

# **REQUEST FOR QUALIFICATIONS**

# Contract Historic Architectural Consultants September 26, 2024

#### 1. INTRODUCTION

The City of Larkspur (City) is seeking to award master agreements to create a panel of qualified consultants which will support and advise planning staff and City Boards and Commissions on matters which affect historic resources within the City. The selected consultant(s) will provide historic preservation services on an as-needed basis, as described in Section 2 – Scope of Work.

The Community Development Department intends to enter into a Professional Services Agreement with the selected consultants, based on an agreed-upon specific scope of services and fee.

The City of Larkspur has a population of approximately 13,000. The City has a local inventory of historic structures with approximately 100 listed sites.

https://cityoflarkspur.org/DocumentCenter/View/411/Historic-Resources-Inventory?bidId=

The City's downtown area is listed on the National Register of Historic Places. The City has an H Combining Heritage Preservation District that is applied to the downtown area and certain other listed sites. The City has a list of resources that are potentially locally historic and many structures and sites have not been evaluated.

Background about the City of Larkspur can be found on the City's website: <a href="http://www.ci.larkspur.ca.us/">http://www.ci.larkspur.ca.us/</a> and <a href="https://cityoflarkspur.org/167/Heritage-Preservation">https://cityoflarkspur.org/167/Heritage-Preservation</a>

# 1.1 TERM OF MASTER AGREEMENTS TO AWARD

The result of this RFQ will be a master agreement with each selected consultant firm or team. Each master agreement will have a five (5) year term. Since this is an "As-Needed" contract, award of a master agreement does not guarantee that the selected firms will perform all or any portion of the services described in this RFQ.

#### 1.2 TENTATIVE RFQ SCHEDULE

The anticipated schedule for this RFQ is below. These dates are tentative, non-binding, and subject to change. It is the responsibility of the proposer to check for any addenda to this RFQ or other pertinent information.

The City accepts no responsibility to any prospective consultant (Agency) or sub-consultant, financially or otherwise, for the failure of any contingency requiring the postponement or cancellation of this RFQ.

Proposal Phase	Date

Advertise RFQ	September 26, 2024
Deadline for Written Questions	4:00 PM, PDT on Friday, October 11, 2024
Deadline to Submit Proposals	4:00 PM, PDT on Thursday, October 24,
	2024
Interviews with Selected Consultants (if required)	Wednesday, November 6, 2024
Decision Notification to Applicants	Wednesday, November 13, 2024

All requests for clarification of any ambiguities, discrepancies, inconsistencies or questions concerning the RFQ must be in writing via email to Alex Othon at <a href="mailto:aothon@cityoflarkspur.org">aothon@cityoflarkspur.org</a>, before the deadline stated above. New information and significant changes will be addressed and memorialized in a written addendum to this RFQ.

#### **SECTION 2 – SCOPE OF WORK**

It is the intent of the City to create a list of selected consultants that are retained by the City to provide project-specific historical evaluations. The selected Consultants shall provide as-needed professional historic resources services as required by the local ordinance and California Environmental Quality Act (CEQA). City staff may request multiple proposals from the selected consultants for final selection by the property owner, considering the proposal cost and timeline. It is anticipated that services will be needed on a bimonthly basis. Services may include:

- Site Visit to the property.
- Historic Resource Evaluations (HRE), including but no limited to:
  - Architectural Description of any structures on the property.
  - Integrity analysis of any structures on the property.
  - Occupancy Timeline of all occupants of the property from construction to the present.
  - Supplemental research as needed on occupants, architect, builder, and/or property.
- Evaluation of property and/or project compliance with:
  - The criteria established in Larkspur Municipal Code Section 18.19.020.
  - The Secretary of the Interior's Standards.
- Recordation of the property on State of California Department of Parks and Recreation 523 (DPR 523) Forms, if appropriate.
- Attendance at public meetings, presentations to Boards and Commissions as necessary.
- Peer review of historical resource evaluations submitted by applicants.

#### **SECTION 3 – GENERAL QUALIFICATIONS / SUBMITTAL REQUIREMENTS**

The consultant shall demonstrate relevant expertise and experience to successfully perform the scope of work as described in this RFQ through the submittal of a Statement of Qualifications (SOQ), which should address the following general requirements:

- Qualification per the Secretary of the Interior's Professional Qualification Standards in History and/or Architectural History.
- Experience in the preparation of quality Determination of Historic Significance Reports for jurisdictions in Marin County or other Bay Area jurisdictions.
- Experience in evaluating existing and/or proposed modifications to properties per the Secretary of the Interior's Standards for Treatment of Historic Properties.

• Excellent corporate, project, and individual references.

#### 3.1 SUBMITTAL REQUIREMENTS

Proposers shall follow the proposal response requirements and instructions described below. Any proposal that does not demonstrate that the Proposer meets the requirements specified below may be considered non-responsive and ineligible for award of a contract.

#### 3.2 TIME AND PLACE FOR SUBMISSION OF PROPOSALS

Proposals must be received by the time and date as specified in Section 1 of this RFQ, or as revised in a subsequent addendum, if any. Four hard copies and one electronic proposal on a flash drive shall be delivered to:

Alex Othon, Senior Planner Community Development Department 400 Magnolia Avenue Larkspur, CA 94939

Late or partial submittals may not be considered.

#### 3.3 SUBMITTAL PACKAGE

Proposal shall include the following attachments:

- Cover Letter: Maximum of two pages to serve as an Executive Summary.
- Firm Profile: Provide a description of the firm, including number of professional personnel, years in business, office location(s), organizational structure, areas of particular expertise, etc.
- Key Personnel: Provide a summary description of the key personnel who will be involved in each work element described in the Scope of Services section above, their roles and responsibilities, and their experience in similar past projects. In addition to this summary, full resumes should be provided.
- Firm's Capabilities: Provide a summary statement that demonstrates the firm's capabilities
  for the variety of anticipated work as described in the Scope of Services section and
  demonstrates that the firm meets the requirements described under General Qualifications.
- Work Sample: Provide a sample Historic Resource Evaluation prepared for either the City of Larkspur or another jurisdiction.
- Fee Schedule and one Fee Proposal: Include a Fee Schedule identifying costs associated with personnel and labor rates for the types of work identified in the Scope of Services. Include one Not to Exceed amount for preparation of a historic report for a single-family residence, not currently listed on a local, state or national register, in a separate sealed envelope (Attachment 1). Attach to the Fee Proposal an itemized breakdown showing how the fee proposal was developed, including all anticipated elements, time requirements, hourly rates, etc. Include separate line items for each work element described in the Scope of Services section above.
- Reference List: Include a minimum of three references.

- Evidence of Ability to meet the City of Larkspur Insurance Requirements, including:
  - Workers' Compensation Insurance
    - The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$2,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code.
  - o Commercial General and Automobile Liability Insurance:
    - Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- A Professional Services Agreement Sample for the City of Larkspur is shown in Attachment A. Proposers are required to carefully review the sample Agreement and Insurance Requirements identified therein. The terms of the Agreement, including insurance requirements, are the City's standards. Proposals must indicate whether the proposer is willing to execute the Agreement as drafted and comply with the insurance requirements. Proposer's response must also indicate any requests for changes to the provisions of the Agreement. There will be no modifications to the Agreement that are not requested in a proposal. The City reserves the right to reject any requests for changes to the Agreement and/or to deem the proposal non-responsive if the proposer requests changes to the Agreement, including to the insurance requirements.

#### Section 4 – EVALUATION PROCESS AND SELECTION CRITERIA

#### **4.1 GENERAL EVALUATION PROCESS**

Proposals will be evaluated by a selection committee comprised of a member of the City Council, a member of the Heritage Preservation Board, and two members of City Staff.

Proposals will be evaluated on the criteria outlined below.

There will be an initial screening on the minimum qualifications, followed by a written proposal evaluation, and potential oral interview – the City may choose to hold Oral interviews with the highest ranked proposers from the written evaluation phase.

#### **4.2 SELECTION CRITERIA**

Each submittal shall be judged as to the consultant's capabilities and experience to perform the required services. In addition to meeting those criteria listed in "General Qualifications", selection will be based on 80-point criteria as follows:

(40) Capabilities, Experience and Part Performance. Each firm will be evaluated on its demonstrated capabilities and experience to provide the desired consultant services for the City of Larkspur.

- (20) Key Personnel. Each firm will be evaluated on the experience and education of the key personnel that will be assigned to the City's projects.
- (10) Ability to Accomplish Work. Each firm will be evaluated on its ability to provide the desired scope of services and ensure those services can be provided as-needed and on time. Items to be considered include number of qualified staff (emphasis on local staffing), support staff, available equipment, and facilities.
- (10) Cost. Each firm will be evaluated on any cost information as it relates to their capacity and ability to meet or exceed the needs of the City of Larkspur.

The fee proposal is required to be submitted in a sealed envelope as a part of this Request for Qualifications. It is the intent of the selection process to examine the demonstrated competence and professional qualifications of the firm. The fee proposal is intended to assist the selection committee in gauging a fair and equitable fee for the services requested. The City may, at its option, negotiate and modify the scope of service with the selected firm and negotiate fee adjustments, as the City deems appropriate. Qualifications that do not include the required fee proposal will not be considered for final selection.

#### **QUESTIONS**

All questions should be directed to Alex Othon, Senior Planner, at <a href="mailto:aothon@cityoflarkspur.org">aothon@cityoflarkspur.org</a> or (415) 927-5026.

# CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF LARKSPUR AND

THIS A	AGREEMENT for consulting services is made by and between the City of Larkspur ("City") and  ("Consultant") (together referred to as the "Parties") as of , 2024 (the "Effective Date").
the tim	
1.1	<u>Term of Services.</u> The term of this Agreement shall begin on the Effective Date and shall end on, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 7. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 7.
1.2	<u>Standard of Performance</u> . Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
1.3	Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
1.4	<u>Time.</u> Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.
shall co service adjustr betwee compe Agreer payme invoice	COMPENSATION. Contractor will agree to process the entirety of the project (Exhibit A) for a exceed fee of \$ In consideration for the services to be performed by Contractor, City compensate Consultant for time and materials at hourly rates specified in Exhibit B for historical consulting as as described in Exhibit A. Hourly rates below may be amended to account for cost-of-living ments, subject to written request by Consultant and approval of City Manager. In the event of a conflict en this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of ensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this ment at the time and in the manner set forth herein. The payments specified below shall be the only ents from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all set to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant of bill City for duplicate services performed by more than one person.
is base benefit compe	Itant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement upon Consultant's estimated costs of providing the services required hereunder, including salaries and its of employees and subcontractors of Consultant. Consequently, the parties further agree that ensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no

Consulting Services Agreement between the City of Larkspur and

responsibility for such contributions beyond compensation required under this Agreement.

- **2.1** <u>Invoices.</u> Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
  - Serial identifications of progress bills, i.e., Progress Bill No. 1 for the first invoice, etc.;
  - The beginning and ending dates of the billing period;
  - A Task Summary containing the original contract amount, the number of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
  - At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
  - The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
  - The Consultant's signature;
- **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all the requirements above to pay Consultant.
- 2.3 <u>Total Payment.</u> City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
  - In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- **2.4** Hourly Fees and Expenses. Fees for work performed by Consultant on an hourly basis, and expenses incurred therein, shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- **2.5** Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.6 Payment upon Termination. If the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- **2.7** Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.
- **Section 3. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives,

employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

- 3.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$2,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.
- 3.2 Commercial General and Automobile Liability Insurance.
  - 3.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
  - 3.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.
    - **3.2.3** Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
      - a. The Insurance shall cover on an occurrence or an accident basis, and not on a claimsmade basis.

- b. 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.
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

# 3.3 Professional Liability Insurance.

- **3.3.1 General requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- **3.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:
  - a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
  - b. Insurance must be maintained, and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
  - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
  - d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

# 3.4 All Policies Requirements.

- **3.4.1** Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- **3.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage

on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

- 3.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its 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.
- **3.4.4 Wasting Policies**. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 3.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.
- **3.4.6 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.
- 3.5 <u>Remedies.</u> In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:
  - Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
  - Terminate this Agreement.

#### Section 4. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives all rights of any type to express or implied indemnity against the Indemnitees.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

# Section 5. STATUS OF CONSULTANT.

- 5.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 5.2 Consultant Not an Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

#### Section 6. LEGAL REQUIREMENTS.

- **Governing Law.** The laws of the State of California shall govern this Agreement.
- **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

- 6.4 <u>Licenses and Permits.</u> Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 6.5 <u>Nondiscrimination and Equal Opportunity.</u> Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

#### Section 7. TERMINATION AND MODIFICATION.

**Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 7.3 <u>Amendments.</u> The parties may amend this Agreement only by a writing signed by all the parties.
- 7.4 <u>Assignment and Subcontracting.</u> City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's

unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 7.5 <u>Survival.</u> All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
  - **7.6.1** Immediately terminate the Agreement;
  - **7.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - **7.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
  - 7.6.4 Charge Consultant the difference between the cost to complete the work described in <a href="Exhibit A">Exhibit A</a> that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

#### Section 8. KEEPING AND STATUS OF RECORDS.

- 8.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- **8.2** Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- **8.3** Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California

Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

#### Section 9 MISCELLANEOUS PROVISIONS.

- **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- **9.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Marin or in the United States District Court for the 1st District of California.
- 9.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- **9.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- **9.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 9.7 <u>Conflict of Interest.</u> Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq.

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* 

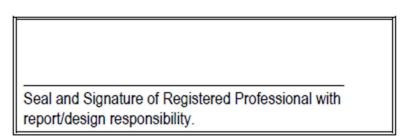
Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- **9.9** Contract Administration. This Agreement shall be administered by the Director of Public Works ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- **9.10 Notices.** Any written notice to Consultant shall be sent to:


Any written notice to City shall be sent to:

Community Development Director Larkspur City Hall 400 Magnolia Avenue, Larkspur, CA 94939

9.11 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



**9.12** Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services

Exhibit B Payment AND Expenses Schedule

**9.13** Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

# Historic Consultant Services RFQ - Attachment A

CITY OF LARKSPUR	
CITT OF LYWROT OR	
Dan Schwarz, City Manager	signature
ATTEST:	
	Print name & title
Alison Foulis, City Clerk	
APPROVED AS TO FORM:	
City Attorney	

The Parties have executed this Agreement as of the Effective Date.



Historic Consultant Services RFQ - Attachment A