



# **CITY OF LOMITA**

## **REQUEST FOR STATEMENT OF QUALIFICATIONS**

**FOR**

### **As-Needed Consulting Services for Environmental, Archaeological and Historical Services**

**DEADLINE  
MAY 23, 2024  
1:00 P.M.**

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

# **SECTION I**

## **GENERAL INFORMATION**

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

The City of Lomita is seeking to compile a list of consultants to perform environmental, archaeological, and historical support services. Support services will be on an on-call, as-needed basis for a period of 5 years.

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. The City of Lomita is located in the southwestern part of 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 on the east, the City of Rolling Hill Estates on the southwest, and the City of Rancho Palos Verdes and unincorporated Los Angeles County on 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 DESCRIPTION**

The purpose of this request for Statements of Qualifications (SOQ) is to seek consultant qualifications, capabilities, and approach to provide environmental, archaeological, and historical consulting services for the City of Lomita. SOQ's will include key personnel, their related experience and qualifications. Firms may list qualifications for one or more of the general tasks listed. The goal is for the City to retain one or more consulting firms to fulfill the City's needs for a period of 5 years subject to renewal.

### **C. DESCRIPTION OF WORK**

Due to the fact that the City occasionally receives federal funding for some projects, federal funding often requires that the City conduct environmental, archaeological, and historical studies prior to the start of a project.

This includes, but is not limited to, the need for State Historical Preservation Office (SHPO) consultation, U.S. Fish and Wildlife Service consultation, archaeological investigations, NEPA document preparation, CEQA document preparation, and environmental impact reports.

The contract will be regulated according to the provisions of all Federal, State and local laws and ordinances that are applicable. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775. Please refer to the Professional Service Agreement (PSA) - Attachment A.

#### **D. PROJECT DURATION**

This best qualified list will be valid for five years beginning from the list issuance date.

#### **E. PROJECT SCHEDULE**

A tentative schedule is included below.

<b>Milestone</b>	<b>Date*</b>
Request for SOQ Release	May 3, 2024
Last Day for Questions	May 13, 2024 at 1:00 PM
Issue Addendum	May 16, 2024
SOQ Deadline	May 23, 2024 at 1:00 PM
Consultant Interviews	June 5-6, 2024
Expected City Council Approval	June 18, 2024

\*Note – All dates are estimates and subject to change

## SECTION II

### GENERAL REQUIREMENTS

#### A. GENERAL

The SOQ must be concise, well organized and should demonstrate the consulting firm's team qualifications and experience related to this project. The SOQ shall be printed on 8½" x 11" pages and include resumes, past experience, and qualifications. The SOQ shall not exceed fifteen (15) pages excluding covers, cover letter, tabs, references, resumes and financial statements. It must include the following:

1. Cover Letter (one page): Provide a one-page cover letter, which includes the firm's legal name, name, address, and telephone number of the person(s) to be used for contact who will be authorized to make presentations for the firm. The cover letter must bear the signature of the person authorized to sign on behalf of the proposer and to bind the applicant in a contract. The cover letter will include a statement offering the proposer's acceptance of all conditions listed in the "Statement of Qualifications" document. **Any exception on the consultant's behalf must be stated in the SOQ cover letter.**
2. Qualification and Experience: 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, and have a good understanding of public agency issues, procedures, and policies. In addition, it is highly desirable that the team have experience performing similar tasks.

Qualifications and experience to be shown in the SOQ shall include, but not be limited to, the following:

- Consultant's organizational chart.
- Identification of experience of key staff members, including major subconsultants, if utilized. Resumes of principal staff should not exceed one page per person.
- Experience of the firm, the team and subconsultants on similar projects.

3. References: Provide as reference the name of at least three (3) agencies you currently or have previously consulted for on similar projects in the past five (5) to seven (7) years. The reference list shall include the firm's/agency's name, address, telephone number, project title, and contact person.
4. Additional Items:
  - Provide turn-around time for requests.
  - Note any conflicts of interest: The consultant shall include a description of all projects which the consultant is currently working on which could pose a potential conflict of interest with this project.
5. **Consultant shall submit a Rate Schedule in a SEPARATE SEALED ENVELOPE marked "Rate Schedule" along with the Project title.** The Rate Schedule shall include the firm's standard professional hourly rates and an estimate for reimbursable expenses including method for charging. Any proposed subconsultant shall also be included in the Rate Schedule. The consultant and all subconsultants 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.
6. Prevailing wages will apply if the services to be performed meet the criteria according to California Department of Industrial Relations web site at: [http://www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html). The City will not assume any responsibility for the consultant's failure to pay prevailing wages in accordance with State law.

## **B. EXAMINATION OF SOQ DOCUMENTS**

By submitting an SOQ, consultant represents that it has thoroughly examined and become thoroughly familiar with the work required under this request for SOQ 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 request for SOQ. Any written addenda issued pertaining to this request for qualifications shall be incorporated into the terms and conditions of any resulting Agreement. The City will not be bound to any modifications to or deviations from the requirements set forth in this request for qualifications as the result of oral instructions. Consultants shall acknowledge receipt of addenda in their SOQ.

Below is the link to the City's website where addenda and other pertaining information will be posted:

<https://lomitacity.com/current-bids-rfps/>

#### **D. QUESTIONS AND ADDITIONAL INFORMATION**

Questions relating to this request for SOQ shall be emailed to the City at both [publicworks@lomitacity.com](mailto:publicworks@lomitacity.com) and [f.aboujaoude@lomitacity.com](mailto:f.aboujaoude@lomitacity.com) no later than **May 13, 2024, at 1:00 PM.**

#### **E. SOQ SUBMITTAL**

SOQ are due on or before **May 23, 2024, at 1:00 PM.**

One (1) electronic PDF copy of the SOQ shall be emailed to the City at both [publicworks@lomitacity.com](mailto:publicworks@lomitacity.com) and [f.aboujaoude@lomitacity.com](mailto:f.aboujaoude@lomitacity.com) with "SOQ for As-Needed Consulting Services for Environmental, Archaeological and Historical Services" in the email title.

The Rate Schedule shall be emailed to the City at both [publicworks@lomitacity.com](mailto:publicworks@lomitacity.com) and [f.aboujaoude@lomitacity.com](mailto:f.aboujaoude@lomitacity.com) with "Rate Schedule for As-Needed Consulting Services for Environmental, Archaeological and Historical Services" 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 20 - Insurance Requirements of the attached sample Professional Service Agreement (PSA), Attachment A.

All insurance policies must be open to inspection by the City and copies of policies must be submitted to the City and/or upon written request.

#### **G. SELECTION CRITERIA**

Responses to this request for qualifications 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 REQUEST FOR STATEMENT OF QUALIFICATIONS**

Should any prospective firm be in doubt as to the true meaning of any portion of this request for statement of qualifications or should the firm find any ambiguity, inconsistency, or omission therein, the firm shall make a written request for an official interpretation or correction.

Such interpretation or correction, as well as any additional SOQ 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 request for qualifications. Any addendum issued by the City shall become part of the request for statement of qualifications and will be incorporated into the SOQ. **Addenda will be posted on the City's website at <https://lomitacity.com/current-bids-rfps/>.**

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 SOQ is subject to disclosure under this provision. This act also provides for a complete disclosure of contracts and attachments thereto.

## **I. 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.

## **J. 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 (approved tasks only) and remaining balance
- Each employee's name, number of hours worked, date, task, 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.

**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**

This request for statement of qualifications is to solicit SOQ for environmental, archaeological and historical consulting services. Specific task requirements will be defined for individual projects. In general, tasks may include, but are not limited to, the following:

#### **Task 1 – SHPO Consultation**

Consultant to perform State Historical Preservation Office (SHPO) consultation obtained through National Historic Preservation Act (NHPA) Section 106 consultation. This task also may include, but is not limited to:

- Obtaining an inventory of cultural resources that could be affected by implementation of the project. This information is available via the California Historical Resources Information System (CHRIS).
- Preparing a documented finding from a qualified archaeologist or architectural historian of the anticipated effects of the project on cultural resources within the Area of Potential Effects (APE), consistent with Section 106 of the NHPA.
- Preparing a list of Native American contacts provided by the Native American Heritage Commission (NAHC). To do so, provide the NAHC with the APE and project description, as well as location information. The NAHC uses a Sacred Lands File and Native American Contacts List Request Form for this purpose.
- Conducting and documenting a Tribal consultation to ensure that tribal comments are taken into consideration during the review process and to identify properties of religious or cultural significance to tribes.
- Performing an archaeological property survey and report.

#### **Task 2 – US Fish and Wildlife Service Consultation**

Consultant to perform a US Fish and Wildlife Service consultation obtained through Endangered Species Act informal consultation. This may include providing recommendations for how to minimize impact on endangered and threatened species in proposed project locations.

### **Task 3 – Potential Additional Miscellaneous Services**

The City may request potential additional miscellaneous services, examples of which are listed below:

- Environmental impact reports, or portions thereof, as needed for specific project requirements,
- Initial Studies or Environmental Assessments,
- Comprehensive NEPA document preparation,
- Comprehensive CEQA document preparation,
- California Native American tribes that are on the Native American Heritage Commission's (NAHC) Tribal List (AB52) Consultation,
- Endangered Species Act Section 10 Consultation,
- Providing technical advice and assistance to the City related to Public Works activities, and other miscellaneous tasks, as needed, based on project requirements.

## **SECTION IV**

### **SELECTION OF CONSULTANTS**

All SOQ 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 SOQ. The evaluation of the SOQ 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 SOQ according to the below evaluation criteria and weighting factors. The committee will then establish a shortlist based on the highest ranked SOQ. The qualified consultants on the shortlist may be interviewed.

If interview(s) is/are conducted, after the interview(s), the committee will reestablish a final ranking of the highest ranked consultants. The highest ranked consultant(s) will be selected for the list of best qualified consultants. Rate Schedules for all qualified consultants will be opened and used to begin negotiations with the highest ranked consultant(s).

The SOQ 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 key tasks they are qualified to perform for this project. Resumes or qualifications are required for proposed project personnel who will be assigned to the project. Qualifications and capabilities of any subconsultants shall be included.

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

The written SOQ must include a list of specific experience in the project study area and indicate proven ability in similar projects for the firm and the individuals to be assigned to the project. Experience should include projects related to archaeological investigations, SHPO consultations, USFWS consultations, NEPA and CEQA document preparation, and/or environmental impact reports.

#### **C. FEES - 20 points**

Submit a rate schedule in a separate file from the SOQ. Provide a general rate schedule including names and titles of individuals who may work on optional tasks and the

associated hourly rates. Rate schedules will be ranked based on lowest fees receiving full points and others receiving proportional points.

**D. REFERENCES - 10 points**

Provide as reference the name of at least three (3) agencies you currently or have previously consulted for on similar projects in the past five (5) to seven (7) years. The reference list shall include the firm's/agency's name, address, telephone number, project title, and contact person. Points will be awarded based on responses of the references in relation to meeting the City's needs for this project.

**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 \_\_\_\_\_**

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

**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 \_\_\_\_\_.
- C. CONSULTANT 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 CONSULTANT to perform the services as described in **Exhibit A** of this Agreement.

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

**1. CONSIDERATION AND COMPENSATION.**

- A. As partial consideration, CONSULTANT agrees to perform the work listed in the SCOPE OF SERVICES, attached as **Exhibit A**;
- B. As additional consideration, CONSULTANT and CITY agree to abide by the terms and conditions contained in this Agreement;
- C. As additional consideration, CITY agrees to pay CONSULTANT an amount not to exceed \$\_\_\_\_\_, for CONSULTANT's services, unless otherwise specified by written amendment to this Agreement.
- D. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager or his designee.
- E. CONSULTANT 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 CONSULTANT all uncontested amounts set forth

in the CONSULTANT'S bill within 30 days after it is received.

**2. SCOPE OF SERVICES.**

A. CONSULTANT 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, CONSULTANT will, in a professional manner, furnish all of 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 CONSULTANT by this Agreement.

**3. PAYMENTS.** For CITY to pay CONSULTANT as specified by this Agreement, CONSULTANT 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 CONSULTANT 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, CONSULTANT represents that CONSULTANT 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.** CONSULTANT's key person assigned to perform work under this Agreement is \_\_\_\_\_. CONSULTANT 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 \_\_\_\_\_, unless earlier termination occurs under Section 11 of this Agreement, or extended in writing in advance by both parties.

**8. 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 CONSULTANT and CITY. The cost or credit to CITY resulting from changes in the services will be determined in accordance with written agreement between the parties.



9. **TAXPAYER IDENTIFICATION NUMBER.** CONSULTANT will provide CITY with a Taxpayer Identification Number.
10. **PERMITS AND LICENSES.** CONSULTANT will obtain and maintain during the term of this Agreement all necessary permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.
11. **PREVAILING WAGES:**

Pursuant to Labor Code § 1720, and as specified in 8 California Code of Regulations § 16000, CONSULTANT must pay its workers prevailing wages. It is CONSULTANT's responsibility to interpret and implement any prevailing wage requirements and CONSULTANT agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws.

In accordance with Labor Code § 1773.2, copies of the prevailing rate of per diem wages are available upon request from CITY's Engineering Division or the website for State of California Prevailing wage determination at <http://www.dir.ca.gov/DLSR/PWD>. CONSULTANT must post a copy of the prevailing rate of per diem wages at the job site.

CITY directs CONSULTANT's attention to Labor Code §§ 1777.5, 1777.6 and 3098 concerning the employment of apprentices by CONSULTANT or any subcontractor.

Labor Code § 1777.5 requires contractor or subcontractor employing tradesmen in any apprenticeship occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate must also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases will not be less than one to five except:

When employment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days before the request for certificate, or

When the number of apprentices in training in the area exceeds a ratio of one to five, or

When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally, or

When CONSULTANT provides evidence that CONSULTANT employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.

CONSULTANT is required to make contributions to funds established for the administration of apprenticeship programs if CONSULTANT employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

CONSULTANT and any subcontractor must comply with Labor Code §§ 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.

CONSULTANT and its subcontractors must keep an accurate certified payroll records showing the name, occupation, and the actual per diem wages paid to each worker employed in connection with this Agreement. The record will be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. If requested by CITY, CONSULTANT must provide copies of the records at its cost.

**12. 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. CONSULTANT 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, CONSULTANT shall cease services as of the date of termination, all finished or unfinished documents, data, drawings, maps, and other materials prepared by CONSULTANT shall, at CITY's option, become CITY's property, and CONSULTANT 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.

**13. INDEMNIFICATION.**

- A. CONSULTANT 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 CONSULTANT'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 CONSULTANT'S legal counsel unacceptable, then CONSULTANT shall reimburse CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. CONSULTANT 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 CONSULTANT as required by Section 17, 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 CONSULTANT pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

14. **ASSIGNABILITY.** This Agreement is for CONSULTANT's professional services. CONSULTANT's attempts to assign the benefits or burdens of this Agreement without CITY's written approval are prohibited and will be null and void.

15. **INDEPENDENT CONSULTANT.** CITY and CONSULTANT agree that CONSULTANT will act as an independent CONSULTANT and will have control of all work and the manner in which is it performed. CONSULTANT will be free to contract for similar service to be performed for other employers while under contract with CITY. CONSULTANT 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 CONSULTANT as to the details of doing the work or to exercise a measure of control over the work means that CONSULTANT will follow the direction of the CITY as to end results of the work only.

16. **AUDIT OF RECORDS.**

A. CONSULTANT agrees that CITY, or designee, has the right to review, obtain, and copy all records pertaining to the performance of this Agreement. CONSULTANT 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. CONSULTANT further agrees to maintain such records for a period of three

(3) years following final payment under this Agreement.

B. CONSULTANT will keep all books, records, accounts and documents pertaining to this Agreement separate from other activities unrelated to this Agreement.

17. **CORRECTIVE MEASURES.** CONSULTANT will promptly implement any corrective measures required by CITY regarding the requirements and obligations of this Agreement. CONSULTANT will be given a reasonable amount of time as determined by CITY to implement said corrective measures. Failure of CONSULTANT to implement required corrective measures shall result in immediate termination of this Agreement.

18. **INSURANCE REQUIREMENTS.**

A. CONSULTANT, at CONSULTANT'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. CONSULTANT shall require all subconsultants 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 CONSULTANT for CITY.
2. General Liability Coverage. CONSULTANT 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. CONSULTANT shall maintain automobile liability insurance covering bodily injury and property damage for all activities of CONSULTANT 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. CONSULTANT shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from CONSULTANT'S operations under this Agreement, whether such

operations be by CONSULTANT or by its employees, subconsultants, or subconsultants. 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," CONSULTANT 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 CONSULTANT for all claims made by CITY arising out of any errors or omissions of CONSULTANT, 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. CONSULTANT also agrees to require all CONSULTANTS, and subconsultants 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 CONSULTANT, 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. CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT 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, CONSULTANT shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
  - E. CONSULTANT 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 CONSULTANT to procure or maintain required insurance shall constitute a material breach of contract under which CITY may terminate this Agreement pursuant to Section 11 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 CONSULTANT (as the named insured) should CONSULTANT 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. CONSULTANT understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by CONSULTANT as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should CITY pay the SIR or deductible on CONSULTANT'S behalf upon CONSULTANT'S failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, CITY may include such amounts as damages in any action against CONSULTANT for breach of this Agreement in addition to any other damages incurred by CITY due to the breach.
- 19. USE OF OTHER CONSULTANTS.** CONSULTANT must obtain CITY's prior written approval to use any CONSULTANTS while performing any portion of this Agreement. Such approval must include approval of the proposed CONSULTANT and the terms of compensation.
- 20. FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE.** The acceptance by the CONSULTANT 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 CONSULTANT for anything done, furnished or relating to the CONSULTANT'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 CONSULTANT, its employees, sub-CONSULTANTS 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 CONSULTANT, its employees, sub-CONSULTANTS and agents.

21. **CORRECTIONS.** In addition to the above indemnification obligations, the CONSULTANT shall correct, at its expense, all errors in the work which may be disclosed during CITY'S review of CONSULTANT'S report or plans. Should the CONSULTANT 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 CONSULTANT. 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 CONSULTANT under this Agreement up to the amount of the cost of correction.
22. **NON-APPROPRIATION OF FUNDS.** Payments to be made to CONSULTANT by CITY for services performed 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 CONSULTANT'S services beyond the current fiscal year, the Agreement shall cover payment for CONSULTANT'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.
23. **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	CONSULTANT
<u>City of Lomita</u> <u>24300 Narbonne Avenue</u> <u>Lomita, CA 90717</u>	
<u>ATTN: City Manager</u>	<u>ATTN:</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.

24. **SOLICITATION.** CONSULTANT maintains and warrants that it has not employed nor retained any company or person, other than CONSULTANT's bona fide employee, 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 CONSULTANT'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 CONSULTANT breach or violate this warranty, CITY may rescind this Agreement without liability.
25. **THIRD PARTY BENEFICIARIES.** This Agreement and every provision herein is generally for the exclusive benefit of CONSULTANT and CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of CONSULTANT's or CITY's obligations under this Agreement.
26. **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.
27. **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.
28. **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.
29. **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.
30. **ACCEPTANCE OF FACSIMILE OR ELECTRONIC SIGNATURES.** The Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.
31. **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.



32. **TIME IS OF ESSENCE.** Time is of the essence to comply with dates and schedules to be provided.
33. **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.
34. **STATEMENT OF EXPERIENCE.** By executing this Agreement, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness and capacity to perform the Agreement in a manner satisfactory to CITY. CONSULTANT represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private CONSULTANTs, and experience in dealing with public agencies all suggest that CONSULTANT is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.
35. **DISCLOSURE REQUIRED.** (CITY and CONSULTANT initials required at one of the following paragraphs)

By their respective initials next to this paragraph, CITY and CONSULTANT hereby acknowledge that CONSULTANT is a “CONSULTANT” for the purposes of the California Political Reform Act because CONSULTANT’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 CONSULTANT employed by CITY. CONSULTANT 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 CONSULTANT commencing services hereunder, the City’s Manager shall prepare and deliver to CONSULTANT a memorandum detailing the extent of CONSULTANT’S disclosure obligations in accordance with the CITY’S Conflict of Interest Code.

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

CONSULTANT Initials \_\_\_\_\_

**OR**

By their initials next to this paragraph, CITY and CONSULTANT hereby acknowledge that CONSULTANT is not a “CONSULTANT” for the purpose of the California Political Reform Act because CONSULTANT’S duties and responsibilities are not within the scope of the definition of CONSULTANT 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 \_\_\_\_\_

CONSULTANT Initials \_\_\_\_\_

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

CITY OF LOMITA

CONSULTANT

\_\_\_\_\_  
City Manager

By:

\_\_\_\_\_  
TITLE

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Taxpayer ID No.

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney