

AGREEMENT FOR CONSULTANT
COMPREHENSIVE GENERAL PLAN UPDATE AND CEQA DOCUMENT

THIS AGREEMENT FOR CONSULTANT ("Agreement") is effective as of [_____] and is between the CITY OF LEMOORE, a California municipal corporation ("City"), and _____ ("Consultant"). City and Consultant each are a "Party," and collectively, the "Parties," to this Agreement.

The City desires to retain a consulting firm "Consultant" to complete its Comprehensive General Plan Update and CEQA Document. The Consultant is familiar with the San Joaquin Valley and specializes in and or has knowledge and experience of comprehensive and environmental planning and land use, as listed in the RFP, and possess the ability to complete the task as agreed to in the scope of work according to the agreed timeframe and project cost.

Consultant warrants that it is specifically trained, experienced, expert and competent to perform such services required by the City as demonstrated in the Proposal attached hereto as Exhibit "A."

The City and the Consultant therefore agree as follows:

1. **Scope of Work.** City retains Consultant to provide all the services, equipment and materials necessary to complete the work described in the attached Exhibit "B."
2. **Standard of Performance.** Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.
3. **Consultant.** City designates Consultant's employee [_____] to serve under this Agreement as the Project Manager/Lead. As the designated Lead, [_____] shall be responsible for personally providing or supervising all of Consultant's work under this Agreement.
4. **Term.** Subject to termination under section 10 below, the term of this Agreement, to include completion of all deliverables as agreed upon, shall not exceed three (3) years beginning with the effective date of this Agreement.
5. **Ownership, Delivery, Release, and Reproduction of Information.** All documents, information and materials of any type prepared by the Consultant under this Agreement shall be the property of the City, whether completed or in process. Consultant shall not permit the reproduction, release, or use of such documents, information, and materials by any other person except as permitted by this Agreement.
 - a. City shall upon request provide Consultant with access to all information and data in its possession which are required in connection with the consulting services, including, but not limited to, pertinent environmental reports and supporting technical documents.
 - b. City shall upon request provide Consultant with access to, and make all provisions necessary to enter upon, public or private lands as required for Consultant to perform work under this Agreement.
 - c. Consultant, its officers, employees, agents, or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories or other

information concerning the work performed under this Agreement. A response to a subpoena or court order shall not be considered "voluntary" if Consultant gives City prior notice of such court order or subpoena.

- d. Consultant shall promptly notify City Manager or designee if Consultant, its officers, employees, agents or subcontractors are served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any proposed responses to discovery requests to be provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.
- e. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

6. Subcontractors. Consultant is authorized to subcontract any specialized work, provided that the City Manager or designee has given its written approval of each subcontractor in advance of the engagement of the subcontractor. Consultant shall be responsible for payment of subcontractor and shall require subcontractor to comply with this Agreement.

7. Compensation. City shall pay to Consultant in arrears as compensation in full for all work required by this Agreement a sum not to exceed in any fiscal year the total amount allotted for such services in the City's annual budget. In no event shall Consultant be paid more than _____ for services provided pursuant to this Agreement unless first approved by City Council.

Consultant's compensation shall be based on actual services performed and costs incurred at the rates set forth for each task in the Consultant's Fee Schedule appearing in Exhibit "C." The Consultant's Fee Schedule shown in Exhibit "C" shall remain in effect for the term of this Agreement and may only be changed upon approval of the City Manager or designee. Progress payments will be made as set forth below based on compensable services provided and allowable costs incurred pursuant to this Agreement. Consultant shall submit to City itemized invoices for the services rendered. If the work is satisfactorily completed, City shall pay such invoice within thirty (30) days of its receipt. If City disputes any portion of any invoice, then City shall pay the undisputed portion within the thirty-day period, and at the same time advise Consultant in writing of the disputed portion.

8. Indemnification. CONSULTANT agrees to the fullest extent permitted by law including California Civil Code Section 2782.8, to indemnify, protect, defend, and hold harmless the CITY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or

willful misconduct of the CITY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.

9. Insurance. Consultant shall procure the following required insurance coverages at its sole cost and expense and shall maintain in full force and effect for the period covered by this Agreement such insurance against claims for injuries to persons or damages to property which may arise from or in connection with negligent acts, errors or omissions in performance of work hereunder by the Consultant, its agents, representatives, employees or subcontractors.

Minimum Scope

Coverage shall be at least as broad as the following:

Errors and Omissions Insurance. Not less than \$1,000,000 per claim and \$1,000,000 in the aggregate during the performance of this Agreement. The consultant agrees to purchase and maintain errors and omissions coverage providing coverage for a minimum of two years after completion of this Agreement.

General Liability Insurance. Insurance Service Office form number GL0002 (Ed. 1/73) or its equivalent, covering Commercial Liability and Insurance Services Office form GL 0404 or its equivalent, covering Broad Form Commercial General Liability coverage ("occurrence" form CG 0001) not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.

Automobile Liability Insurance. Insurance Service Office form number CA0001 (Ed 1/78), or its equivalent Automobile Liability, code 1 "any auto" and endorsement CA 0025, or its equivalent, not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

Worker's Compensation and Employer's Liability Insurance. Worker's Compensation Insurance limits as required by Labor Code of the State of California; Employers' Liability Insurance limits of \$1,000,000.

Deductibles and Self Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved in writing by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, City Council members, employees, volunteers, agents, and city officials; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

- a. General Liability and Automobile Liability Coverages.
 1. The City, City Council members, employees, volunteers, agents, and city officials are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant; premises owned, occupied or used by the Consultant or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, City Council members, employees, volunteers, agents, and city officials.

2. The Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials and employees. **Vendor's liability policies shall be primary and shall not seek contribution from the City's coverage.**
 3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, City Council members, employees, volunteers, agents, and city officials.
 4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- b. Worker's Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, City Council members, employees, volunteers, agents, and city officials for losses arising from work performed by the Consultant for the City.
 - c. All Coverages. Coverage shall not be suspended, voided, canceled by either Party, or reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City.

Acceptability of Insurers

- a. Insurance is to be placed with insurers with a Best's rating of no less than A:VII. However, the minimum Best's rating required of the professional liability insurer is A:V.
- b. Any changes in insurance required herein must be approved in writing by the City Attorney's Office.
- c. The Consultant shall provide certificates of said insurance within fifteen (15) calendar days of the effective date of this Agreement.

10. Termination of Agreement. This Agreement may be terminated by mutual agreement, or it may be terminated by the City upon giving thirty (30) days' advanced written notice of intent to terminate the contract. In the event of such termination, Consultant shall be paid for undisputed work completed to the date of termination, and any such work completed shall become property of the City.

11. Compliance with Federal, State and Local Laws. Consultant shall be responsible for and shall comply with all applicable laws, rules and regulations that are now in effect or may be promulgated or amended from time to time by the Government of the United States, the State of California, Kings County, the City and any other agency now authorized or which may be authorized in the future to regulate the services to be performed pursuant to this Agreement. Consultant represents that it currently has, and will maintain in effect all proper licensing and permits necessary to providing the described services, including, but not limited to, []'s licensure as a California registered professional []. Where the services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant funds, Consultant's performance will be in:

- a. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub-grantees.)
- b. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub-grants or construction or repair).

- c. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub-grantees required by Federal grant program legislation.)
- d. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)
- e. Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.
- f. Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- g. Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.
- h. Compliance with access requirements imposed by the grantee, the sub-grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.
- i. Compliance with applicable requirements for the retention of all required records for three (3) years after grantees or sub-grantees make final payments and all other pending matters are closed.
- j. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts and sub grants of amounts in excess of \$100,000.)
- k. Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871.) [53 FR 8068, 8067, Mar 11, 1988 as amended at 60 FR 19639, 19642, Apr. 19 1995]
- l. Compliance with debarment and suspension requirements under Executive Orders 12549 and 12689 for award of contracts in excess of \$25,000.
- m. Compliance with the Byrd Anti Lobbying Amendment (31 U.S.C. 1352) for contracts of \$100,000 or more.
- n. Compliance with applicable requirements pursuant to section 6002 Solid Waste Disposal Act (42 U.S.C 6962), as amended by the Resource Conservation and Recovery Act.

12. City of Lemoore Business License. Consultant and each of its subcontractors will obtain and maintain a valid business license from the City of Lemoore during the term of this Agreement.

13. Attorney's Fees. If either Party institutes an action or proceeding for a declaration of rights of the parties under this Agreement, for injunctive relief, or for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or if either Party is in default of its obligations hereunder,

whether or not suit is filed or prosecuted to final judgment, the non-defaulting or prevailing party shall be entitled to reasonable attorney's fees and to any court costs incurred, in addition to any other damages or relief awarded.

14. Law to Govern; Venue. The law of the State of California shall govern this Agreement. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in Kings County.

15. Amendment or Modification. This Agreement may be amended or modified only by written agreement of the Parties hereto. The Parties agree to meet and confer in good faith if amendments or modifications are proposed.

16. Savings Clause and Entirety. If any material provision of this Agreement shall for any reason be held invalid or unenforceable, the invalidity or unenforceability shall not affect any of the remaining provisions of this Agreement.

17. Records of Consultant. Records of Consultant's direct personnel and reimbursable expenses pertaining to services under this Agreement shall be kept on a generally recognized accounting basis, and shall be available for inspection by City or its designees at reasonable times.

18. Assignment. Consultant shall not assign this Agreement, or any part thereof, or any monies due hereunder, without the prior written consent of City.

19. No Third-Party Beneficiary Rights. The Parties agree that no provision of this Agreement shall in any way inure to the benefit of any third-person or entity, including applicants for City development permits, so as to constitute any such person or entity as a third-person beneficiary of this Agreement or of any of its terms or otherwise give rise to any cause of action in any person or entity not a party to this Agreement.

20. Waiver. Waiver by either Party of any term of this Agreement shall not constitute a waiver of any other term. Waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any provisions of this Agreement.

21. Non-discrimination. In connection with the performance of Consultant pursuant to this Agreement, Consultant will not willfully discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, national origin, or any other protected characteristic under federal state, or local law. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, ancestry, national origin, or any other protected characteristic under federal state, or local law. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The City is an equal opportunity employer and requires that all consultants comply with policies and regulations concerning equal employment opportunity. The designated City Planner and other personnel of Consultant working on City projects will be required to comply with City policies and practices. Prior to the commencement of work, the designated City Planner must show evidence of having completed the two hour AB 1234 Ethics in Public Service training as well as the state-mandated two hour supervisory Prevention of Sexual Harassment training. The designated City Planner will be required to complete subsequent ethics and sexual harassment training in the same manner as City's Department heads are required to complete such training.

22. Notices. The City department responsible for administering this Agreement is the Community Development Department and all written communications hereunder with the City shall be addressed to the City Manager. All notices, statements, reports, approvals, or requests or other communications, that are required either expressly, or by implication, to be given by either Party to the other under this Agreement shall be in writing and signed for each

Party by such officers as each may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in the U.S. Post Office for delivery. Unless, and until formally notified otherwise, all notices shall be addressed to the Parties at their address shown below:

CITY:
CITY OF LEMOORE
MARISSA TREJO, CITY MANAGER
711 W CINNAMON DR.
LEMOORE, CA 93245
ATTN: CITY CLERK

CONSULTANT:
FIRM NAME
CEO/PRINCIPAL
ADDRESS
CITY
ATTN:

23. Agent of City. In performing the services required under this Agreement, Consultant is acting as an agent, but not an employee, of City, subject to the general supervision and control of its governing body and City Manager or designee. As such, Consultant shall be entitled to the same immunities and protections as any other City employee exercising discretion under all applicable statutes, regulations, and judicial and administrative precedent, subject to City's rights of action against Consultant for any professional errors or omissions of Consultant. Consultant shall have no right to any or all employment rights and benefits available to City employees. Consultant shall be solely liable and responsible for providing to or on behalf of its employees, all legally-required employee benefits. In addition, Consultant shall be solely responsible and save City harmless from all matters relating to payment of the Consultant's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement Consultant may be providing services to others unrelated to City or to this Agreement.

24. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

25. Conflicts of Interest. Consultant covenants that neither the designated City Planner, nor any officer or principal of Consultant, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of the City or which in any way would hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. At all times, Consultant shall avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of City in the performance of this Agreement. The designated City Planner is a "designated employee" under City's Conflict-of-Interest Code and so shall file all required statements of economic interest.

26. New and Entire Agreement. Upon the effective date of this Agreement, all other agreements between the Parties for the provisions of the services described herein are superseded. This Agreement represents the full and entire agreement between the Parties hereto with respect to the matters covered herein.

27. Signature in Counterparts. This Agreement may be signed in any number of counterparts, including facsimile copies which shall be treated as originals, all of which, taken together shall constitute the same instrument.

28. Guarantee of Authority. The persons signing this Agreement guarantee they are legally authorized to sign the Agreement on behalf of the designated Party and that such execution binds the designated Party to the terms of this Agreement.

