

## SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between THE CITY OF LOMA LINDA, a Municipal Corporation (hereinafter referred to as "CITY") and \_\_\_\_\_, a California Corporation/a Partnership/a Sole Proprietor, (hereinafter referred to as "CONTRACTOR").

### A. RECITALS

1. City has heretofore requested of CONTRACTOR the performance of services with respect to \_\_\_\_\_ (PROJECT" hereinafter);
2. CONTRACTOR has now submitted its proposal for the performance of such services;
3. CITY desires to retain CONTRACTOR to perform the services necessary to render advice and assistance to CITY relating to the PROJECT;
4. CONTRACTOR represents that it is qualified to perform such services and is willing to perform such services as hereinafter defined.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONTRACTOR as follows:

### B. AGREEMENT

1. Definitions: The following definitions shall apply to the following terms, except where the context of this Agreement otherwise requires:
  - a. PROJECT: The preparation of all of the necessary documents, and reports with respect to the Scope of Services described herein and hereto, and made a part hereof;
  - b. SCOPE OF SERVICES: Such services as are necessary to be performed by CONTRACTOR in order to complete the WORK as set forth herein in Exhibit "A" attached hereto and incorporated herein by reference;
2. CONTRACTOR agrees as follows:
  - a. CONTRACTOR shall forthwith undertake and complete the PROJECT in accordance herein specified and applicable with Federal, State and CITY statutes, regulations, ordinances and guidelines, all to the reasonable satisfaction of the CITY.
  - b. CONTRACTOR shall at CONTRACTOR'S sole cost and expense, secure and hire such other persons as may, in the opinion of CONTRACTOR, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by CONTRACTOR, CONTRACTOR hereby warrants that such other persons shall be fully qualified to perform services required hereunder.

c. CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, secure the required issuance of a City Business License as a condition precedent to being engaged as a CONTRACTOR within the CITY.

3. CITY agrees as follows:

a. To pay to CONTRACTOR a maximum sum of that amount set forth in Exhibit "B" hereto. This sum shall cover the cost of all direct and indirect costs or fees, including the work of employees and consultants of CONTRACTOR. Payment to CONTRACTOR, by CITY, shall be made in accordance with the provisions of Exhibit "B".

b. Optional Services: Payments for additional services requested, in writing, by CITY, and not included in the Scope of Services, shall be paid on a compensation basis in accordance with the compensation rates set forth in Exhibit "B". Charges for additional services shall be invoiced on a monthly basis and shall be paid by CITY within 30 days after said invoices are received by CITY.

4. CITY agrees to provide to CONTRACTOR:

a. Information and assistance in the Scope of Services, hereto;

b. Copies of information, if available, which CONTRACTOR considers necessary in order to complete the Project;

c. Such information as is generally available from CITY files applicable to the Project;

d. Assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be CONTRACTOR'S responsibility to make all initial contact with respect to the gathering of such information.

5. Ownership of Documents: All documents, data, studies, photographs and reports prepared by CONTRACTOR pursuant to this Agreement shall be considered the property of the CITY and, upon payment for services performed by CONTRACTOR, such documents and other identified materials shall be delivered to CITY by CONTRACTOR. CONTRACTOR may, however, make and retain such copies of said documents and materials as CONTRACTOR may desire.

6. Termination: This Agreement may be terminated by CITY upon the giving of written "Notice of Termination" to CONTRACTOR at least ten (10) days prior to the date of termination specified in said Notice. In the event this Agreement is so terminated, CONTRACTOR shall be compensated at CONTRACTOR'S applicable hourly rates as set forth in Bid Schedule, on a pro rata basis with respect to the percentage of the PROJECT completed as of the date of termination. CONTRACTOR shall provide to CITY any and all documents, studies, photographs and reports, whether in draft or final form, prepared by CONTRACTOR as of the date of termination. CONTRACTOR may not terminate this Agreement except for cause.

7. Notices and Designated Representatives: Any and all notices, demands, invoices and written communications between the parties hereto shall be addressed as set forth in the Paragraph 7. The below-named individuals, furthermore, shall be those persons primarily responsible for the performance by the parties under this Agreement:

8. Definition of Contract Period: The Contract shall be in force from \_\_\_\_\_, until \_\_\_\_\_. Payments for the items in the Bidding Schedule shall be prorated for the portion of the year during which the work is performed.

CITY: CITY OF LOMA LINDA  
Name: T. JARB THAIPEJR, P.E.  
Title: CITY MANAGER  
Address: 25541 BARTON ROAD, LOMA LINDA, CA 92354

CONTRACTOR: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Any such notices, demands, invoices or written communications, by mail, shall be deemed to have been received by the addressee forth-eight (48) hours after deposit thereof in the United States Mail, postage prepaid, and property addressed as set forth above.

9. Insurance:

a) Type of /Required Coverages

Without limiting the indemnity provisions of the Contract, the Contractor shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

- (1) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, with minimum limits of at least \$1,000,000 per occurrence for bodily injury, personal injury and property damage, and \$2,000,000 aggregate total bodily injury, personal injury and property damage. Commercial General Liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

**Products-Completed Operations:** Contractor shall procure and submit to City evidence of insurance for a period of at least three (3) years from the time that all work under this Contract is completed.

- (2) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$1,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.

- (3) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.

b) Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

- 1) The insurance coverages required by Section (a)(1) Commercial General Liability; and (a)(2) Automobile Liability Insurance shall contain the following provisions or be endorsed to provide the following:

**Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Contract. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of contractor
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Contract)

**Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

- 2) The policy or policies of insurance required by Section (a)(3) Workers' Compensation shall be endorsed, as follows:

**Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

c) Notice of Cancellation

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

d) Waiver of Subrogation

Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and Policies shall contain or be endorsed to contain such a provision.

e) Evidence of Insurance

The Contractor, concurrently with the execution of the contract, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

g) Contractual Liability

The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this contract.

h) Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Contract. In addition, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon.

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

i) Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Contractor's Contract with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least three (3) years from termination or expiration of this Contract.

Upon expiration or termination of coverage of required insurance, Contractor shall procure and submit to City evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from the time that all work under this contract is completed.

k) Insurance for Subcontractors

Contractor shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Contract/Agreement, including adding the City as an Additional Insured to the Subcontractor's policies.

10. Indemnification:

- a) Defense, Indemnity and Hold Harmless. Contractor shall defend, indemnify and hold harmless the City, its present and former officers, directors, employees, agents, volunteers, mayor, staff, boards, committee and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses damages, sums or any other matters, threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Contractor herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct or other actions, omissions or conduct of Contractor, including its subcontractors, employees, agents and other persons or entities performing work for Contractor.
- b) Contractual Indemnity. To the fullest extent permitted under California law, Contractor shall contractually indemnify, defend and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Contractor or by any individual or entity for which Consultant is legally liable, including but not limited to Contractor's officers, agents, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, including all negligent acts or omissions, or intentional misconduct or other actions, omissions to act or conduct of Contractor, including its subcontractors, employees, agents and other persons or entities performing work for Contractor. Indemnification shall include any claim that Contractor or

Contractor's employees or agents, are or may be considered and treated to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties. Contractor's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

- c) **Subcontractors and Indemnification.** Contractor agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant or other person or entity involved by, for, with, or on behalf of Contractor in the performance of any aspect of this Agreement. In the event Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns or heirs of Contractor and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions and all damages, fines, or penalties or loss of theft to the property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct or other Contractor conduct or activities and/or conduct or activities of Contractor's officers agents independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Contractor further agrees to waive all rights of subrogation against the Indemnified Parties.
- d) **City Lost or Damaged Property Theft.** Contractor further agrees to pay or cause to be paid for the indemnified parties' benefit for any of this agreement.
- e) **Non-Waiver and Non-Exhaustion of City's Further Rights and Remedies.** No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Contractor under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Contractor begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Contractor. The indemnity obligations of Contractor shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal.
- f) **Limitations on Scope of Indemnity.** Notwithstanding the foregoing, Contractor shall not be responsible for indemnification for claims or losses caused solely by the negligence or intentional wrongdoing of Indemnified Parties. Further, the indemnity provided shall be interpreted as broadly as permitted under California law and as to agreements between

parties, and shall if required be reformed to be consistent with those laws to protect and save this provision for the protection of the Indemnified Parties.

11. Assignment: No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by CONTRACTOR without the prior written consent of CITY.
12. Independent Contractor: The parties hereto agree that CONTRACTOR and its employees, officers, and agents are independent contractors under this Agreement and shall not be construed for any purpose to be employees of CITY.
13. Compliance With Laws: CONTRACTOR shall comply with all applicable laws in performing its obligations under this Agreement.
14. Confidentiality: Information and materials obtained by the CONTRACTOR from CITY during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the CONTRACTOR for any purpose other than the performance of this Agreement.
15. Discrimination: The CONTRACTOR agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONTRACTOR agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.
16. Government Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.
17. Attorneys' Fees: In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover reasonable attorneys' fees and costs from the opposing party in an amount determined by the Court to be reasonable.
18. Entire Agreement: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party, which is not embodied herein, nor any other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only as it is in writing, signed by all parties.
19. Contents of Request for Proposals: Contractor is bound by the contents of City's Request for Proposal, Exhibit "A" hereto and incorporated herein by this reference, and the contents of the proposal submitted by Contractor, Exhibit "B" hereto. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Contractor's proposal.



IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first set forth above.

CONTRACTOR:

CITY:

City of Loma Linda, A Municipal Corporation

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
*Signature*

Name: \_\_\_\_\_  
*Typed/Printed*

Name: \_\_\_\_\_  
*Typed/Printed*

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Lynette Arreola, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane Robbins, City Attorney