

**CITY OF LOMPOC
DEPARTMENT OF PUBLIC WORKS
CALIFORNIA**



**Consultant Services Agreement
With
Moore & Associates, Inc.**

AGREEMENT NUMBER: TRN-1-24

TITLE OF AGREEMENT: TRANSIT REIMAGINED STUDY,
CITY OF LOMPOC

THIS AGREEMENT for Consultant Services is entered into on _____, 2024, by and between the **City of Lompoc**, a California municipal corporation, hereinafter called the "CITY" and **Moore & Associates, Inc.**, a California corporation, hereinafter called the "CONSULTANT." (CITY and CONSULTANT are sometimes, hereinafter, referred to, individually, as Party and collectively, as Parties.)

WITNESETH:

WHEREAS, CITY desires to secure necessary Professional Consulting services relating to the subject Transit Reimagined Study (herein called the "Project") in accordance with the terms of this Agreement, and

WHEREAS, CONSULTANT represents that it is willing and able to provide such services,

NOW, THEREFORE, for good and valuable consideration, CITY and CONSULTANT mutually agree as follows:

- 1 **CITY CONTRACT WITH CONSULTANT.** CITY hereby engages with CONSULTANT, CONSULTANT agrees to perform the services set forth herein and in Exhibit "A," "Request for Proposal," and Exhibit "B," "Proposal," dated March 19, 2024; and CITY and CONSULTANT mutually agree to payment of CONSULTANT in the manner and amounts set forth herein and in Exhibits "A" and "B."
- 2 **DESIGNATED REPRESENTATIVE.** Richard Fernbaugh, Transit/Airport Administrator, (805) 875-8268 (voice), r_fernbaugh@ci.lompoc.ca.us (email), is the Designated Representative of CITY and will administer this Agreement for and on behalf of CITY. Jim Moore, Project Manager/Managing Partner, (888) 743-5977 (voice), jim@moore-associates.net (email), is the Designated Representative for

CONSULTANT. Changes in Designated Representative shall be made only after Official Notice to the other party. Additionally, CONSULTANT shall not change Designated Representative or staff managing the project without receiving prior written approval from CITY.

- 3 **OFFICIAL NOTICES.** Notices to either party shall be provided by personal delivery or by depositing them in the United States mail, first class postage prepaid, and addressed as identified on the signature page of this Agreement. Either party may give written notice of a change of mailing address for all purposes under this Agreement.
- 4 **STANDARDS OF PERFORMANCE.** CONSULTANT represents that it has the skills, expertise, and licenses/permits necessary to perform the Services required under this Agreement. Accordingly, CONSULTANT shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONSULTANT is engaged. All products of whatsoever nature which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a manner conforming to the standards of quality normally observed by a person practicing in CONSULTANT's profession. CONSULTANT shall correct or revise any errors or omissions, at CITY's request, without additional compensation. Permits and/or licenses shall be obtained and maintained by CONSULTANT without additional compensation.
- 5 **TAXES.** CITY shall not be responsible for paying any taxes on CONSULTANT's behalf, and if CITY is required to do so by state, federal, or local taxing agencies, then CONSULTANT agrees to promptly reimburse CITY for those payments, plus an additional amount, based on CITY's burden rates, to cover CITY's costs for reviewing and processing those payments.
- 6 **RESPONSIBILITY OF CITY.** CITY shall provide all information reasonably necessary to CONSULTANT in performing the services required herein.
- 7 **CHANGES.** Changes involving provisions for payment or changes in the Services must be approved in writing by the Designated Representative.
- 8 **NOTICE OF NON-CONFORMANCE.** If CITY becomes aware of a nonconformity of the Services with this Agreement, CITY shall give prompt written notice thereof to CONSULTANT who shall promptly conform such services to the requirements of this Agreement.
- 9 **COMPENSATION**
 - 9.1 For services performed per Exhibit "A," "Request for Proposal;" and Exhibit "B," "Proposal," dated March 19, 2024, the CITY agrees to pay CONSULTANT a total fee that shall not exceed **\$210,539.66**. That amount does not include Extra Services as defined in Paragraph 11 of this Agreement. The compensation for all services pursuant to this Agreement, including all reimbursable expenses and all extra services, shall be paid at the time and in the manner set forth in said Exhibits "A," and "B."
 - 9.2 CONSULTANT shall submit itemized statements to request payment in a format approved, in writing, by the Designated Representative. CONSULTANT shall keep records concerning payment items on a generally recognized accounting basis and such records shall be maintained for a **period of 3 years** following termination of this Agreement. Such records shall be made available for copying, inspection or audit by CITY employees or independent agents during reasonable business hours.
 - 9.3 As applicable, Federal Acquisition Regulations in Title 48, CFR 31 are the governing factors regarding allowable elements of cost.
 - 9.4 **Payment.** Payment to CONSULTANT will only be made upon receipt by the CITY of acceptable satisfactory work produced by the CONSULTANT, as set forth in Exhibits "A," and "B," and as approved in writing by the Designated Representative. Such payment shall be based on an itemized statement, filled out and signed by CONSULTANT, covering services performed during the period covered by the itemized statement and supported by such data as the Designated Representative may require.

10 FINAL PAYMENT AND CLAIMS

- 10.1.1 The final payment shall be due and payable after acceptance of the Services by Designated Representative.
- 10.1.2 After acceptance by CITY, CITY will make a proposed final cost in writing of the total amount payable to CONSULTANT, including therein an itemization of said amount, segregated in conformance with the price breakdown in Exhibit "B", "Proposal." All prior estimates and payments shall be subject to correction in the proposed final cost. Within 30 days after said proposed final cost has been submitted to it, CONSULTANT shall submit to CITY its written approval of said proposed final cost or a written statement of all claims it has arising under or by virtue of this Agreement.
- 10.1.3 On CONSULTANT's approval, or if it files no claim pursuant to Subsection 10.1.2, CITY will issue a final cost in writing in accordance with the proposed final cost submitted to CONSULTANT and within 30 days thereafter CITY will pay the entire sum so found to be due.

- 11 EXTRA SERVICES OF CONSULTANT.** Extra Services are hereby defined as any services other than the Services, which are authorized, as provided below, by the Designated Representative and satisfactorily performed by CONSULTANT. Prior to performing Extra Services, CONSULTANT shall submit a written request for Extra Services and obtain the written approval of the Designated Representative. The request for extra services shall at a minimum include a description of the proposed Extra services to be performed, the reason why the proposed Extra Services are needed or required, a schedule of completion of the proposed Extra Services, and a not-to-exceed amount for the performance of the proposed Extra Services. Each approved Extra Services request shall be billed separately. Payment for Extra Services will not be made unless the Services are approved by the Designated Representative in writing with a not-to exceed amount prior to the Extra Services being performed. Consultant shall commence performance of the tasks identified as "Extra Services" only upon written authorization to proceed upon such tasks issued by the Designated Representative.

12 CHANGES

- 12.1 The Designated Representative must approve changes involving provisions for payment or minor changes in the Scope Of Services in writing. Major changes in the Scope Of Services shall require an amendment to this Agreement signed by both Parties.
- 12.2 CHANGES FOR CONSULTANT'S CONVENIENCE. CONSULTANT may make minor additions, deletions and modifications ("Changes") to the Services that do not materially or adversely affect the Project or other CITY requirements. CONSULTANT shall provide immediate written notice to CITY of such Changes. CITY shall provide CONSULTANT with a written acceptance or dispute of such Changes within ten (10) calendar days after receipt thereof. Unless approved by CITY and CONSULTANT, no such changes shall be authorized which increase this Agreement price, completion date, or alter the payment schedule or scope of services. Errors or omissions by CONSULTANT shall not result in a Change under this paragraph and in the case of such errors or omissions, the Agreement price, completion date, and payment schedule shall not be adjusted without CITY's written consent. CONSULTANT shall be solely responsible for correcting CONSULTANT's errors or omissions.
- 12.3 CHANGES FOR CITY'S CONVENIENCE. CITY may make Changes that neither increase CONSULTANT's costs nor adversely affect CONSULTANT's ability to meet the completion date, nor deprive CONSULTANT of the benefits of the payment schedule, or the Agreement price. CITY may also make changes affecting the completion date, payment schedule or Agreement price, provided that CITY agrees to such modifications of the completion date, payment schedule and Agreement price as the case may be, as are established by CONSULTANT. CITY shall provide written notice to CONSULTANT of all changes. CONSULTANT shall provide CITY with a written acceptance or dispute of such changes (and provide proposed modifications of the completion date, payment schedule or Agreement price for changes affecting the same) within thirty (30) calendar days after receipt thereof.

- 12.4 **CHANGES CAUSED BY FORCE MAJEURE EVENTS.** If an event of Force Majeure affects CONSULTANT's costs under this Agreement or CONSULTANT's ability to meet a milestone or completion date, CONSULTANT shall propose in writing an equitable adjustment to this Agreement price, payment schedule and completion date as the case may be, and CITY shall accept or dispute such proposal in writing within thirty (30) calendar days.
- 12.5 **PERFORMANCE PENDING RESOLUTION OF DISPUTES.** If a good faith dispute is pending regarding the cost of a Change and the total value of that Change is less than five percent (5%) of the compensation described in Paragraph 9.1, as may be modified pursuant to this Agreement, then CONSULTANT shall proceed with the performance of that Change. If the parties cannot resolve that dispute, in good faith, then the amount to be paid for that Change shall be equal to the amount CITY claims, in good faith, (CITY's Claim), plus one-half difference between the amount of CITY's Claim and the amount CONSULTANT claims, in good faith. If a good faith dispute is pending regarding the cost of a CHANGE and the total value of that Change is five percent (5%) or more than the compensation described in Paragraph 9.1, as may be modified pursuant to this Agreement, then CONSULTANT is not required to proceed with the performance of that Change while that good faith dispute remains pending.
- 12.6 **SUPPORTING DOCUMENTATION.** Claims by CONSULTANT for adjustments to this Agreement price, completion date, and payment schedule shall be supported by documentation such as invoices from vendors and sub-consultants and CONSULTANT's man-hour breakdowns.
- 13 **CITY CAUSED DELAYS.** If an act or omission of CITY affects CONSULTANT's costs or ability to meet a milestone within the critical path of the Services that would also delay the completion date, then CONSULTANT shall propose in writing an equitable adjustment to the respective Agreement price, payment schedule and completion date, as the case may be, and CITY shall accept or dispute such proposal in writing within thirty (30) calendar days.
- 14 **AUTHORIZATION TO PROCEED.** Prior to starting any of the services under this Agreement, CONSULTANT shall be in receipt of a written Authorization to Proceed issued by the Designated Representative that identifies the specific services authorized to proceed.
- 15 **TIME OF BEGINNING AND COMPLETION.** Time is of essence for this Agreement.
- 15.1 CONSULTANT shall commence Services upon receipt of written Authorization to Proceed. CONSULTANT agrees to coordinate with CITY as to scheduling and mutually satisfactory completion of the services set forth in Exhibits "A," and "B."
- 15.2 CONSULTANT shall adhere to schedules and deadlines agreed to by CITY and CONSULTANT. CONSULTANT's failure to complete the Services within the time specified, due to avoidable delays, may at the CITY's discretion be considered a material breach of this Agreement. No extension of time to complete any portion of the services called for in this Agreement shall be allowed except upon the express, written approval of the Designated Representative. Consultant shall request, in writing, a time extension for approval by CITY, promptly upon the occurrence of any action causing delay in CONSULTANT's prosecution of the services. The nature of the delay, the corrective actions taken and the impacts on the project schedule shall be described in each request for time extension.
- 16 **OWNERSHIP OF DOCUMENTS.** All documents, computer programs, plans, designs and other intellectual property prepared by CONSULTANT specifically for this Agreement shall become the property of CITY. CONSULTANT will take such steps as are necessary to perfect or to protect the ownership interest of the CITY in such property. CONSULTANT may retain copies of original documents for CONSULTANT's file.
- 17 **ASSIGNMENT OF AGREEMENT.** CONSULTANT shall not assign, transfer, subcontract, or delegate any right, privilege or interest in this Agreement, or any part thereof, without prior written consent of CITY. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge

the CONSULTANT from any obligation under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing independent consultants, associates, and sub-consultants to assist in the performance of the Services.

18 **THIRD PARTY RIGHTS.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than CITY and CONSULTANT.

19 **INDEMNITIES.** CONSULTANT shall perform all Services in a careful, diligent and professional manner and shall indemnify, defend, and hold harmless CITY, its officials, officers, employees, and volunteers from and against all claims, damages, losses, and expenses including reasonable attorney's fees (Damages) arising out of the performance of the Services described herein, caused in whole or in part by **willful misconduct or negligent act or omission of** CONSULTANT, anyone directly or indirectly employed by CONSULTANT or anyone for whose acts CONSULTANT may be liable; provided, that the obligation to indemnify and hold harmless is only to the extent CONSULTANT caused Damages.

20 **INSURANCE REQUIREMENTS.** As part of the consideration of this Agreement, CONSULTANT agrees to obtain and maintain at its sole cost and expense during the life of this Agreement the following insurance with an insurer or insurers satisfactory to the CITY:

20.1 Insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the Services hereunder by the CONSULTANT, its agents, representatives, employees, and sub-consultants.

20.2 Coverage shall be at least as broad as:

20.2.1 Insurance Services Office Commercial General Liability coverage (occurrence from CG 0001).

20.2.2 Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).

20.2.3 Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.

20.3 CONSULTANT shall maintain limits not less than:

20.3.1 General Liability: \$3,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

20.3.2 Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

20.3.3 Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

20.4 Any deductibles or self-insured retentions must be declared to and approved 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, its officials, officers, employees and volunteers; or the CONSULTANT shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

20.5 The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

20.5.1 The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.

- 20.5.2 For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officials, officers, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
- 20.5.3 Each insurance policy required by this clause shall be endorsed to state coverage shall not be canceled by either party, except after thirty (30) days' (or 10-days' for non-payment of a premium) prior written notice by certified mail, return receipt requested, has been given to the CITY. In the event the said insurance is cancelled, the CONSULTANT shall, prior to the cancellation date, submit to the CITY new evidence of insurance meeting the requirements and in the amounts herein established.
- 20.6 Insurance shall be placed with insurers with a current A.M. Bests rating of no less than A:VII.
- 20.7 Professional Liability "errors and omissions" insurance shall be placed with insurer or insurers satisfactory to the CITY, with limits of liability not less than one million (\$1,000,000.00) dollars, to cover all insurable claims for professional services rendered by CONSULTANT pursuant to this Agreement.
- 20.8 CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before Consulting Services commence. The CITY reserves the right to require at any time complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- 20.9 CONSULTANT shall include all sub-consultants as insureds under its policies or shall furnish separate certificates and endorsements for each sub-consultant. All coverage and limits for sub-consultants shall be subject to all the requirements stated herein.
- 21 **ENDORSEMENT ON PS&E/OTHER DATA.** When required, due to the nature of the Services, the responsible professional designated by CONSULTANT shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by them and where appropriate, indicate their registration number. If CITY's City Manager or Public Works Director determines a designated professional is not providing CITY with acceptable service, then CONSULTANT shall designate another professional to service CITY within 5 days of written notice of that dissatisfaction.
- 22 **NONDISCRIMINATION.** During the performance of this Agreement, CONSULTANT shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), gender and actual or perceived sexual orientation. CONSULTANT shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all lower-tier subcontracts to perform services under this Agreement.
- 23 **WARRANTY AGAINST CONTINGENT FEES.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- 24 **COMPLIANCE WITH LAW.** CONSULTANT shall, at its sole cost and expense, comply with all CITY, County, State and Federal rules, regulations and laws (Laws) now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONSULTANT in any action or proceeding against CONSULTANT, whether CITY is a party thereto or

not, that CONSULTANT has violated any such laws, shall be conclusive of that fact as between CONSULTANT and CITY.

- 25 **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, Santa Maria Branch, if in State court, regardless of where else venue may lie.
- 26 **TERMINATION OF THIS AGREEMENT.** This Agreement may be terminated by (i) either party upon 10 days' written notice to the other party in the event of a substantial failure of performance by such other party (ii) if CITY decides to abandon or indefinitely postpone the Project or (iii) if CONSULTANT becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of receiver for its business or assets, files for relief from creditors under any bankruptcy or insolvency law whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.
- 26.1 In the event of such termination, CITY shall pay CONSULTANT for all services satisfactorily performed to the date of receipt of Notice of Termination. An itemized statement of the Services performed to the date of termination shall be submitted to CITY. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed Services and Services in process of completion and to completion of the incomplete drawings and other documents whether delivered to CITY or in the possession of CONSULTANT. All documents, original tracings, and specifications shall be the property of CITY and may be reused by CITY without additional compensation to CONSULTANT.
- 27 **RELATIONSHIP BETWEEN CONSULTANT AND CITY.** It is expressly understood between the Parties no employee/employer relationship is intended; the relationship of CONSULTANT to CITY being that of an independent contractor. CONSULTANT represents and warrants that the personnel used to provide services to the CITY pursuant to this Agreement are classified by CONSULTANT as employees. In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System ("CalPERS") to be classified as other than an independent contractor for the CITY, then CONSULTANT shall indemnify, defend, and hold harmless the CITY for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to the CITY as a consequence of, or in any way attributable to, the assertion that CONSULTANT or any staff CONSULTANT used to provide services under this Agreement are employees of the CITY.
- 28 **CONFLICT OF INTEREST.** While this Agreement is in force and effect, CONSULTANT shall accept no Services or perform any services that would constitute a conflict of interest with CITY. CONSULTANT agrees to promptly notify CITY whenever CONSULTANT or a client of CONSULTANT has an interest that may constitute such a conflict of interest with CITY.
- 29 **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and or/federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONSULTANT hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONSULTANT is obligated, which breach would have a material effect hereon.
- 30 **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions in the numbered sections shall prevail over those in the Exhibits. In the event of a conflict between any of the provisions of Exhibit "A" and Exhibit "B," the provisions of Exhibit "A" shall prevail.

- 31** **EXHIBITS.** The Exhibits listed below are incorporated by reference in this Agreement:
- 31.1 Exhibit "A" - "Request for Proposal", dated February 16, 2024, including Addendum No. 1, issued March 11, 2024, totaling 36 pages.
- 31.2 Exhibit "B" - "Proposal," dated March 19, 2024, totaling 36 pages.

32 **INTEGRATION.** This Agreement represents the entire agreement between the Parties regarding the Project. It supersedes all prior or extemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. No amendment or modification of this Agreement shall be valid unless evidenced in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be executed and entered into this _____ day of _____ 2024.

CITY OF LOMPOC	CONSULTANT
By: _____ Dean Albro, City Manager	By: _____ _____ (Name)
ATTEST	Its: _____ (Office)
By: _____ Stacey Haddon, City Clerk	By: _____ _____ (Name)
APPROVED AS TO FORM:	Its: _____ (Office)
By: _____ Jeffrey M. Malawy, City Attorney	