultant shall schedule and participate in progress meetings with the City to review work and upcoming program needs.

##### **Task 2 – Program Funding Assistance**

- The consultant shall prepare the City's Safe Clean Water Program (SCWP) Annual Plan and Annual Report.
- Consultant shall assist in the preparation of funding applications and necessary correspondence with funding agency as determined by the City.
- Consultant shall assist in the development and administration of fees, budgets, and cost share agreements.
- The Consultant shall provide regular updates on SCWP and NPDES funding programs and shall represent the City as needed in meetings and prepare required correspondence.

### **Task 3 – Control Programs**

- Capital Improvement Projects and Programs
  - Assist the City implementing NPDES Capital Improvement Projects and Programs.
- Planning and Land Development
  - Consultant shall be responsible for maintaining, tracking, and updating Low Impact Development (LID) and related documents with program information.
  - Review LID Plans and related documents as requested.
  - As requested, conduct inspections to verify Best Management Practices (BMP) installations, Operation and Maintenance (O&M), and issue enforcement as needed by the City.
- Construction
  - Consultant shall update and track available program inventory records for sites greater than or equal to one acre.
  - Conduct BMP inspections at sites greater than or equal to one acre, including follow-up inspections and issue enforcement.
- Industrial / Commercial Facilities
  - Consultant shall be responsible for maintaining, tracking, and updating facility records using available data sources.
  - Consultant shall distribute, develop and purchase educational material as deemed necessary by the City.
  - Consultant shall schedule and conduct BMP inspections, follow-up inspections and issue enforcement as needed.
- Public Agency Activities and Training
  - Track and update records for inventoried City facilities with the available information.
  - Conduct BMP inspections as needed at City Facilities and assist and make recommendations for BMP.
  - Develop and provide Municipal NPDES training for City staff as applicable.
- Illicit Discharge
  - Conduct field investigations for illicit discharges, conduct field investigations and follow-ups as necessary, and issue enforcement as needed.
- Public Information and Participation
  - Maintain, track, and update records for public reach activities.
  - Assist with community events to promote pollution prevention.
  - Provide and distribute education materials as directed by the City.
  - Update and develop educational materials and content as directed but the City.

### **B. Time of Performance**

The term of this work shall commence on the Effective Date and expire upon completion of all obligations of the parties, unless earlier terminated by the by the parties. The initial contract shall be for a **thirty-six (36) month** period and shall, at the City's option and upon mutually agreeable terms, be renewed thereafter for up to two (2) additional **twelve (12) month** periods.

## **SECTION IV SELECTION OF CONSULTANTS**

All proposals will be evaluated by a City of Lomita Selection Committee (Committee). The Committee may be composed of City of Lomita staff and other parties that may have expertise or experience in the services described herein. The Committee will review the submittals and will rank the proposals. The evaluation of the proposals shall be within the sole judgment and discretion of the Committee. All contacts during the evaluation phase shall be through the City of Lomita Project Manager only. The selection committee will review the submitted proposals according to the below evaluation criteria and weighting factors. The committee will then establish a shortlist based on the highest ranked proposals.

After the interview, the committee will reestablish a final ranking of the highest ranked consultants. The highest ranked consultant will be selected for the project. If no single consultant can provide all services, multiple consultants may be selected.

The proposals will be evaluated based on the following:

### **A. PROFESSIONAL QUALIFICATIONS - 30 points**

Identify individuals who will be assigned to this project by name, title and their role on this project. Indicate which of these individuals you consider key to the successful completion of the project. Resumes or qualifications are required for proposed project personnel who will be assigned to the project. Qualifications and capabilities of any sub-consultants shall be included.

### **B. PAST EXPERIENCE WITH SIMILAR PROJECTS - 40 points**

The written proposal must include a list of specific experience in the project area and indicate proven ability in providing municipal support related to stormwater for the firm and the individuals to be assigned to the project. Experience with stormwater/NPDES in a similar capacity is highly desirable. The proposal should also indicate the ability to have essential work completed within a timely and organized manner. A complete list of client references must be provided for similar projects completed within the last five years. It shall include the firms/agencies name, address, telephone number, project title, and contact person.

### **C. PROPOSED WORK PLAN – 30 points**

A work plan is to be presented and should outline the overall project understanding, approach, and list all tasks determined to be necessary to accomplish the overall scope of the project. The work plan shall include, but is not to be limited to, the objectives/tasks listed in Section III of the RFP. The work

plan shall define resources needed for typical recurring tasks (title and estimate of labor hours) and staff persons completing the project element tasks. In addition, the work plan shall include a timeline schedule depicting the sequence and duration of tasks showing how the work will be organized and executed.

The work plan shall be sufficiently detailed and clear to identify the progress milestones, i.e. when project elements, measures, and deliverables are to be completed. Additional project elements suggested by the proposer that are thought to be necessary for the completion of the project are to be included in the work plan and identified as proposer-suggested elements.

Identify all of those, if any, who will be subcontracted to assist you with this project, and the extent of work for which they will be responsible. Include similar reference data for subcontractors and employees as requested above for the main proposer.

Include any other information that you believe to be pertinent but not specifically asked for elsewhere.

**D. FEES**

Submit a rate schedule in a separate sealed envelope with proposal.

**E. AUTHORIZED NEGOTIATOR**

Include the name and phone number of person(s) in the organization authorized to negotiate the Professional Services Agreement with the City.

# **ATTACHMENT - A**

## **PROFESSIONAL SERVICES AGREEMENT (SAMPLE)**



**CONTRACT FOR PROFESSIONAL SERVICES  
BETWEEN  
THE CITY OF LOMITA AND NAME**

This AGREEMENT for Description is entered into this \_\_\_ day of \_\_\_, 20\_\_\_, by and between the CITY OF LOMITA, a general law city and municipal corporation ("CITY") and NAME ("CONTRACTOR").

**RECITALS**

- A. CITY does not have the personnel able and/or available to perform the services required under this agreement.
- B. Therefore, CITY desires to contract out for Description.
- C. CONTRACTOR warrants to CITY that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.
- D. CITY desires to contract with CONTRACTOR to perform the services as described in Exhibit A of this Agreement.

**NOW, THEREFORE**, based on the foregoing recitals, CITY and CONTRACTOR agree as follows:

**1. CONSIDERATION AND COMPENSATION.**

- A. As partial consideration, CONTRACTOR agrees to perform the work listed in the SCOPE OF SERVICES, attached as Exhibit A;
- B. As an additional consideration, CONTRACTOR and CITY agree to abide by the terms and conditions contained in this Agreement.
- C. As additional consideration, CITY agrees to pay CONTRACTOR an amount of \$xxx,xxx.xx, the CONTRACTOR's estimated costs of its services, unless otherwise specified by written amendment to this Agreement. The City Council has also approved an additional xx% of these estimated costs, or up to \$xx,xxx.xx, for unexpected contingencies, or a total, not-to-exceed amount of \$xxx,xxx.xx. If CONTRACTOR incurs expenses exceeding its estimated costs of \$xxx,xxx.xx, the CONTRACTOR must request such expenses in writing, and the CITY's City Manager or his designee must approve of such requests, for CONTRACTOR to receive compensation for those costs.

- D. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager or his designee.
- E. CONTRACTOR shall submit to CITY, by not later than the 10th day of each month, its bill for services itemizing the fees and costs incurred during the previous month. CITY shall pay CONTRACTOR all uncontested amounts set forth in the CONTRACTOR'S bill within 30 days after it is received.

**2. SCOPE OF SERVICES.**

- A. CONTRACTOR will perform the services and activities set forth in the SCOPE OF SERVICES attached hereto as **Exhibit A** and incorporated herein by this reference. If any part of **Exhibit A** is inconsistent with the terms of this Agreement, the terms of this Agreement shall control.
- B. Except as herein otherwise expressly specified to be furnished by CITY, CONTRACTOR will, in a professional manner, furnish all the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space, and facilities necessary or proper to perform and complete the work and provide the professional services required of CONTRACTOR by this Agreement.

**3. PAYMENTS.** For CITY to pay CONTRACTOR as specified by this Agreement, CONTRACTOR must submit an invoice to CITY which lists the reimbursable costs, the specific tasks performed, and, for work that includes deliverables, the percentage of the task completed during the billing period.

**4. TIME OF PERFORMANCE.** The services of CONTRACTOR are to commence upon receipt of a notice to proceed from CITY and shall continue until all authorized work is completed to CITY's reasonable satisfaction, in accordance with the schedule incorporated in "**Exhibit A**," unless extended in writing by CITY.

**5. FAMILIARITY WITH WORK.** By executing this Agreement, CONTRACTOR represents that CONTRACTOR has (a) thoroughly investigated and considered the scope of services to be performed; (b) carefully considered how the services should be performed; and (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.

**6. KEY PERSONNEL.** CONTRACTOR's key person assigned to perform work under this Agreement is **Name(s)**. CONTRACTOR shall not assign another person to be in charge of the work contemplated by this Agreement without the prior written authorization of CITY.

**7. TERM OF AGREEMENT.** The term of this Agreement shall commence upon execution by both parties and shall expire on **DATE**, unless earlier termination occurs under Section 13 of this Agreement or extended in writing in advance by both parties.

8. **BEST MANAGEMENT PRACTICES AND TRAINING.** The contractor shall implement and maintain activity specific Best Management Practices (BMPs) to prevent pollutant loading from stormwater and non-stormwater discharges to receiving waters as required in Municipal NPDES Permit No. CAS004004. Contracting staff whose primary job duties are related to implementation of BMPs shall be adequately trained to effectively implement, operate, and maintain such BMPs and must be versed in factors affecting BMP effectiveness. The contractor shall certify they have received all applicable training to implement the requirements in Municipal NPDES Permit No. CAS004004 and shall provide documentation to that effect.
9. **CHANGES.** CITY may order changes in the services within the general scope of this Agreement, consisting of additions, deletions, or other revisions, and the contract sum, and the contract time will be adjusted accordingly. All such changes must be authorized in writing, executed by CONTRACTOR and CITY. The cost or credit to CITY resulting from changes in the services will be determined in accordance with the written agreement between the parties.
10. **TAXPAYER IDENTIFICATION NUMBER.** CONTRACTOR will provide CITY with a Taxpayer Identification Number.
11. **PERMITS AND LICENSES.** CONTRACTOR will obtain and maintain during the term of this Agreement all permits, licenses, and certificates that may be required by local, state, and federal laws in connection with the performance of services under this Agreement, including a business license as specified in Title VI, Chapter 2 of the Lomita Municipal Code.
12. **LAWS AND REGULATIONS; EMPLOYEE/LABOR CERTIFICATION.** CONTRACTOR 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. CONTRACTOR shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for CITY to terminate the Agreement for cause.
13. **PREVAILING WAGE.**
- A. Prevailing Wage. CONTRACTOR is aware of the requirements of California Labor Code Section 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 "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, CONTRACTOR agrees to fully comply with such Prevailing Wage Laws. Upon request, CITY shall provide CONTRACTOR with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. CONTRACTOR shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available



- to interested parties upon request and shall post copies at the CONTRACTOR'S principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and CONTRACTOR shall therefore comply with such Labor Code sections to the fullest extent required by law. CONTRACTOR shall defend, indemnify and hold the CITY, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.
- B. **Registration/DIR Compliance.** If the services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, CONTRACTOR and all subcontractors must be registered with the Department of Industrial Relations ("DIR"). CONTRACTOR shall maintain registration for the duration of the project and require the same of any subcontractors. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be CONTRACTOR'S sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against CONTRACTOR or any subcontractors that affect CONTRACTOR'S performance of services, including any delay, shall be CONTRACTOR'S sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered CONTRACTOR caused delay and shall not be compensable by CITY. CONTRACTOR shall defend, indemnify and hold CITY, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against CONTRACTOR or any subcontractor.
- C. **Labor Certification.** By its signature hereunder, CONTRACTOR 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.
- D. **Employment of Apprentices.** CONTRACTOR and all subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices. 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.
- E. **CONTRACTOR or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7.** Any contract on a public works project entered into between the CONTRACTOR and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money

that is paid or may have been paid to a debarred subcontractor by CONTRACTOR on the project shall be returned to CITY. The CONTRACTOR shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

- F. CONTRACTOR agrees to bind every subcontractor to the terms of the Agreement as far as such terms are applicable to subcontractor's portion of the work. CONTRACTOR shall be as fully responsible to CITY for the acts and omissions of its subcontractor and of persons either directly or indirectly employed by its subcontractor, as CONTRACTOR is for acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in these Agreement shall create any contractual relationship between any subcontractor and CITY.

#### **14. TERMINATION.**

- A. Except as otherwise provided, CITY may terminate this Agreement at any time with or without cause. Notice of termination shall be in writing.
- B. CONTRACTOR may terminate this Agreement. Notice will be in writing at least 30 days before the effective termination date.
- C. In the event of such termination, CONTRACTOR shall cease services as of the date of termination, all finished or unfinished documents, data, drawings, maps, and other materials prepared by CONTRACTOR shall, at CITY's option, become CITY's property, and CONTRACTOR will receive just and equitable compensation for any work satisfactorily completed up to the effective date of notice of termination.
- D. Should the Agreement be terminated pursuant to this Section, CITY may procure on its own terms services similar to those terminated.

#### **15. INDEMNIFICATION.**

- A. CONTRACTOR shall indemnify, defend with counsel approved by CITY, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, regardless of CITY'S passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of CITY. Should CITY in its sole discretion find CONTRACTOR'S legal counsel unacceptable, then CONTRACTOR shall reimburse CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. CONTRACTOR shall promptly pay any final judgment rendered against CITY (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State

of California and will survive termination of this Agreement.

- B. The requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR as required by Section 19, and any approval of said insurance by CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.
16. **ASSIGNABILITY.** This Agreement is for CONTRACTOR's professional services. CONTRACTOR's attempts to assign the benefits or burdens of this Agreement without CITY's written approval are prohibited and will be null and void.
17. **INDEPENDENT CONTRACTOR.** CITY and CONTRACTOR agree that THE CONTRACTOR will act as an independent contractor and will have control of all work and the manner in which it is performed. THE CONTRACTOR will be free to contract for similar service to be performed for other employees while under contract with CITY. CONTRACTOR is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct CONTRACTOR as to the details of doing the work or to exercise a measure of control over the work means that CONTRACTOR will follow the direction of the CITY as to end results of the work only.
18. **AUDIT OF RECORDS.**
- A. THE CONTRACTOR agrees that CITY, or designee, has the right to review, obtain, and copy all records pertaining to the performance of this Agreement. CONTRACTOR agrees to provide CITY, or designee, with any relevant information requested and will permit CITY, or designee, access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this Agreement. CONTRACTOR further agrees to maintain such records for a period of three (3) years following final payment under this Agreement.
- B. CONTRACTOR will keep all books, records, accounts and documents pertaining to this Agreement separate from other activities unrelated to this Agreement.
19. **CORRECTIVE MEASURES.** CONTRACTOR will promptly implement any corrective measures required by CITY regarding the requirements and obligations of this Agreement. CONTRACTOR will be given a reasonable amount of time as determined by CITY to implement said corrective measures. Failure of CONTRACTOR to implement required corrective measures shall result in immediate termination of this Agreement.

## **20. INSURANCE REQUIREMENTS.**

A. CONTRACTOR, at CONTRACTOR's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies:

1. Workers Compensation Insurance as required by law. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for their respective employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by CITY at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against CITY, its officers, agents, employees, and volunteers for losses arising from work performed by CONTRACTOR for CITY.
2. General Liability Coverage. CONTRACTOR shall maintain commercial general liability insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If a commercial general liability insurance 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.
3. Automobile Liability Coverage. CONTRACTOR shall maintain automobile liability insurance covering bodily injury and property damage for all activities of CONTRACTOR arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired, and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
4. Professional Liability Coverage. CONTRACTOR shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from CONTRACTOR'S operations under this Agreement, whether such operations be by CONTRACTOR or by its employees, subcontractors, or subcontractors. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single-limit-per-occurrence basis. When coverage is provided on a "claims made basis," CONTRACTOR will continue to renew the insurance for a period of three (3) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover CONTRACTOR for all claims made by CITY arising out of any errors or omissions of CONTRACTOR, or its officers, employees or agents during the time this Agreement was in effect.

B. Endorsements. Each general liability, automobile liability and professional liability insurance policy shall be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of

California, or which is approved in writing by CITY, and shall be endorsed as follows. CONTRACTOR also agrees to require all contractors, and subcontractors to do likewise.

1. "The CITY, its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the CONTRACTOR, including materials, parts, or equipment furnished in connection with such work or operations."
  2. This policy shall be considered primary insurance as respects CITY, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by CITY, including any self-insured retention CITY may have, shall be considered excess insurance only and shall not contribute with this policy.
  3. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  4. The insurer waives all rights of subrogation against CITY, its elected or appointed officers, officials, employees, or agents.
  5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its elected or appointed officers, officials, employees, agents, or volunteers.
  6. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' written notice has been received by CITY.
- C. CONTRACTOR agrees to provide immediate notice to CITY of any claim or loss against Contractor arising out of the work performed under this agreement. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.
- D. Any deductibles or self-insured retentions must be declared to and approved by CITY. At CITY's option, CONTRACTOR shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- E. CONTRACTOR shall provide certificates of insurance with original endorsements to CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with CITY on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with CITY at all times during the term of this Agreement.

F. Failure on the part of CONTRACTOR to procure or maintain the required insurance shall constitute a material breach of contract under which CITY may terminate this Agreement pursuant to Section 13 above.

G. The commercial general and automobile liability policies required by this Agreement shall allow CITY, as additional insured, to satisfy the self-insured retention ("SIR") and/or deductible of the policy in lieu of the CONTRACTOR (as the named insured) should CONTRACTOR fail to pay the SIR or deductible requirements. The amount of the SIR or deductible shall be subject to the approval of the City Attorney and the Finance Director. CONTRACTOR understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by CONTRACTOR as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should CITY pay the SIR or deductible on CONTRACTOR'S behalf upon CONTRACTOR'S failure or refusal to do so to secure defense and indemnification as an additional insured under the policy, CITY may include such amounts as damages in any action against Contractor for breach of this Agreement in addition to any other damages incurred by CITY due to the breach.

21. **USE OF OTHER CONTRACTORS.** THE CONTRACTOR must obtain CITY's prior written approval to use any Contractors while performing any portion of this Agreement. Such approval must include approval of the proposed Contractor and the terms of compensation.

22. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE.** The acceptance by the CONTRACTOR of the final payment made under this Agreement shall operate as and be a release of CITY from all claims and liabilities for compensation to the CONTRACTOR for anything done, furnished or relating to the CONTRACTOR'S work or services. Acceptance of payment shall be any negotiation of CITY'S check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONTRACTOR, its employees, sub-Contractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONTRACTOR, its employees, sub-Contractors and agents.

23. **CORRECTIONS.** In addition to the above indemnification obligations, the CONTRACTOR shall correct, at its expense, all errors in the work which may be disclosed during the CITY'S review of CONTRACTOR'S report or plans. Should the CONTRACTOR fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONTRACTOR. In addition to all other available remedies, CITY may deduct the cost of such correction from any retention amount held by CITY or may withhold payment otherwise owed CONTRACTOR under this Agreement up to the amount of the cost of correction.

24. **NON-APPROPRIATION OF FUNDS.** Payments to be made to CONTRACTOR by CITY for services preformed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that CITY does not appropriate sufficient funds for payment of CONTRACTOR'S services beyond the current fiscal year, the Agreement shall cover payment for CONTRACTOR'S only to the conclusion of the last fiscal year in which CITY appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.
25. **NOTICES.** All communications to either party by the other party will be deemed made when received by such party at its respective name and address as follows:

CITY	CONTRACTOR
<u>City of Lomita</u> <u>24300 Narbonne Avenue</u> <u>Lomita, CA 90717</u>  <u>ATTN: City Manager</u>	<u>Company</u> <u>Address</u>  <u>ATTN: Signer</u>

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph. Courtesy copies of notices may be sent via electronic mail, provided that the original notice is deposited in the U.S. mail or personally delivered as specified in this Section.

26. **SOLICITATION.** CONTRACTOR maintains and warrants that it has not employed nor retained any company or person, other than CONTRACTOR's bona fide employee, to solicit or secure this Agreement. Further, CONTRACTOR warrants that it has not paid, nor has it agreed to pay any company or person, other than CONTRACTOR's bona fide employee, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Should CONTRACTOR breach or violate this warranty, CITY may rescind this Agreement without liability.
27. **THIRD PARTY BENEFICIARIES.** This Agreement and every provision herein is generally for the exclusive benefit of CONTRACTOR and CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of the CONTRACTOR's or CITY's obligations under this Agreement.
28. **INTERPRETATION.** This Agreement was drafted in and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this agreement will be in Los Angeles County.

29. **ENTIRE AGREEMENT.** This Agreement, and its Attachments, sets forth the entire understanding of the parties. There are no other understandings, terms or other agreements expressed or implied, oral or written.
30. **RULES OF CONSTRUCTION.** Each Party had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement will be construed simply, as a whole, and in accordance with its fair meaning; it will not be interpreted strictly for or against either Party.
31. **AUTHORITY/MODIFICATION.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment with signatures of all parties to this Agreement. CITY's city administrator, or designee, may execute any such amendment on behalf of CITY.
32. **ACCEPTANCE OF FACSIMILE OR ELECTRONIC SIGNATURES.** The Parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission, scanned and delivered via electronic mail, or delivered using digital signature technology approved by CITY. Such facsimile or electronic signatures will be treated in all respects as having the same effect as an original signature.
33. **FORCE MAJEURE.** Should performance of this Agreement be impossible due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the Parties' control, then the Agreement will immediately terminate without obligation of either party to the other.
34. **TIME IS OF ESSENCE.** Time is of the essence to comply with dates and schedules to be provided.
35. **ATTORNEY'S FEES.** The parties hereto acknowledge and agree that each will bear his or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.
36. **STATEMENT OF EXPERIENCE.** By executing this Agreement, CONTRACTOR represents that it has demonstrated trustworthiness and possesses the quality, fitness and capacity to perform the Agreement in a manner satisfactory to CITY. CONTRACTOR represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private Contractors, and experience in dealing with public agencies all suggest that CONTRACTOR is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.



**37. DISCLOSURE REQUIRED.** (CITY and CONTRACTOR initials required at one of the following paragraphs)

By their respective initials next to this paragraph, CITY and CONTRACTOR hereby acknowledge that CONTRACTOR is a “contractor” for the purposes of the California Political Reform Act because CONTRACTOR’S duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a)(2) or otherwise serves in a staff capacity for which disclosure would otherwise be required were CONTRACTOR employed by CITY. CONTRACTOR hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the CITY’S Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to the Contractor commencing services hereunder, the City’s Manager shall prepare and deliver to CONTRACTOR a memorandum detailing the extent of CONTRACTOR’S disclosure obligations in accordance with the CITY’S Conflict of Interest Code.

City Initials \_\_\_\_\_

Contractor Initials \_\_\_\_\_

**OR**

By their initials next to this paragraph, CITY and CONTRACTOR hereby acknowledge that CONTRACTOR is not a “contractor” for the purpose of the California Political Reform Act because CONTRACTOR’S duties and responsibilities are not within the scope of the definition of contractor in Fair Political Practice Commission Regulation 18700.3(a)(2) and is otherwise not serving in staff capacity in accordance with CITY’S Conflict of Interest Code.

City Initials \_\_\_\_\_

Contractor Initials \_\_\_\_\_

[signatures on following page]

**IN WITNESS WHEREOF** the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF LOMITA

CONTRACTOR

\_\_\_\_\_  
Ryan Smoot, City Manager

By:

\_\_\_\_\_  
Signatory, Title

ATTEST:

\_\_\_\_\_  
Kathleen Horn Gregory, City Clerk

\_\_\_\_\_  
XX-XXXXXX

Taxpayer ID No.

APPROVED AS TO FORM:

\_\_\_\_\_  
Trevor Rusin, City Attorney