



CITY OF LOMITA

REQUEST FOR PROPOSALS/QUALIFICATIONS RFP/RFQ

**FOR AS-NEEDED; CONSTRUCTION MANAGEMENT (CM),
RESIDENT ENGINEER (RE), & INSPECTION SERVICES**

**RFP/RFQ; DEADLINE:
DECEMBER 6, 2018
5:00 P.M.**

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Attachment A - Professional Services Agreement (sample)

SECTION I

GENERAL INFORMATION

A. INTRODUCTION / BACKGROUND:

The City of Lomita is requesting proposals from qualified and experienced civil engineering firms to provide as needed comprehensive construction management, construction inspection, and material testing services for the projects described below.

The project types are typical of Municipal Street (slurry seals, overlays, and major reconstructions) and water main and appurtenances improvement projects. The estimated construction times are varied and may be revised after a constructability review is completed, which is to be the first task in the consultant's scope of services.

The purpose of this RFP/RFQ is to retain consulting firms that will provide the City with the quality assurance that the City's projects are constructed in compliance with the plans and specifications and all local, state and federal provisions (where applicable). An important objective is to maintain a level of high quality construction management oversight through appropriate documentation and workflow methodology in the most cost-effective manner possible.

The contract will be regulated according to the provisions of all 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.

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/RFQ 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/RFQ. Any written addenda issued pertaining to this RFP/RFQ 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/RFQ 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/RFQ shall be emailed to Mondher Saïed, P.E. at m.saied@lomitacity.com no later than Thursday November 29, 2018. No pre-proposal meeting will be held.

E. PROPOSAL SUBMITTAL:

Four (4) hard copies and one (1) cd copy of the proposal shall be submitted to the following address on or before **5:00pm, Thursday December 6, 2018:**

City of Lomita
City Clerk's Office
24300 Narbonne Avenue
Lomita, CA 90717
Attn: Mondher Saïed, P.E.

F. FEE PROPOSAL:

Fee quotations shall be submitted in a separate sealed envelope with the proposal. Any proposal not complying with this requirement may be subject to disqualification. Late submittals may be returned to sender unopened. All proposals received will become the property of the City of Lomita.

The proposal must be signed in ink by an official authorized to bind the submitter to its provisions. Each proposal must remain valid for at least 90 days from the due date of this RFP/RFQ. Provide a schedule of hourly rates that will be charged to perform services specified in this RFP/RFQ.

Fee quotations are to include the names, title, hourly rates, overhead factors, and any other details by which the overall and project element costs have been derived. The fee quotation is to relate in detail to each item of the proposed work plan, including the proposer-suggested project elements and proposer-suggested contingencies, if any.

The total fee proposal may be adjusted after negotiations with the City and prior to signing a formal contract, as necessary.

G. SELECTION CRITERIA:

Responses to this RFP/RFQ 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/RFQ:

Should any prospective proposer be in doubt as to the true meaning of any portion of this (RFP/RFQ), 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/RFQ 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/RFQ. Any addendum issued by the City shall become part of the RFP/RFQ and will be incorporated into the proposal.

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 Professional Services Agreement (PSA) is included in Attachment A. Those who wish to submit a proposal to the City are required to carefully review the Professional Services Agreement.

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. RELATED EXPERIENCE AND REFERENCES FOR CONSULTANT:

This section of the proposal should establish the ability of Consultant to satisfactorily perform the required work by reasons of: experience in performing work of the same or similar nature; demonstrated experience working with local agencies and cities directly involved in this project; strength and stability of the Consultant; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references. Equal weighting will be given to firms for past experience performing work of a similar nature whether with the City or elsewhere.

Consultant to:

- (1) Describe the firm's experience in performing work of a similar nature to that solicited in this RFP/RFQ, and highlight the participation in such work by the key personnel proposed for assignment to this project.
- (2) Describe experience in working with the various government agencies that may have jurisdiction over the approval of the work specified in this RFP/RFQ. Please include specialized experience and professional competence in areas directly related to this RFP/RFQ.

(3) Provide a list of past joint work by the Consultant and each subcontractor, if applicable. The list should clearly identify the project and provide a summary of the roles and responsibilities of each party.

(4) A minimum of five (5) references should be given. Furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. Consultant may also supply references from other work not cited in this section as related experience.

N. PROPOSED PROJECT APPROACH AND ABILITY TO PROVIDE REQUESTED SERVICES:

This section of the proposal should establish the method that will be used by the Consultant to manage the project as well as identify key personnel assigned. Proposed Staffing and Organization are to be presented by Consultant for project segments identified in the Scope of Services.

Consultant to:

(1) Provide education, experience and applicable professional credentials of project staff. Include applicable professional credentials of "key" project staff.

(2) Furnish brief resumes for the proposed Construction Manager, and other key personnel.

(3) Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, and proposed position for this project, current assignment, and level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.

(4) Include a project organization chart that clearly delineates communication/reporting relationships among the project staff, including sub-consultants.

Include a statement that key personnel will be available to the extent proposed for the duration of the project, acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the City Engineer.

SECTION II

SCOPE OF SERVICES

A. DESCRIPTION:

The Scope of work is to provide the necessary comprehensive turn-key Construction Management, Construction Inspection and Material Testing Services to the City of Lomita Public Works Department in accordance with all provisions of this RFP/RFQ. These services will be needed from the date of the issuance of the Notice to Proceed through the course of construction work and until Notice of Completion of construction. The goal is to complete the project on time, on budget and in accordance with the approved plans and specifications and State and local laws and ordinances that are applicable.

The following tasks include but are not limited to:

- **Constructability Review:** Review construction plans and specifications and advise of their constructability and bid-ability.
- **Traffic Control Plan:** Review and approve the Traffic Control Plan.
- **Water Pollution Control Plan (WPCP):** Monitor contractor performance of the WPCP (contractor bid item) by using the WPCP checklist and BMPs. Perform and document NPDES inspections at the required frequencies; suspend any works and/or reject any materials not conforming to the contract requirements. Consultant will also assist the City in filing any required NOI, NOT, and/or other required paperwork with the State of California SMARTS system.
- **Material Submittals:** Review and approve material submittals by the Contractor to ensure the submittals meet the requirements of the approved plans and specifications.
- **Construction Schedule:** Review and approve construction schedules and look-ahead projection submitted by the contractor.
- **Meetings:** Coordinate, facilitate, and attend project-related meetings, such as the pre-construction meeting, project progress meetings (frequency to be determined), and dispute resolution meeting (as needed). Coordination with Caltrans District 7 is absolutely critical.
- **Meeting Agenda and Minutes:** Conduct meetings, prepare meeting agenda and meeting minutes, and distribute to all parties involved.
- **Written Progress Reports:** Provide written progress reports to the City Engineer, as needed.
- **Construction Inspector:** Coordinate, monitor, and document all construction activities.
- **Cut sheets/Field conflicts:** Review and approval of cut sheets, identify and resolve field conflicts, etc.
- **Surveyor's Work Coordination: Construction contractor is to provide**

survey services for construction and for survey monument preservation. Consultant shall coordinate and verify the surveyor's work. Identify, review, and approve survey work associated with any survey monument preservation.

- **Progress Payment:** Prepare progress payment estimate monthly and coordinate with the contractor, submit to the City for processing and payment.
- **Certified Payroll:** Review Contractor's Certified Payroll to ensure the prevailing wages and DBE requirements are met.
- **RFI/RFC:** Log in, review, distribute, and respond to each RFI and RFC.
- **Change Orders:** Log in, evaluate, and negotiate contract change orders and make recommendations to the City.
- **Record drawings:** Establish and maintain accurate project files and record drawings.
- **Inspector's Daily Report:** Provide daily report, sign-off, and submit to the City no later than the next business day.
- **Claims:** Review and evaluate claims from private parties and contractors and submit written recommendations along with supporting documents and photos.
- **Work progress:** Monitor the Contractor's daily work progress and inform the City, in writing, of the progress, prepare agenda, and attend weekly construction progress meetings.
- **Pre-final Inspection:** At the close of the project, conduct a walk-through with City staff and the Contractor and compile a detailed punch list.
- **Final Inspection:** Review and approve final inspection and project acceptance.
- **Project File:** At the close of the project, submit all project-related files, documents, CDs, red-lined plans for as-built drawings, material tickets, RFI and change order logs to the City.
- **Safety:** Monitor project site and adjacent areas for unsafe conditions; promptly require corrective measures to be addressed by the Contractor.
- **Workmanship:** Monitor Contractor's work for quality and workmanship.
- **Work Days:** Prepare a weekly statement of working days.
- **As-built Updates:** On a daily basis, review the Contractor's as-built updates on the approved job plan set, identify missing items and require the Contractor to keep as-built records up to date throughout the project.
- **Materials Testing:** Schedule and perform quality assurance materials testing to verify compliance of the work and the contract documents.
- **Project Closeout:** Upon project completion, all records are to be compiled in a three (3) ring binder(s), prominently labeled on the face and spine with the title of the project to serve as a record of the project. Photographs of the work site prior to construction of work, during construction and after completion of the construction are to be included in the record of the project. Additionally, a copy of the record of the project is to be provided in MS Office and PDF format on a USB "thumb" drive.

- **ADA Requirements:** Provide the coordination necessary to assure that ADA requirements are complied with.
- **Utility Coordination:** Ensure utility coordination throughout the construction phase of the project is performed by the Contractor.
- **Coordination with Residents and Property:** Work with adjacent property owners', businesses and residents' to resolve their concerns, review potential accessibility issues, and ensure installation of traffic control devices per approved traffic control plans.
- **Survey Monuments Preservation: All work associated with the survey monument preservation shall be per Section 8771 (Land Surveyors Act) of the Business and Professions Code of the State of California.**
 Consultant at no additional cost to the City, shall correct errors, omissions, and unworkable and/or improper work whether discovered during or after the completion of the City's review process.
- **Monitor Construction Traffic Control:** Monitor construction traffic control routinely to ensure the optimum situation with regard to the following:
 - Protection of the public both pedestrian and vehicular, during the construction operation.
 - Arrange the traffic control so that there is minimal disruption to traffic and access to local business operations.
 - Provide safe access for pedestrians and vehicles during the construction operation.
 - Provide for the optimal phasing of the traffic control to facilitate the efficient completion of the construction operation.
- **Inspector Responsibilities:**
 - Document material usage and quantities on the Inspector's Daily Report (IDR) using Field Book,
 - Review/inspect the Contractor's equipment to confirm it meets the project specifications,
 - Inspect the contractor's workmanship to verify that it meets the methods, tolerances, time requirements, temperature requirements of the specifications and document this on the Inspector's Daily Report (IDR),
 - Inspect and document that the work is performed and completed to the lines, grades, and elevations required by the project plans and specifications,
 - Document the contractor workforce and weather conditions on the IDR,
 - Document daily contractor activities, including any description and explanation of downtime, damage to the work, any actions taken by others including private utilities, City forces, adjacent property owners, etc. on the IDR,
 - Measure daily work as it's done by the contractor,
 - Calculate quantities and document on the IDR or in field books as appropriate,

- Conduct periodic nighttime review/inspection of temporary traffic control devices and the maintenance of traffic throughout the construction influence area as needed,
- Perform and document NPDES inspections at the required frequencies;
- Suspend any work and/or reject any materials not conforming to the contract requirements;
- Perform and document wage rate interviews,
- Document changes, extra work, “revisions to” notes etc. on the plans kept in the office to assist in the preparation of “as built” plans;
- Develop and maintain the project “punch list”.

The Consultant is also required to provide a detailed project summary. The project summary shall include a brief detailing of the dates of bid release, bid opening, dates of issuance of Notice to Proceed to Consultant and the Contractor, name and all related information of Consultant and the Contractor, number of contract days and number of work days, date of completion of the project. This project summary is also to be provided in a three (3) ring binder as well as a PDF format on a USB “thumb” drive. The project summary shall also include the project budget and change order(s). The project summary shall be labeled with the same information as the comprehensive record detailed above.

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 **twelve (12) month** period and shall, at the City’s option and upon mutually agreeable terms, be renewed thereafter for an additional **twelve (12) month** period.

SECTION III

GENERAL REQUIREMENTS

The qualified Consultant must have a minimum of 5 years' experience with Public Works construction projects, including construction management and inspection experience in traffic signal and lighting improvement projects as well as AC pavement, ADA curb ramps, curb and gutter, sidewalks, water lines, storm drains, landscaping and, signing and striping work within the jurisdiction of Caltrans (preferably District 7).

The qualified Consultant must have completed at minimum two (2) projects of similar work and must be familiar with the Standard Specifications for Public Works Construction (SSPWC "Green book"), and the Caltrans Standard Specifications.

All construction documentation and filing system used on this project is anticipated to be done in a format acceptable to Caltrans and/or the City of Lomita, Ca.

SECTION IV

SELECTION OF CONSULTANTS

The proposals will be evaluated and scored based on the following criteria:

A. STAFF QUALIFICATIONS - 20 points

Identify individuals who will be assigned to this project by name, title and their role on this project. Show where these personnel will be physically located during the time they are engaged in the work. 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 - 20 points

The written proposal must include a list of specific experience in the project area and indicate proven ability in implementing similar projects for the firm and the individuals to be assigned to the project. Experience with Caltrans District 7 in a similar capacity is highly desirable. The proposal should also indicate the ability to have projects completed within the budgeted amounts. A complete list of client references must be provided for similar projects completed within the last two years. It shall include the firms/agencies name, address, telephone number, project title, and contact person.

C. PROPOSED WORK PLAN - 20 points

A detailed work plan (typical) is to be presented which outlines the overall project understanding, approach, and lists all tasks determined to be necessary to accomplish the overall scope of the project. The work plan shall include, but is not be limited to, the objectives/tasks listed in Section II of the RFP. The work plan shall define resources needed for each task (title and 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. COMPENSATION - 40 points

Submit a fee schedule in a separate sealed envelope with proposal. Fee schedule shall clearly identify each task, number of hours assigned to each task, name and title of individual assigned to each task, hourly rate of each individual, and total hours and total dollar amount for the project.

E. AUTHORIZED NEGOTIATOR:

Please 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 is entered into this ____ day of _____, **2018**, by and between the CITY OF LOMITA, a general law city a municipal corporation (“CITY”) and _____, a limited liability company (“CONSULTANT”).

RECITALS

- A. The City does not have the personnel able and/or available to perform the services required under this agreement.
- B. Therefore, the City desires to contract out for consulting services for certain projects relating to preparation of documents in connection with a design project.
- C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.
- D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, based on the foregoing recitals, the City and the 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. The City shall pay the 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 SERVICE 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 the CONTRACTOR are to commence upon receipt of a notice to proceed from the CITY and shall continue until all authorized work is completed to the CITY's reasonable satisfaction, in accordance with the schedule incorporated in "Exhibit A," unless extended in writing by the 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 the City.

7. TERM OF AGREEMENT. The term of this Agreement shall commence upon execution by both parties and shall expire on _____, 20____, 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. CONTRACTOR 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. 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, the CONTRACTOR 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.

12. 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 attorney's 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 the CITY. Should CITY in its sole discretion find CONSULTANT'S legal counsel unacceptable, then CONSULTANT shall reimburse the CITY its costs of defense, including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation. The CONSULTANT shall promptly pay any final judgment rendered against the

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.

13. 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.

14. INDEPENDENT CONTRACTOR. CITY and CONSULTANT agree that CONSULTANT will act as an independent contractor and will have control of all work and the manner in which it is 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.

15. 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.

16. 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 the

City to implement said corrective measures. Failure of CONSULTANT to implement required corrective measures shall result in immediate termination of this Agreement.

17. INSURANCE REQUIREMENTS.

- A. The CONSULTANT, at the 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. The Consultant 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 the CITY at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against the CITY, its officers, agents, employees, and volunteers for losses arising from work performed by the CONTRACTOR for City.
 2. General Liability Coverage. The 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. The CONSULTANT shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the 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. The CONSULTANT shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from the CONSULTANT'S operations under this Agreement, whether such operations are by the CONSULTANT or by its employees, subcontractors, or sub consultants. 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 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 CONSULTANT, including materials, parts, or equipment furnished in connection with such work or operations.”
 2. This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the CITY, including any self-insured retention the 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 the 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 the 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 the CITY.
- C. CONSULTANT 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 the CITY. At the CITY’s option, the CONSULTANT shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- E. The CONSULTANT shall provide certificates of insurance with original endorsements to the CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CITY on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the CITY at

all times during the term of this Agreement.

- F. Failure on the part of the CONSULTANT to procure or maintain required insurance shall constitute a material breach of contract under which the 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 the 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.

18. 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.

19. 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 the 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 the 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 the CITY shall not constitute, nor be deemed, a release of the responsibility and liability of the 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 the CITY for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

20. 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 the City’s review of the Consultant’s report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the CITY, and the cost thereof shall be charged to the CONSULTANT. In addition to all other available remedies, the City may deduct the cost of such correction from any retention amount held by the City or may withhold payment otherwise owed CONSULTANT under this Agreement up to the amount of the cost of correction.

21. 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.

22. 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
City of Lomita 24300 Narbonne Avenue Lomita, CA 90717	
<u>ATTN:</u> City Manager	<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.

23. 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.

24. THIRD PARTY BENEFICIARIES. This Agreement and every provision herein are 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. ACCEPTANCE OF FACSIMILE OR ELECTRONIC SIGNATURES. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract 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.

30. 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.

31. TIME IS OF ESSENCE. Time is of the essence to comply with dates and schedules to be provided.

32. 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.

33. 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.

34. 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 18701(a) (2) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the 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 18701(a) (2) (A) and is otherwise not serving in staff capacity in accordance with the 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

MICHAEL G. SAVIDAN, Mayor

By:

TITLE

ATTEST:

Taxpayer ID No.

SANDRA MEDINA, City Clerk

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

ATTACHMENT ‘ B’

PLANS AND SPECIFICATIONS N/A

(Not For CONSTRUCTION)