

# City of Los Alamitos



## Request for Proposal (RFP) 2020-02 SB2 Planning Grants Program

FOR

### Development Services Department

Attn: Leslie Roseberry  
*Interim Development Services Director*  
3191 Katella Avenue  
Los Alamitos, California 90720  
(562) 431-3538, Extension 303  
(562) 493-1255 Fax  
Email: [roseberry@cityoflosalamitos.org](mailto:roseberry@cityoflosalamitos.org)

**Deadline/Bid Opening Date:**  
Must be received by 2:00pm  
Tuesday, July 14, 2020

RFP Available at <http://www.cityoflosalamitos.org>

*Request For Proposal 2020-02  
SB2 Planning Grants Program  
City of Los Alamitos*

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**SECTION A**

**REQUEST FOR PROPOSAL (RFP) 2020-02  
SB2 PLANNING GRANTS PROGRAM  
IN THE CITY OF LOS ALAMITOS, CALIFORNIA**

**NOTICE INVITING SEALED BIDS**

**NOTICE INVITING PROPOSALS**  
**CITY OF LOS ALAMITOS**  
**Development Services Department**



**NOTICE OF REQUEST FOR PROPOSALS**

Sealed proposals will be received at the office of the City Clerk of the City of Los Alamitos, 3191 Katella Avenue, Los Alamitos, California 90720 until 2:00 PM on Tuesday, July 14, 2020. Due to COVID-19 City offices are closed to the public, please contact Department Secretary Maria Enciso by email, [MEnciso@cityoflosalamitos.org](mailto:MEnciso@cityoflosalamitos.org) or by phone (562) 431-3538 Extension 301 to schedule an appointment. Bid submittals are by appointment only. The Request for Proposals documents can be found online at: <https://cityoflosalamitos.org/business/bids-and-rfps/>

The bids will be opened via teleconference and read at 2:00 p.m. on the 14<sup>th</sup> day of July 2020. Pursuant to Executive Orders and given the current health concerns, members of the public can access bid opening by phone dial +1 (301) 715-8592 and enter the Meeting ID: 818-5817-6636. Your microphone will be disabled upon entry for the duration of the meeting. Members of the public may not attend the bid opening in person.

**SB2 PLANNING GRANTS PROGRAM**

Proposals must be submitted in sealed envelopes marked on the outside,

**“SB2 PLANNING GRANTS PROGRAM. DO NOT OPEN WITH REGULAR MAIL.”**

The contract will consist of a qualified consultant team to provide assistance with a SB2 Planning Grants Program (“PGP”) project to create a strategic plan and an addendum to the General Plan EIR that will provide project level CEQA compliance for future projects in the City of Los Alamitos’ Town Center Mixed Use Zoning District.

Withdrawal of proposals shall not be permitted for a period of sixty (60) days after the date set for the opening thereof. The City reserves the right to reject any and all proposals.

*Request For Proposal 2020-02*  
*SB2 Planning Grants Program*  
*City of Los Alamitos*

City of Los Alamitos  
Leslie Roseberry  
*Interim Development Services Director*  
3191 Katella Avenue  
Los Alamitos, CA 90720

**SECTION B**

**REQUEST FOR PROPOSAL (RFP) 2020-02  
SB2 PLANNING GRANTS PROGRAM  
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**INSTRUCTIONS TO BIDDERS**

## **INSTRUCTIONS TO PROPOSERS AND PROCEDURES FOR SUBMITTAL**

One (1) original and one (1) Microsoft Word digital version of the Proposal must be submitted in a sealed envelope and submitted to the following address:

**City of Los Alamitos  
Attn: Leslie Roseberry  
Interim Development Services Director  
3191 Katella Avenue  
Los Alamitos, CA 90720**

Proposers are solely responsible for ensuring their Proposal is received by the City in accordance with the solicitation requirements, before Submittal Deadline, and at the place specified. Postmarks will not be accepted in lieu of actual delivery. No oral, telegraphic, electronic, facsimile, or telephonic Proposals or modifications will be considered. The City shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Delivery of Proposals shall be made at the office specified in this REQUEST FOR PROPOSALS. All Proposals shall become the property of the City. Late Proposals will not be accepted and will be returned to the Proposer unopened.

## **PROPOSAL RESPONSE REQUIREMENTS**

**Proposers shall submit Proposal on or before the Submittal Deadline. If discrepancies are found between the copies, or between the original and copy or copies, the “ORIGINAL” will provide the basis for resolving such discrepancies. If no document can be identified as original bearing original signatures, Proposer's Proposal may be rejected at the discretion of the City.**

It is imperative that all Contractors responding to the RFP comply exactly and completely with the instructions set forth herein. Proposals must be concise but with sufficient detail to allow accurate evaluation and comparative analysis. Proposals should be straightforward and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposal should be concise and be able to properly convey all information.

Bids must be prepared in conformance with INSTRUCTIONS TO BIDDERS, submitted in in a sealed envelope, and plainly marked on the outside:

**“SEALED BID FOR REQUEST FOR PROPOSAL (RFP) FOR SB2 PLANNING GRANTS PROGRAM. DO NOT OPEN WITH REGULAR MAIL”**

Questions related to this Request for Proposals may be referred to Associate Planner Tom Oliver at 562-431-3538 x303. Proposals not received on or prior to the date and time specified will not be considered.

**SECTION C**  
**REQUEST FOR PROPOSAL (RFP) 2020-02**  
**SB2 PLANNING GRANTS PROGRAM**  
**IN THE CITY OF LOS ALAMITOS, CALIFORNIA**

***PROPOSAL INFORMATION AND DOCUMENTS***

- 1. SCOPE OF SERVICES**
- 2. PROPOSAL REQUIREMENTS**
- 3. ADDITIONAL CONSULTANT RESPONSIBILITIES**
- 4. TERM**
- 5. SELECTION CRITERIA**
- 6. CLARIFICATION OF SPECIFICATIONS**

## **BACKGROUND**

The City of Los Alamitos is soliciting Requests for Proposals from qualified firms to provide assistance with a SB2 Planning Grants Program (“PGP”) project to create a strategic plan and an addendum to the General Plan EIR that will provide project level CEQA compliance for future projects in the City of Los Alamitos’ Town Center Mixed Use Zoning District.

In 2017, Governor Brown signed Senate Bill 2 (SB 2), referred to as the “Building Homes and Jobs Act.” This bill establishes funding dedicated to promoting and facilitating affordable housing development. In November of 2019, the City of Los Alamitos was awarded \$160,000 in grant funding. The fund agreement with the State was signed in February 2020. The purpose of the Los Alamitos’ particular Planning Grants Program award is to adopt a strategic plan to augment the City’s Town Center Mixed Use zoning district. This will formalize the direction and planning for the land use, design, circulation, and infrastructure in this area. Although the Strategic Plan would establish targeted goals, it would not be a regulatory document. The Plan provides a vision that will help guide future projects as they were envisioned in the City’s General Plan and the 2010 Katella + Los Alamitos Commercial Corridors Plan.

### **1. SCOPE OF SERVICES**

On September 16, 2019, the Los Alamitos City Council authorized Staff’s submittal of an application for Senate Bill 2 PGP to create a strategic plan and CEQA documentation for future developments in the City’s new Town Center Mixed Use (TCMU) Zoning District. The projects identified in the grant application total \$160,000 and are listed here:

- A. The strategic plan will provide: an authentic & unique image for the Town Center, create all hours activity in the Town Center, produce an attractive, pedestrian-friendly Town Center that would serve as the heart of the community, as well as give rise to a residential homeplace that can facilitate affordable housing.
- B. A strategic plan that will guide developers to improve or build new development in the Town Center through a capacity/feasibility analysis - to understand site constraints, built form requirements, and evaluate where changes may need to be made. This will increase the certainty of development as the plan demonstrates to the developer what is desired and constraints that are present. The Plan could save 6-12 months from site planning and redesign work.
- C. As part of the plan process, an addendum to the General Plan EIR will be prepared to provide project level CEQA compliance. This addendum could potentially save 6-12 months in entitlement processing time for new developments.

Here is the project objectives approved by the State of California Housing and Community Development Department (the timeline has been moved forward in time to accommodate this RFP):

Project Timeline and Budget				
Objective	Estimated Cost	Begin	End	Deliverable
Kick-off Meeting/Project Initiation & Research	\$15,000.00	8/6/2020	9/30/2020	Facilitate Meeting
Ongoing Meetings with Staff	\$10,000.00	8/6/2020	3/26/2021	Facilitate Meetings
Stakeholder Meetings	\$10,000.00	8/14/2020	8/21/2020	Facilitate Meetings
Public Open Houses	\$15,000.00	9/24/2020	12/3/2020	Facilitate Meeting
Draft Strategic Plan/EIR Addendum to Staff	\$70,000.00	12/4/2020	1/4/2021	Draft Plan/EIR Addendum
Draft Strategic Plan/EIR Addendum	\$13,000.00	12/4/2020	1/4/2021	Draft Plan/EIR Addendum
Planning Commission Mtg – Recommend to Council	\$3,000.00	2/24/2021	2/25/2021	Attend Meeting/Answer Questions
City Council Meeting - Adoption	\$3,000.00	3/15/2021	3/16/2021	Attend Meeting/Answer Questions
Final Strategic Plan deliverable	\$15,000.00	3/16/2021	3/26/2021	Final Strategic Plan
Mileage/Printing/Deliveries	\$6,000.00	8/6/2020	3/26/2021	Mileage/Printing/Deliveries
<b>Total Estimated Cost</b>	<b>\$160,000.00</b>			

The grant invoices must be delivered to HCD by February 28, 2022, and be fully expended by June 30, 2022.

## 2. PROPOSAL REQUIREMENTS

The purpose of this Request for Proposal (RFP) is to solicit and select a firm to provide consultant services for the completion of the SB2 Planning Grants Program. Under the direction of the Development Services Director, the consultant firm would serve as coordinator and would provide the range of expertise necessary to carry out the tasks in the Scope of Work to be performed.

All services provided by the proposing consultant firm shall be performed by individuals that meet the qualification, education, and certification/licensing requirements for the position. The successful consultant firm shall also have the resources to provide cost effective and timely services including providing customer service to the City of Los Alamitos.

Proposers shall submit Proposal on or before the Submittal Deadline. It is imperative that all Consultants responding to the RFP comply exactly and completely with the instructions set forth herein. Proposals must be concise but with sufficient detail to allow accurate evaluation and comparative analysis. Proposals should be straightforward and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear

description of the offer. Proposal should be concise and be able to properly convey all information.  
All Proposals shall include the following information:

**A: LETTER OF TRANSMITTAL**

Please include a brief introduction and history of your firm. Be sure to state why you believe that your firm is the best qualified to provide such services to the City of Los Alamitos.

**B: COMPANY DATA**

Please submit the following information:

1. Official firm name and address
2. Name, address, telephone number and email address of the Proposer's point of contact
3. Indicate what type of entity (corporation, company, joint venture, etc.). Please enclose a copy of the Joint Venture Agreement if entity is a joint venture
4. Federal Employer I.D. Number
5. The address and telephone numbers for each of your firm's locations
6. A detailed statement indicating whether Proposer is entirely or partially owned by another business organization or individual
7. Number of years Proposer has been in business under the present business name
8. All comparable contracts currently in effect
9. Please describe areas of specialization provided by the Proposer
10. Any failures or refusals to complete a contract and explanation
11. Financial interests in other lines of business
12. Known conflicts of interest

**C: PROPOSAL**

The proposal shall clearly address all of the information requested herein. To achieve a uniform review process and obtain the maximum degree of comparability, it is required that proposal be organized and contain all information as specified below:

1. A Letter of Introduction, to include an understanding of the scope of services.
2. The firm's approach to delivering the scope of services.
3. Brief company profile and number of years the firm has been in business.
4. Location of principal office that will be responsible for the implementation of any contracts.
5. Description of the professional qualifications of the personnel who will be assigned to work in the City of Los Alamitos. While the Consultant(s) may propose any staffing scenario to effectively perform the services, the proposal shall identify the key personnel who will be assigned to perform the services and how, where, and when those services will be provided.
6. Three references to include: name, address and phone number of the organization, length of time services were provided, and a description of the services provided.
7. Cost Proposal (including hourly rate) for Services. The method of payment upon

negotiation of an agreement shall be monthly payments based upon satisfactory progress and the submission of requests for payments. This should include hourly billable costs of each team member; project manager, associate and various titles. The

<b>Standard Fee Schedule</b>	
<b>STAFF LEVEL</b>	<b>HOURLY BILL RATE</b>
Principal	\$ _____ - \$ _____
Associate Principal	\$ _____ - \$ _____
Senior Associate/Senior Scientist	\$ _____ - \$ _____
Associate/Scientist	\$ _____ - \$ _____
Project Planner/Project Scientist	\$ _____ - \$ _____
Planner/Assistant Scientist	\$ _____ - \$ _____
Graphics Specialist	\$ _____ - \$ _____
Clerical/Word Processing	\$ _____ - \$ _____
Intern	\$ _____ - \$ _____
<small>Subconsultants are billed at cost plus X%.                      Mileage reimbursement rate is the standard IRS-approved rate.</small>	

8. Any other information which should be considered, such as any special services or customer service philosophy which define your firm’s practices.
9. If contracted in the future, the firm will be required to have professional liability insurance including liability at a minimum of one million per occurrence, worker’s compensation, and vehicle coverage including comprehensive and collision insurance naming the City of Los Alamitos as additional insured. The proposal shall state whether the firm could provide such insurance proof of coverage at time of any contract execution.
10. Selection of the firm will be based on:
  - Firm Experience
  - Coordination & Supervision Team Work
  - Qualification and Experience of staff and/or sub-consultants
  - Schedule & Budget Responsiveness
  - Quality Control and Assurance
  - Cost

The City of Los Alamitos reserves the right to accept or reject any and all proposals, or any portion of any proposal, or to waive any irregularities or informalities in the proposal or in the proposal process, or to make the award on the basis of that item or combination or items which, in its opinion, serves the best interest of the City. Services shall not commence until the Professional Services Agreement is executed by the City. Responses to this Request for Proposal become the property of the City.

One (1) original and two (2) copies of the proposal must be submitted no later than 2:00 p.m., Tuesday, July 14, 2020. It is the sole responsibility of the proposer to insure that their proposal is received by the deadline. Postmarks and/or faxes are not acceptable. Proposals must be titled “PROPOSAL (RFP) FOR SB2 PLANNING GRANTS PROGRAM”. Proposals must be submitted to:

Leslie Roseberry  
Interim Development Services Director  
City of Los Alamitos  
3191 Katella Avenue  
Los Alamitos, CA 90720

### **3. ADDITIONAL CONSULTANT RESPONSIBILITIES**

The consultant shall be responsible for completing the specified services in accordance with the City’s Professional Services Agreement.

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the services under this Agreement are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and the project site. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

### **4. TERM**

The term of the agreement is for (1) year.

### **5. SELECTION CRITERIA**

The process will adhere to the current City of Los Alamitos policies for the award of Professional Services Agreements. Each proposal will be evaluated based on firm qualifications and the required submittals. Firm selection will be made by utilizing the criteria described in this document. Each firm will be evaluated on their qualification submissions. All respondents will be notified as to the results of this evaluation.

## **6. CLARIFICATION OF SPECIFICATIONS**

If any respondent, prior to submitting their proposal should find any discrepancies and/or omissions from the specifications or other Professional Services Agreement documents, or if they should be in doubt as to the true meaning of any part thereof, they shall at once make a written request to the City of Los Alamitos Development Services Director for corrections, clarification, or interpretation of the points in question. The person submitting such request shall be responsible for its prompt delivery.

In the event that the City receives a request and it should be found that certain essential information is not clearly and fully set forth, or if the City discovers errors, omissions, or points requiring clarification in these documents, a written addendum will be mailed to each person to whom a proposal has been delivered. The City will not be responsible for any instructions, explanations, or interpretations of the documents presented to respondents in any manner other than the aforementioned written addendum.

## **7. ADDENDUM**

The City may modify, clarify or interpret the Request for Proposals by sending an addendum to each Firm/Individual(s) that has been issued a proposal package or notified the City of an interest in submitting a proposal. Any such addendum shall become part of the package and of any contract awarded. The City is not responsible for any other explanation or interpretation. A signed copy of the addendum shall be attached to the proposal and submitted as part of the package. Failure to do so may result in a non-responsive submittal.

**SECTION D**  
**REQUEST FOR PROPOSAL (RFP) 2020-02**  
**SB2 PLANNING GRANTS PROGRAM**  
**IN THE CITY OF LOS ALAMITOS, CALIFORNIA**

**PROFESSIONAL SERVICES AGREEMENT**

**PROFESSIONAL SERVICES AGREEMENT**  
**[enter name of firm/company]**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into, to be effective this [ ] day of [ ] 2020 (“Effective Date”), by and between the CITY OF LOS ALAMITOS, a California charter city and municipal corporation, (“City”) and [ ], a [ ], (“Firm”). City and Firm are sometimes hereinafter individually referred to as “Party” and are hereinafter collectively referred to as the “Parties.”

**RECITALS**

- A. City has determined that it requires the services of a qualified firm to provide [ ] (“Project”).
- B. Firm has submitted to City a written proposal, dated [ ], 2020, to provide [ ] for the Project.
- C. Firm represents and maintains that it is uniquely qualified by virtue of its experience, training, education, reputation, and expertise, to provide the necessary services to City and has agreed to provide such services as set forth herein.
- D. City desires to engage Firm to provide such services subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

**1. SERVICES OF FIRM**

**1.1 Scope of Services and Standard of Performance.** Firm shall provide those services set forth in the [ ] Proposal, dated [ ], 2020, attached hereto as Exhibit “A” (“Scope of Services” and/or “Project Services”). Firm shall provide the Project Services in compliance with all terms and conditions of this Agreement. Firm warrants that all Project Services shall be performed in a skillful, competent, professional and satisfactory manner in accordance with all standards prevalent in the same profession in the State of California. Firm represents and warrants that it is skilled in the professional discipline necessary to perform the Project Services. Firm represents and warrants that it and all employees, subconsultants and subcontractors providing any services

pursuant to this Agreement shall have sufficient skill and experience to perform the Project Services. All Project Services shall be completed to the reasonable satisfaction of City.

**1.1.1 Resolution of Inconsistencies.** In the event of any inconsistency between or among the terms and conditions contained in the main body of this Agreement and the Scope of Services, such inconsistency shall be resolved by applying the provisions in the highest priority of the documents containing such inconsistency, which shall be determined in the following order of declining priority: (1<sup>st</sup>) the main body of this Agreement; and (2<sup>rd</sup>) the Scope of Services.

**1.2 Compliance with Law.** All Project Services shall be provided in accordance with all laws, ordinances, resolutions, statutes, rules, and regulations of City and any federal, state or local governmental agency of competent jurisdiction. Firm shall be liable for all violations of such laws, ordinances, resolutions, statutes, rules and regulations in connection with performance of the Project Services. If Firm performs any Project Services in violation of such laws, ordinances, resolutions, statutes, rules or regulations, Firm shall be solely responsible for all penalties and costs arising therefrom. Firm shall defend, indemnify, and hold City, its officials, officers, employees, agents and volunteers, free and harmless from and against any claim or liability arising out of any failure or alleged failure to comply with such laws, ordinances, resolutions, statutes, rules or regulations.

**1.3 Licenses and Permits.** Prior to performing any Project Services, Firm shall obtain all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Project Services. Firm represents and warrants to City that Firm shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement and any extension, any license, permit, qualification, or approval that is legally required for Firm to perform the Project Services. Firm shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Firm's performance of the Project Services, and shall defend, indemnify, and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from and against any claim or liability arising out of any failure or alleged failure to obtain such license, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Project Services.

**1.4 Familiarity with Work.** By executing this Agreement, Firm warrants that Firm (a) has thoroughly investigated and considered the Project Services to be performed, (b) has carefully considered how the Project Services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the Project Services under this Agreement.

**1.5 Care in Performance of Project Services.** Firm shall adopt reasonable methods during the term of the Agreement to prevent losses or damage to materials, papers or other components of the Project Services, and shall be responsible for all such damages, to persons or property, until acceptance of the Project Services by the City, except such losses or damages as may be caused by City's own negligence.

**1.6 Non-Exclusive Agreement.** Firm acknowledges that City may enter into agreements with other firms, contractors, consultants, or vendors for services similar to the services that are the subject of this Agreement. Firm further acknowledges that City may have its own employees perform services similar to the services that are the subject of this Agreement.

## **2. COMPENSATION**

**2.1 Maximum Contract Amount.** Firm shall be compensated for the Project Services performed, including authorized reimbursements, if any, in accordance with the rates and charges set forth in the **professional hourly rates and charges** set forth in the Scope of Services in an amount not to exceed **\_\_\_\_\_ Dollars (\$\_\_\_\_\_)**. The maximum amount of City's payment obligation under this Agreement is the amount specified in this section.

**2.2 Method of Payment.** In any month in which Firm wishes to receive payment, Firm shall no later than first working day of such month, submit to the City, in a form approved by the City Manager or his designee, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Firm and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. Within thirty (30) calendar days of receipt of invoice, City shall pay all undisputed amounts included on the invoice.

**2.3 Changes in Scope.** In the event any change or changes in the Scope of Services is requested by the City, the Parties shall execute a written amendment to this Agreement, signed by an individual authorized to formally bind the Party for which he/she is signing, setting forth with particularity all terms of such amendment, including, but not limited to, any additional professional fees. An amendment may be entered into: (a) to provide for revisions or modifications to documents or other work product when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or, (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Firm's profession.

**2.4 Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefore by the Los Alamitos City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the City.

### **3. SCHEDULE OF PERFORMANCE**

**3.1 Time of Essence.** Time is of the essence in the performance of this Agreement. The time for completion of the Project Services to be performed by Firm is an essential condition of this Agreement.

**3.2 Schedule of Performance.** Firm shall prosecute regularly and diligently the Project Services according to the periods specified in the Scope of Services. When requested by Firm, extensions of the time period(s) specified in the Scope of Services may be approved in writing by the Contract Officer; however, the City shall not be obligated to grant any such extension.

**3.3 Force Majeure.** The time for performance of the Project Services may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Firm (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Firm, within ten (10) calendar days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Firm be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Firm's sole remedy being extension of the Agreement pursuant to this section.

**3.4 Term.** Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall commence upon the Effective Date and shall continue in full force and effect for a period of \_\_\_\_\_, ending on \_\_\_\_\_, \_\_\_\_\_, unless extended by mutual written agreement of the Parties.

### **4. COORDINATION OF PROJECT SERVICES**

**4.1 Firm's Representative.** The following principal of Firm is hereby designated as being the principal and representative of Firm authorized to act on its behalf with respect to the Project Services and to make all decisions in connection therewith: \_\_\_\_\_. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Firm and devoting sufficient time to personally supervise the Project Services performed hereunder. The foregoing principal may not be changed by Firm without prior written approval of the Contract Officer.

**4.2 City's Contract Officer.** The City's Contract Officer shall be **such person as may**

be designated by the City Manager, and is subject to change by the City Manager. It shall be the Firm's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Project Services, and the Firm shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

**4.3 Prohibition Against Subcontracting or Assignments.** The experience, knowledge, capability, expertise, and reputation of Firm, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Firm shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City. Firm shall not contract with any other entity to perform the Project Services without prior written consent of City. If Firm is permitted by City to subcontract any part of this Agreement, Firm shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the performance of Project Services will be considered employees of Firm. City will deal directly with and will make all payments to Firm. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written consent of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Firm, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Firm or any surety of Firm from any liability hereunder without the express written consent of City.

#### **4.4 Independent Contractor.**

**4.4.1** The legal relationship between the Parties is that of an independent contractor; nothing herein shall be deemed to make Firm a City employee. During the performance of this Agreement, Firm and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. Firm will determine the means, methods and details of performing the Project Services subject to the requirements of this Agreement. The personnel performing the Project Services on behalf of Firm shall at all times be under Firm's exclusive direction and control. Neither City nor any of its officials, officers, employees, agents or volunteers shall have control over the conduct of Firm or any of its officers, employees, or agents, except as set forth in this Agreement. Firm, its officers, employees or agents, shall not maintain a permanent office or fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Firm's officers, employees, or agents or in fixing their number, compensation, or hours of service. Firm shall pay all wages, salaries, and other amounts due its employees in connection with the performance of Project Services and shall be responsible for all reports and obligations respecting them, including but not limited to social

security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Firm in its business or otherwise a joint venturer or a member of any joint enterprise with Firm.

**4.4.2** Firm shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

**4.4.3** No City benefits shall be available to Firm, its officers, employees, representatives, agents, subconsultants or subcontractors in connection with the performance of any Project Services. Except for professional fees paid to Firm as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Firm for the performance of any Project Services. City shall not be liable for compensation or indemnification to Firm, its officers, employees, representatives, agents, subconsultants or subcontractors, for injury or sickness arising out of the performance of any Project Services. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 2 herein, of any nature relating to salary, taxes, or benefits of Firm's officers, employees, representatives, agents, or subconsultants or subcontractors, Firm shall defend, indemnify, and hold harmless City from and against all such financial obligations.

#### **4.5 PERS Eligibility Indemnification.**

**4.5.1** In the event that Firm or any officer, employee, representative, agent, subconsultant or subcontractor of Firm providing any Project Services claims or is determined by a court of competent jurisdiction or the California Public Employee Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Firm shall indemnify, defend, and hold harmless City against (1) all such claims and determinations, (2) for the payment of any employee and/or employer contributions for PERS benefits on behalf of Firm or its officers, employees, representatives, agents, subconsultants or subcontractors, and (3) the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

**4.5.2** Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Firm and any of its officers, employees, representatives, agents, subconsultants or subcontractors providing any Project Services shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

### **5. INSURANCE**

**5.1 Compliance with Insurance Requirements.** Firm shall obtain, maintain, and keep in full force and effect during the term of this Agreement, at its sole cost and expense, and in a form and content satisfactory to City, all insurance required under this section. Firm shall not

commence any Project Services unless and until it has provided evidence satisfactory to City that it has secured all insurance required under this section. If Firm's existing insurance policies do not meet the insurance requirements set forth herein, Firm agrees to amend, supplement or endorse the policies to do so.

**5.2 Types of Insurance Required.** As a condition precedent to the effectiveness of this Agreement, and without limiting the indemnity provisions set forth in this Agreement, Firm shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

**5.2.1 Professional Liability/Errors and Omissions Insurance ("PLI").** Firm shall obtain and maintain a policy of Professional Liability or Errors and Omissions Insurance appropriate to Firm's profession with per-claim and aggregate limits of no less than **Two Million Dollars (\$2,000,000.00)**. Covered professional services shall specifically include all Project Services to be performed under the Agreement and the policy shall be endorsed to delete any exclusions that may exclude coverage for claims within the minimum PLI limits set forth herein for the Project Services to be performed under this Agreement.

**5.2.1.1** The PLI policy shall be endorsed to delete any Contractual Liability Exclusion. The PLI shall include contractual liability coverage applicable to this Agreement. The policy must "pay on behalf of" the insured, and include a provision establishing the insurer's duty to defend the insured.

**5.2.1.2** If the PLI policy is written on a "claims-made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of all Project Services provided hereunder (the "PLI Coverage Period"). If any PLI policy is replaced, cancelled, non-renewed, discontinued, or otherwise terminated, or if the limits of a PLI policy are reduced or the available coverage depleted below the required minimum coverage amounts for any reason during the PLI Coverage Period, Firm shall immediately obtain replacement PLI coverage meeting the requirements of this Section 5.2.1. Such replacement coverage shall satisfy all requirements herein, and shall include coverage for the prior acts or omissions of Firm during the time period during which any Project Services were performed. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City.

**5.2.1.3** If the PLI policy is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Project Services provided for in this Agreement, whichever is later. In the event of termination of the PLI policy during this period, new coverage shall immediately be obtained, and written evidence of the policy shall be immediately provided to the City, to ensure PLI coverage during the entire course of performing the Project services.

**5.2.1.4** Firm shall not perform any Project Services at any time during which required types or amounts of PLI insurance are not in effect, and the City shall have no obligation to pay Firm for Project Services performed while required PLI insurance is not in effect.

**5.2.2 Commercial General Liability Insurance.** Firm shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Commercial General Liability Insurance (CGL). Coverage shall be at least as broad as ISO Form CG 00 01 written on a per occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits of no less than **One Million Dollars (\$1,000,000.00)** per occurrence and Two Million Dollars (**\$2,000,000.00**) in the general aggregate. The policy shall not contain any endorsements or provisions limiting coverage for (1) contractual liability, (2) cross liability exclusion for claims or suits by one insured against another, or (3) contain any other exclusion contrary to the Agreement.

**5.2.3 Automobile Liability Insurance.** Firm shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Automobile Liability Insurance. Coverage shall be at least as broad as ISO Form CA 00 01 written on a per occurrence basis, covering Code 1 (any auto), or if the Firm has no owned autos, Code 8 (hired) and Code 9 (non-owned), with limits of no less than **One Million Dollars (\$1,000,000.00)** for each occurrence covering bodily injury and property damage.

**5.2.4 Workers' Compensation Insurance.** Firm shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Workers' Compensation Insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Firm agrees to waive and obtain endorsements from its workers' compensation insurer waiving all subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, employees, agents and volunteers, and to require each of its subconsultants and subcontractors, if any, to do likewise under their workers' compensation insurance policies. Firm shall also obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Employer's Liability Insurance written on a per occurrence basis with limits of at least **One Million Dollars (\$1,000,000.00)** per accident for bodily injury or disease. Notwithstanding the foregoing, Firm shall not be required to procure either Worker's Compensation Insurance or Employer's Liability Insurance if Firm provides written verification to the City that Firm does not have any employees.

**5.3 Acceptability of Insurers.** Insurance required by this section shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A:-VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Approved Surplus Lines Insurers (LASLI)), by the latest edition of A.M. Best's Key Rating Guide, except that the City will accept workers' compensation insurance from the State Compensation Fund. In the event the City determines that the work or Project Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Firm agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt

of written notice from the City. Firm shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein.

**5.4 Specific Insurance Provisions and Endorsements.** Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for written approval. Required insurance policies shall contain the following provisions, or Firm shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

**5.4.1 CGL and Auto Liability Endorsements.** The policy or policies of insurance required by this section for CGL and Automobile Liability Insurance shall be endorsed as follows:

**5.4.1.1 Additional Insured.** The City, its officials, officers, employees, agents and volunteers, shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement; and

**5.4.1.1.1 Additional Insured Endorsements.** Additional insured endorsements shall not (1) be restricted to “ongoing operations”, (2) exclude “contractual liability”, (3) restrict coverage to “sole” liability of Firm, or (4) contain any other exclusions contrary to the Agreement; and, the coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

**5.4.1.2 Primary and Non-Contributing Insurance.** Each CGL and Automobile Liability Insurance policy shall be endorsed to be primary, and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents or volunteers, shall not contribute with this primary insurance.

**5.4.1.3 Waiver of Subrogation.** Each CGL and Automobile Liability Insurance policy shall contain or be endorsed to waive subrogation against the City, its officials, officers, employees, agents and volunteers, or shall specifically allow Firm or others providing insurance evidence in compliance with the requirements set forth in this section to waive their right to recovery prior to a loss. Firm hereby agrees to waive its own right of recovery against the City, its officials, officers, employees, agents and volunteers, and Firm hereby agrees to require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

**5.4.2 Notice of Cancellation.** Each policy of any type shall be endorsed to provide that coverage shall not be suspended, voided, cancelled, or modified, or reduced in coverage or in limits, except after thirty (30) calendar days prior written notice has been provided to the City. Notwithstanding the foregoing, if coverage is to be suspended, voided, or cancelled because of Firm’s failure to pay the insurance premium, the notice provided by the insurer to City shall be by not less than ten (10) calendar days prior written notice. (A statement that notice will be provided "in accordance with the policy terms" or words to that effect is inadequate to meet the requirements of this section.)

**5.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be approved in writing by the City in advance. The decision whether to approve or withhold approval of a deductible or self-insured retention shall be made by the City in the City's sole and absolute discretion.

**5.6 Evidence of Coverage.** Concurrently with the execution of the Agreement, Firm shall deliver certificates of insurance together with original endorsements affecting each of the insurance policies required by this section. Firm shall promptly furnish, at City's request, copies of actual policies including all declaration pages, endorsements, exclusions and any other policy documents City may require to verify coverage.

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

**5.6.2 Authorized Signatures.** The certificates of insurance and original endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

**5.6.3 Renewal/Replacement Policies.** At least fifteen (15) calendar 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 and not replaced immediately so as to avoid a lapse in the required coverage, Firm shall, within ten (10) calendar 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 meeting all requirements of this Agreement.

**5.7 Requirements Not Limiting.** Requirement of specific coverage or minimum limits contained in this section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Nothing in this section shall be construed as limiting in any way the indemnification provision contained in this Agreement, or the extent to which Firm may be held responsible for payments of damages to persons or property.

**5.8 Enforcement of Agreement (Non-Estoppel).** Firm acknowledges and agrees that actual or alleged failure on the part of the City to inform Firm of any non-compliance with any of the insurance requirements set forth in this section imposes no additional obligation on the City nor does it waive any rights hereunder.

**5.9 Insurance for Subconsultants.** Firm shall either: (1) include all subconsultants or subcontractors engaged in the performance of Project Services on behalf of Firm as additional named insureds under the Firm's insurance policies; or (2) Firm shall be responsible for causing its subconsultants or subcontractors to procure and maintain the appropriate insurance in compliance with the terms of the insurance requirements set forth in this section, including adding the City, its officials, officers, employees, agents and volunteers, as additional insureds to their

respective policies. Firm shall not allow any subconsultant or subcontractor to commence any work or services relating to this Agreement unless and until it has provided evidence satisfactory to City that the subconsultant or subcontractor has secured all insurance required under this section.

**5.10 Other Insurance Requirements.** The following terms and conditions shall apply to the insurance policies required of Firm and its subconsultants and subcontractors, if any, pursuant to this Agreement:

**5.10.1** Firm shall provide immediate written notice to City if (1) any of the insurance policies required herein are terminated, cancelled or suspended, (2) the limits of any of the insurance coverages required herein are reduced, or (3) the deductible or self-insured retention is increased.

**5.10.2** All insurance coverage and limits provided by Firm and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.

**5.10.3** None of the insurance coverages required herein will be in compliance with the requirements of this section if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City and approved in writing.

**5.10.4** Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Firm's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.

**5.10.5** Firm agrees to ensure that subconsultants and subcontractors, if any, and any other parties involved with the Project who are brought onto or involved in the Project by Firm, provide the same minimum insurance coverage required of Firm. Firm agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Firm agrees that upon request, all agreements with subcontractors and others engaged in the provision of Project Services will be submitted to the City for review.

**5.10.6** Firm agrees to provide immediate written notice to City of any claim, demand or loss against Firm arising out of the work or Project Services performed under this Agreement and for any other claim, demand or loss which may reduce the insurance available to pay claims, demands or losses arising out of this Agreement.

## **6. INDEMNIFICATION**

To the fullest extent permitted by law, Firm shall defend (at Firm's sole cost and expense with legal counsel reasonably acceptable to City), indemnify and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from any and all claims, demands, orders, causes of action, costs, expenses, liabilities, losses, penalties, judgments, arbitration awards, settlements, damages or injuries of any kind, in law or in equity, including but not limited to property or persons, including wrongful death, (collectively "Claims") in any manner arising out of, pertaining to, related to, or incident to any alleged acts, errors or omissions, or willful misconduct of Firm, its officers, directors, employees, subconsultants, subcontractors, agents or invitees in connection with performance under this Agreement, or in any manner arising out of, pertaining to, related to, or incident to an alleged breach of this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.

Notwithstanding the foregoing, and only to the extent that the Project Services performed by Firm are subject to California Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Firm.

Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Firm's indemnification obligation or other liability hereunder. Notwithstanding the foregoing, such obligation to defend, hold harmless and indemnify the City, its officials, officers, employees, agents and volunteers, shall not apply to the extent that such Claims are caused by the sole negligence or willful misconduct of that indemnified party.

## **7. REPORTS AND RECORDS**

**7.1 Records.** Firm shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Firm shall keep such books and records as shall be necessary to properly perform the Project Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Project Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

**7.2 Reports.** Firm shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Project Services as the Contract Officer shall require.

**7.3 Ownership of Documents.** All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Firm, its employees, subconsultants, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Firm shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the

documents and materials hereunder. Firm may retain copies of such documents for its own use. Firm shall have an unrestricted right to use the concepts embodied therein. Firm shall ensure that all of its subconsultants and subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Firm fails to secure such assignment, Firm shall indemnify City for all damages resulting therefrom.

**7.4 Release of Documents.** Except to the extent otherwise required by law, no drawing, specification, report, record, document, or other material prepared by Firm, its employees, subconsultants, subcontractors and agents in the performance of Project Services shall not be released publicly without the prior written approval of the Contract Officer.

## **8. ENFORCEMENT OF AGREEMENT**

**8.1 California Law and Venue.** This Agreement shall be construed and interpreted both as to validity and as to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such County, and Firm covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

**8.2 Waiver.** No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waiver or render unnecessary City's consent to or approval of any subsequent act of Firm. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

**8.3 Rights and Remedies Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

**8.4 Legal Action.** In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

**8.5 Termination Prior to Expiration of Term.** City reserves the right to terminate this Agreement, at any time, with or without cause, upon thirty (30) calendar days written notice to Firm, except that where the continuation of services would constitute a danger to health, safety or general welfare, the period of notice shall be such shorter time as may be appropriate. Upon receipt of the notice of termination, Firm shall immediately cease all Project Services, except as may be specifically approved by the Contract Officer. Firm shall be entitled to compensation for

all Project Services rendered prior to receipt of the notice of termination and for any Project Services authorized by the Contract Officer thereafter.

## **8.6 Termination for Default of Firm.**

**8.6.1** Firm's failure to comply with any provision of this Agreement shall constitute a default.

**8.6.2** If the Contract Officer determines that Firm is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Firm in writing of such default. If such default is capable of being cured, Firm shall have ten (10) calendar days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Firm fails to cure its default within such period of time, or if such default is not capable of being cured, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Firm shall be liable for any and all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.5.

**8.6.3** If termination is due to the failure of Firm to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.6.2, take over the Project Services and prosecute the same to completion by contract or otherwise, and Firm shall be liable to the extent that the total direct and indirect costs for completion of the Project Services required hereunder exceeds the Maximum Contract Amount, and City may withhold any payments to Firm for the purpose of set-off toward the cost of completion of the Project Services. The withholding or failure to withhold payments to Firm shall not limit Firm's liability for completion of the Project Services as provided herein.

**8.7 Attorneys' Fees.** In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorneys' fees, expert witness fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) calendar days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding. For purposes of this section, "Reasonable attorney fees" shall be calculated by multiplying the actual number of hours reasonably expended by the attorney(s) handling the dispute on behalf of the prevailing Party by the hourly rate actually paid by the prevailing Party, but in no case shall the hourly rate exceed Two Hundred and Fifty Dollars (\$250.00) per hour.

**9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

**9.1 Non-liability of City Officers and Employees.** No officer or employee of the City shall be personally liable to the Firm, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to the Firm or to its successor, or for breach of any obligation of the terms of this Agreement.

**9.2 Covenant Against Discrimination.** Firm covenants that, by and for itself, its heirs, executors, assigns, subcontractors, subconsultants and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, disability, medical condition, color, creed, religion, sex, sexual orientation, marital status, age, national origin, or ancestry. Firm shall take affirmative action to insure that applicants and employees are treated without regard to their race, disability, medical condition, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry.

**10. MISCELLANEOUS PROVISIONS**

**10.1 Confidentiality.** Information obtained by Firm in the performance of this Agreement shall be treated as strictly confidential and shall not be used by Firm for any purpose other than the performance of this Agreement without the written consent of the Contract Officer.

**10.2 Patent and Copyright Infringement.**

**10.2.1** To the fullest extent permitted by law, and in lieu of any other warranty by City or Firm against patent or copyright infringement, statutory or otherwise, it is agreed that Firm shall defend at its expense any claim or suit against City on account of any allegation that any item furnished under this Agreement, or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and Firm shall pay all costs and damages finally awarded in any such suit or claim, provided that Firm is promptly notified in writing of the suit or claim and given authority, information and assistance at Firm's expense for the defense of same, and provided such suit or claim arises out of, pertains to, or is related to the alleged negligence, recklessness or willful misconduct of Firm. However, Firm will not indemnify City if the suit or claim results from City's alteration of a deliverable where such alteration created the infringement upon any presently existing U.S. letters patent or copyright.

**10.2.2** Firm shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof, Firm shall not be obligated to indemnify City under any settlement made without Firm's consent or in the event City fails to cooperate in the defense of any suit or claim, provided, however, that such defense shall be at Firm's expense. If the use or sale of such item is enjoined as a result of the suit or claim, Firm, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

**10.3 Notices.** Any notice, demand, request, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally during normal hours of operation of the Party receiving the notice, or sent by pre-paid, first-class mail to the address set forth below. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated on the day personally served, or two (2) business days from the date of mailing if mailed as provided in this section. Additionally, notices by email will be considered legal notice if such communications include the following text in the Subject field: FORMAL LEGAL NOTICE – [REDACTED].

**To City:**

**City's Contract Officer, title**  
City of Los Alamitos  
3191 Katella Ave.  
Los Alamitos, CA 90720  
[REDACTED]@cityoflosalamitos.org

**With copy to:**

Michael S. Daudt, City Attorney  
Woodruff, Spradlin & Smart  
555 Anton Blvd., Suite 1200  
Costa Mesa, CA 92626  
mdaudt@wss-law.com

**To Firm:**

**Name of Firm**  
**Street**  
**City, State, Zip Code**  
**Email**

**10.4 Entire Agreement; Amendments in Writing.** This Agreement constitutes the entire agreement between the Parties and is intended as an integrated agreement, superseding all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

**10.5 Severability.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the Parties hereunder.

**10.6 Successors in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

**10.7 Third Party Beneficiary.** Except as expressly provided herein, **nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.**

**10.8 Recitals.** **The above-stated Recitals are hereby incorporated into the Agreement as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.**

**10.9 Prevailing Wages.** Firm is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”). Firm agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). It is agreed by the Parties that, in connection with the work or Project Services provided pursuant to this Agreement, Firm shall bear all risks of payment or non-payment of prevailing wages under California law, and Firm hereby agrees to defend, indemnify, and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

**10.0 Corporate Authority.** Each of the undersigned represents and warrants that (i) the Party for which he/she is executing this Agreement is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he/she is signing, (iii) by so executing this Agreement, the Party for which he/she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which the Party for which he/she is signing is bound.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the date first written above.

**“City”**

**City of Los Alamitos**

By: \_\_\_\_\_  
Richard D. Murphy  
Mayor

**APPROVED AS TO FORM.**

Woodruff, Spradlin & Smart, APC

**ATTEST:**

By: \_\_\_\_\_  
Michael S. Daudt  
City Attorney

By: \_\_\_\_\_  
Windmera Quintanar, MMC  
City Clerk

**“Firm”**

**Name of Firm**

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Name  
Title