

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (Agreement) is made effective as of _____, 2024 (Effective Date), by and between Z Consulting Group, a California corporation (Consultant), and the City of Lompoc, a municipal corporation (City). Consultant and City are referred to herein individually as a "party" and collectively as the "parties."

RECITALS

WHEREAS, City is in need of consultant services related to project management oversight services for City's Public Safety Radio Network Upgrade Project as described in Exhibit A (Consultant Services); and

WHEREAS, Consultant engages in the business of providing such Consultant Services; and

WHEREAS, City seeks the services of Consultant to provide such Consultant Services; and

WHEREAS, following submission of a proposal or bid for the performance of the Consultant Services defined and described particularly in Section 4.2 of this Agreement, Consultant was selected by City to perform those services; and

WHEREAS, City and Consultant desire to enter into this Agreement with a completion date no later than June 30, 2026.

WHEREAS, City and Consultant desire to enter into this Agreement for Consultant Services for a Total Compensation Amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00).

WHEREAS, Consultant and City desire to enter into this Agreement to memorialize their agreements regarding the Consultant Services to be provided to City.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Consultant and City agree as follows:

ARTICLE 1 ENGAGEMENT

1.1. Engagement: City hereby engages Consultant to provide the Consultant Services described in Exhibit A, and Consultant hereby accepts such engagement, all on the terms and conditions set forth herein. Consultant will determine the method, detail and means of performing the services detailed below.

**ARTICLE 2
REPRESENTATIONS AND WARRANTIES**

2.1. Representations and Warranties of Consultant: Consultant hereby represents and warrants to City, at all times during the term of this Agreement, that Consultant is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

2.2. Representations and Warranties of City: City hereby represents and warrants to Consultant, at all times during the term of this Agreement, that City is organized and established pursuant to the laws and ordinances of the State of California.

**ARTICLE 3
CONSULTANT STATUS AND QUALIFICATIONS**

3.1. Independent Consultant: Consultant's services are being provided to the City as 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. Consultant represents and warrants that the personnel used to provide services to the City pursuant to this Agreement are classified by Consultant as employees and that Consultant issues or will issue a W-2 to such personnel.

3.2. Payment of Income Taxes: Consultant is responsible for paying when due all income taxes, including estimated taxes, incurred as a result of the compensation paid by City to Consultant for services satisfactorily rendered under this Agreement. On request, Consultant will provide City with proof of timely payment. Consultant agrees to indemnify, defend and hold harmless City for any and all claims, costs, losses, fees, penalties, interest, or damages, including court costs and reasonable attorney's fees, resulting from Consultant's failure to comply with this provision.

3.3. Use of Employees or Subcontractors: Consultant may, at Consultant's own expense, use any employees or subcontractors as Consultant deems necessary to satisfactorily perform the services required of Consultant by this Agreement. City may not control, direct, or supervise Consultant's employees or subcontractors in the performance of those services.

3.4. Qualifications: Consultant represents it is qualified and has the skills necessary to perform the services under this Agreement in a competent and professional manner, without the advice or direction of City.

3.5. No Benefit Contributions: City shall have no obligation under this Agreement to compensate or pay applicable taxes for or provide employee benefits of any kind to any person employed or retained by Consultant.

ARTICLE 4
GENERAL RESPONSIBILITIES OF CONSULTANT

4.1. Minimum Amount of Service: Consultant agrees to devote as much time and attention to the performance of the Consultant Services under this Agreement as may be, in Consultant's sole discretion, required to accomplish the tasks described herein to accomplish the results for which the Consultant is responsible under this Agreement.

4.2. Consultant Scope of Services: Consultant agrees to provide the Consultant Services described in Exhibit A, attached hereto and incorporated herein by reference, including those additional services requested by City and accepted in writing by Consultant during the term of this Agreement.

4.3. Nondiscrimination: There shall be no discrimination against any person employed pursuant to this Agreement in any manner forbidden by law.

4.4. Non-Exclusive Relationship: Consultant may represent, perform services for, and contract with as many additional clients, persons, or companies as Consultant, in Consultant's sole discretion, sees fit.

4.5. Time and Place of Performing Work: Consultant may perform the services under this Agreement at any suitable time and location Consultant chooses.

4.6. Materials and Equipment: Consultant will supply all materials and equipment required to perform the services under this Agreement.

4.7. Professional Skill: It is further understood and agreed by and between the parties hereto that Consultant is skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement, and City, not being skilled in such matters, relies upon Consultant to perform the work in a skillful manner in accordance with generally accepted professional practices, and Consultant agrees to thus perform its work, and the acceptance of its work by City shall not operate as a release of Consultant from said Agreement.

4.8. Insurance: Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry adequate insurance including a commercial general liability policy and an Errors and Omissions policy, both in the amount of not less than \$1,000,000. Consultant shall also, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry automobile liability insurance with liability limits of not less than \$500,000 for the injury or death of a person or persons and property damage in any accident. City, its elective officials, officers and employees shall be named as an additional insured on the commercial general liability and automobile liability policies. Each type of insurance mentioned herein shall be written by a financially responsible company or companies authorized to do business in the State of California. Consultant shall provide City with certificates of insurance on forms acceptable to the City of all policies written and each shall contain an endorsement that they are not subject to cancellation without 30 days written notice being given to City by the insurance company or companies writing such insurance.

4.9. Workers' Compensation: Consultant agrees to provide workers' compensation insurance for Consultant and Consultant's employees and agents and agrees to defend, hold harmless and indemnify City for any and all claims arising out of any injury, disability, or death of any of Consultant's employees or agents.

4.10. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

4.11. Business Tax Receipt: Consultant shall maintain a valid Business Tax Receipt with the City of Lompoc during the term of the Agreement.

4.12. Ownership of Documents: All reports and documents prepared by Consultant under this Agreement are the property of City and shall be turned over to the City upon completion of this Agreement. Consultant shall not release any data, information, and/or materials resulting from the project without prior written consent from City.

4.13. Personnel: City shall have final approval of Consultant staff assigned to work under this Agreement. Consultant shall identify in writing the staff assigned to work under this Agreement and shall give City no less than ten days' written notice prior to any change in the staff assigned to work under this Agreement.

ARTICLE 5 COMPENSATION OF CONSULTANT

5.1. Compensation for Consultant Services: Consultant shall provide all Consultant Services in accordance with the terms, and at the compensation amounts and schedule of remittance, set forth in Exhibit B, which is incorporated by this reference as though set forth in full; provided, that the parties understand and agree the fee schedule is not an estimate but is the complete costs for which Consultant shall provide the Consultant Services. Total compensation under this Agreement shall not exceed Seventy-Five Thousand Dollars (\$75,00.00) annually over a two-year period for a two-year total not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00).

5.2. Payment will be in accordance with City's standard accounts payable process. Term no longer than 45 days after presentation of a valid monthly invoice for disbursement of the payment. Payment to be made by accounts payable check processed and available as part of the weekly disbursement cycle, available each Friday for pickup or mailed delivery.

5.3. Consultant shall provide itemized billing to the Accounts Payable Division identifying the project by City Project Number (if applicable) and listing the completed task, and listing the City Purchase Order Number (if applicable) on each invoice, as follows:

Electronically (preferred) to:

ap@ci.lompoc.ca.us

City of Lompoc
Attn: Accounts Payable
100 Civic Center Plaza
Lompoc CA 93436

5.4. The provisions of Article 9 of this Agreement will govern any dispute associated with compensation.

**ARTICLE 6
OBLIGATIONS OF CITY**

6.1. Cooperation of City: City agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant's duties under this Agreement. To the extent determined in the best public interest, in the sole discretion of City's City Council, City shall be responsible for initially insuring, and continuing to review, local and state laws in City's jurisdiction to assure adequate legal authority for Consultant to engage in the Services described herein on behalf of City.

6.2. Conflict of Interest: No officer, employee, director or agent of City shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the provisions thereof.

6.3. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by City without the prior written consent of Consultant, which consent shall not be unreasonably withheld.

**ARTICLE 7
TERMINATION OF AGREEMENT**

7.1. Termination: Unless earlier terminated as set forth below, this Agreement shall be effective as of the date first set out above and shall remain in full force and effect after execution of this Agreement by City and Consultant until June 30, 2026. Consultant shall satisfactorily complete Consultant Services pursuant to this Agreement within that term, unless the term is modified as permitted for modifications of this Agreement.

7.2. Termination on Notice: Notwithstanding any other provision of this Agreement, City may terminate this Agreement at any time by giving ten-days' written notice to Consultant.

7.3. Termination on Occurrence of Stated Events: This Agreement will terminate automatically on the occurrence of any of the following events:

- (a) Bankruptcy or insolvency of either party.
- (b) The assignment of this Agreement by either party without the consent of the other party; the parties agree that neither party will unreasonably withhold consent to such an assignment.

7.4. Termination for Default: If either party defaults in the performance of this Agreement or materially breaches any of its provisions, then the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five days after mailing of notice, whichever occurs first. For the purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

- (a) Consultant's failure to satisfactorily complete the Consultant Services;

- (b) City's material breach of any representation, warranty or agreement contained in this Agreement;
- (c) Consultant's material breach of any representation, warranty or agreement contained in this Agreement.

**ARTICLE 8
INDEMNIFICATION**

8.1. Indemnification: To the extent permitted by applicable law, Consultant will indemnify, defend and hold harmless City and each of its officers, employees and agents from and against any and all losses, damages, liabilities, claims, death, injuries or costs, including court costs and reasonable attorney's fees, (collectively, Damages) resulting from any act or omission of Consultant or any of its officers, employees, agents or subcontractors related to this Agreement; provided, that the obligation to indemnify and hold harmless is only to the extent Consultant or any of its officers, employees, agents or subcontractors caused the Damages.

**ARTICLE 9
GENERAL PROVISIONS**

9.1. Governing Law: This Agreement shall be governed in all respects by the laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction that would cause the application of the laws of any jurisdiction other than the State of California). Venue for any matter related to this Agreement shall be the Superior Court of the County of Santa Barbara.

9.2. Attorney Fees: In the event of any litigation to enforce, or construe the terms of this Agreement, the prevailing party herein shall be entitled to recover reasonable attorney's fees and costs.

9.3. Section Headings: The section headings appearing herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

9.4. Interpretation: The terms and conditions of this Agreement shall be construed pursuant to their plain and ordinary meaning and shall not be interpreted against the maker by virtue of that party having drafted this Agreement.

9.5. Inconsistency: In the event any provision of this Agreement and the documents incorporated herein by reference are deemed to be in conflict, the provision in this Agreement shall prevail.

9.6. Entire Agreement: This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understanding of the Parties. No amendment or modification of the amendment shall be valid unless evidenced in writing and executed by the parties thereto.

9.7. Successors and Assigns: Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. No party may assign any of its rights or obligations

hereunder without the express written consent of the other party hereto, which consent may not be unreasonably withheld; provided, however, any party may assign any and all of its rights and interests hereunder to one or more of its affiliates and designate one or more of its affiliates to perform its obligations hereunder; provided, however, that such party remains liable for full and total performance of its obligations hereunder.

9.8. Notices: Any notices authorized to be given hereunder shall be in writing and deemed given, if delivered personally or by overnight courier, on the date of delivery, if a Business Day, or if not a business day, on the first Business Day following delivery, or if mailed, three days after mailing by registered or certified mail, return receipt requested, and in each case, addressed, as follows:

If to the Consultant to:

Zahid Masood
Managing Director
Z-Consulting Group, Inc.
2625 N. Three Springs Drive, Suite 200
Westlake Village, CA 91361
zmasood@z-consulting.net
1-818-203-4400

If to City to:

City of Lompoc
Attn: City Manager
100 Civic Center Plaza
Lompoc CA 93436

And a copy to:

Aleshire & Wynder, LLP
Attn: Jeff M. Malawy
3701 Wilshire Blvd., Suite 725
Los Angeles, CA 90010

Or, if delivered by telecopy, on a Business Day before 4:00 p.m. local time of addressee, on transmission confirmed electronically, or if at any other time or day on the first Business Day succeeding transmission confirmed electronically, to the facsimile numbers provided above, or to such other address or telecopy number as any party shall specify to the other, pursuant to the foregoing notice provisions. When used in this Agreement, the term "Business Day" shall mean a day other than a Saturday, Sunday, Federal Holiday, or other day City's city hall is closed to the public.

9.9. Counterparts: This Agreement may be signed in several counterparts.

9.10. Expenses: Each party shall bear its own expenses incurred with respect to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

CITY OF LOMPOC, a municipal corporation

Z CONSULTING GROUP, INC. a California corporation:

By: _____
Dean Albro, City Manager

By: _____
Zahid Masood
Its President

Attest:

By: _____
Stacey Haddon, City Clerk

By: _____
Zahid Masood
Its Secretary

Approved as to form:

By: _____
Jeff Malawy, City Attorney

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer.

EXHIBIT A

CONSULTANT SERVICES

In the event of any conflicts between the provisions in Exhibit A and the other terms of the Agreement, the other terms of this Agreement shall govern.

IMPLEMENTATION OVERSIGHT

Task 1: Project Management: Z Consulting will coordinate the following main functions with the selected vendor, and the City of Lompoc:

1. Conduct and participate in internal and external Project meetings and provide regular status on the progress of the implementation.
2. Coordinate Land Mobile Radio System implementation activities, such as final detailed design, site development, and technology deployments.
3. Interpretation of the negotiated Agreement with the selected vendors.
4. Participate in the Factory Acceptance Testing of the system before it is installed in the field.
5. Provide periodic updates to the City stakeholders.

Task 2: Agreement Reconciliation: We will assist the City of Lompoc with:

1. Reconciliation of vendor invoices to ensure compliance with proper authorization sign-off procedures for payment of services rendered are met.
2. Reconciliation of the Agreement, related design work documents, and project completion budget estimates.

Task 3: Conduct Quality Assurance: Z Consulting will oversee acceptance of each implementation phase against the Agreement and sign-off as the selected vendor completes its respective tasks.

EXHIBIT B

COMPENSATION FOR CONSULTANT SERVICES

In the event of any conflicts between the provisions in Exhibit B and the other terms of the Agreement, the other terms of this Agreement shall govern.

Zahid Masood is proposed to be the project lead assisted by the staff of Federal Engineering, Inc., as technical leads.

Z Consulting will use the hourly rates listed in Table I below:

| | |
|---|----------------|
| Project Manager | \$175 per hour |
| Director/Chief Consultant | \$289 per hour |
| Senior Consultant | \$240 per hour |
| Consultant | \$190 per hour |
| Senior Analyst | \$155 per hour |
| Analyst | \$115 per hour |
| Administrative/Computer Services | \$90 per hour |

Note: These rates are effective January 1, 2024 through December 31, 2024.

Invoices will be submitted at the end of each month. Expenses are in addition and will be invoiced as incurred plus 20% for administrative costs.

Estimated dollar amount per year is \$75,000. The project is expected to be completed over a two-year period.