CITY OF LOMPOC
CALIFORNIA

Consultant Services Agreement
With
Jason Addison Smith Consulting Services, Inc.,
DBA JAS Pacific

AGREEMENT NUMBER:

THIS AGREEMENT for CONSULTANT Services is entered into on _____, 2015, by and between the City of Lompoc, a California municipal corporation, hereinafter called "CITY" and Jason Addison Smith Consulting Services, Inc., a California corporation, dba JAS Pacific, hereinafter called "CONSULTANT." (CITY and CONSULTANT are sometimes collectively referred to as the “PARTIES.”)

WITNESSETH:

WHEREAS, CITY desires to secure necessary professional consulting services to provide inspection services and on-call plan check and in relation to CITY’S Building, Plumbing, Electrical, Mechanical, Historical, Energy, Green Building Standards, Residential and other related codes (the “Building and Housing Codes”) in accordance with the terms of this Agreement (herein called the “Project”); and

WHEREAS, CONSULTANT has satisfactorily provided a Proposal with a “Business Friendly” focus; and

WHEREAS, CONSULTANT has represented it has the experience, expertise, skills, personnel, and qualifications to perform all the services necessary for the Project;

NOW, THEREFORE, the PARTIES do hereby mutually covenant and agree as follows:

1. City Agreement with CONSULTANT. CITY hereby engages CONSULTANT and CONSULTANT hereby agrees to perform for CITY the Contract Services, as hereinafter further described for the payments as hereinafter set forth, all pursuant to the terms and conditions herein.

2. Scope of Service. Pursuant to this Agreement and on its effective date, CONSULTANT shall do all things necessary to provide the Contract Services, including the day-to-day inspection services relating to the Life Safety Division services, including, but not limited to:

   a. Providing a qualified person to serve as CITY'S building inspector ("Building Inspector"). The Building Inspector duties will be coordinated by CITY'S Building and Safety Services Manager (Building Official) and the Division Head. The Building Inspector will perform all billable services within CITY'S jurisdiction, unless otherwise approved in writing by CITY. CONSULTANT shall recommend the working schedule necessary to meet customer performance objectives that minimize costs to CITY.

   b. Providing for a qualified person to serve as a plan checker and provide written comments on submittals related to the Building, Fire and Housing Codes (the "Plan Checker"). The Plan Checker shall review those plans submittal to her/him for review by the Building Official or Division Head. In addition, the Plan Checker shall be available by appointment during working hours for meetings with the development community, as requested by the Building Official or Division Head.

   c. Ensuring all services provided by CONSULTANT are performed by individuals who meet the qualification, education and certification/licensing requirements for those positions. The Building Inspector and Plan Checker must have excellent verbal and clerical skills and be proficient in the use of Microsoft Word and Excel. CONSULTANT shall ensure the Contract Services are provided in a cost effective manner and there is timely deployment of building department services including providing customer service oriented staff during regular City Hall business hours, which are Monday - Friday 8:00 a.m. - 5:00 p.m., excluding City Holidays.

   d. Providing assistance to residents, businesses, and City staff in the form of face-to-face meetings when requested including prior to issuance of a permit.

e. Maintain accurate records and conduct building, fire and grading inspections during normal inspection hours, which are Monday - Friday 7:30am - 4:00pm, excluding City Holidays.

f. Providing a building inspector who is a Certified Access Specialist to provide the services required by Civil Code section 55.53, when needed.

g. Using CITY'S CRW permit software system and ensuring CONSULTANT enter permit information into the system at the counter at the time the permit is issued or plan check fees are collected.

h. Ensuring CONSULTANT'S inspection staff uses CITY'S CRW permit software system to make entries for every inspection. The software system also allows permit applicants or holders to review statuses, correction notices or approvals through web-access.

i. Ensuring all activity related to Building and Housing Codes and Fire Code inspections enforcement is entered by appropriate CONSULTANT in CITY'S CRW software.

j. The Building Inspector is expected to participate as a member of CITY'S Code Enforcement Team ("TEAM") and coordinate with other TEAM members, attend TEAM meetings and assist with assembling enforcement cases for submittal to the City Attorney, as Issuing permits and coordinating plan review, inspections and final approvals with other agencies (internal and external).

k. Providing equipment and supplies required for the Building Inspector and Plan Checker, unless specifically identified to be contributed by CITY.

l. Provide attendance records of continuing education training for all CONSULTANT staff according to current State requirements including Civil Code section 55.53.

m. Assist with periodic thorough reviews of the Division's practices and identify the extent to which required procedures are followed and the effectiveness of current processes and make recommendations to CITY, as the Division Head determines necessary.

n. Provide CONSULTANT staff with email addresses, business cards, and cell phones for easy communications with customers and CITY staff.

3. Extra Services. Extra Services are hereby defined as any services other than the Contract Services described in Section 2, above, which are authorized by CITY and performed by CONSULTANT. Prior to performing Extra Services, CONSULTANT shall submit a written request for Extra Services and obtain the

written approval of CITY. CONSULTANT shall commence Extra Services only upon written authorization to proceed upon such tasks issued by CITY. Extra Services will be paid per the following schedule. Extra plan review fees necessary due to incomplete or changed submittals per Section 10.01 of the Building Fee Schedule shall be calculated using the "Plan Check" category.

POSITION	REGULAR RATE
Building Official	$95.00
Building Inspector (additional)	$69.00
Senior Building Inspector	$85.00
Licensed Architect or Engineer	$95.00
Senior Plan Check Engineer	$105.00

4. Facility and Equipment Use. CITY will make available up to 300 sq. ft. of office space and equipment at City Hall for use by CONSULTANT, including one desktop computer, access to network printer, one desk, one chair, as well as information technology support during normal City Hall working hours (the "Facility and Equipment Rental"). CONSULTANT shall pay CITY $250/month for the Facility and Equipment Rental. Such payment can be made through a monthly reduction in what CITY otherwise would owe CONSULTANT pursuant to this Agreement.

5. City Responsibility. CITY shall provide the following support at no cost to the CONSULTANT: One full-time permit clerk and one part-time grading plan check staff.

6. Option to Reduce Service. CITY reserves the right to reduce the hours needed for CONSULTANT to provide the Contract Services. That right can be exercised at any time, but the reduction shall not exceed 10 hours per week for Building Inspector.

7. Replacement of Personnel. In the event CITY'S Designated Representative, in his/her sole judgment and determination, determines any personnel/contractors assigned by CONSULTANT are not meeting the requirements of this AGREEMENT, CONSULTANT shall immediately replace that person and failure to do so shall be a material breach of this Agreement.

8. Compensation. For the entire term of this Agreement, CITY shall pay CONSULTANT based on the following:

   (i) The Building Inspector Category shall be paid at the rate of $69.00 per hour for hours actually worked by the Building Inspector to satisfactorily perform the Contract Services, not including time for such things as training, vacation, sick days.

(ii) On-call plan check services shall be paid at the rate of $95.00 per hour for hours actually worked conducting plan checks and rechecks.

9. Payment. CONSULTANT shall submit a monthly timesheet for the Building Inspector showing billable hours by day rounded to the nearest quarter hour attached to an itemized statement to request payment in a format approved by CITY'S 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 three years following the completion of the Contract Services for which the payment is requested. Such records shall be made available for copying, inspection or audit by CITY employees or independent agents during reasonable business hours

CONSULTANT shall not be compensated for any services rendered in connection with (i) CONSULTANT'S preparation and submission of timesheets as described above or (ii) any activities of CONSULTANT related to this Agreement, which are in addition to the Contract Services, unless such additional services have received prior written approval from CITY'S Designated Representative.

10. Changes. Changes involving provisions for payment or changes in the Scope of Services must be approved in writing by CITY'S Designated Representative.

11. Term of Agreement. The effective date of this Agreement is August 3, 2015, and it shall remain and continue in effect until June 30, 2016, unless terminated sooner pursuant to the provisions of this Agreement. At CITY'S option, CITY may grant up to two two-year extensions with 60-days' written notice.

12. Performance. In the event CONSULTANT or any person assigned by CONSULTANT to perform CONSULTANT'S obligations pursuant to this Agreement is temporarily unable to perform those duties due to sickness, vacation, or any other reason (the "Absence"), CONSULTANT shall provide a satisfactory replacement within 24 hours of commencement of the Absence.

13. Termination Without Cause. CITY may at any time, for any reason, without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon CONSULTANT at least three-months' prior written notice. If CITY suspends or terminates a portion of this Agreement, then such suspension or termination shall not make void or invalidate the remainder of this Agreement.

In the event this Agreement is terminated pursuant to this Section, CITY shall pay to CONSULTANT the actual value of the work performed up to the time of termination and not yet compensated pursuant hereto; provided, that the work performed is of value to CITY. Upon termination of this Agreement pursuant to this Section, CONSULTANT will submit an invoice to CITY.

14. Default of Service Provider. This is a performance agreement.

CONSULTANT's failure to comply with the provisions of this Agreement shall constitute a default. In the event CONSULTANT is in default for cause under the terms of this Agreement, CITY shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this Agreement immediately by written notice to CONSULTANT following notice of default and an opportunity to cure, as set forth in this Section. If such failure by CONSULTANT to make progress in the performance of work hereunder arises out of causes beyond CONSULTANT'S control, and without fault or negligence of CONSULTANT, then it shall not be considered a default.

If CITY'S Designated Representative determines CONSULTANT is in default in the performance of any of the terms of this Agreement, then he/she shall cause to be served upon CONSULTANT a written notice of the default. CONSULTANT shall have ten days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event CONSULTANT fails to cure its default within such period of time, CITY shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

15. Sale or Transfer. CONSULTANT agrees it will not sell, assign, or transfer, in whole or in part, any right, title or interest it possesses by reason of this Agreement to any other person or entity without first obtaining the written consent of CITY to such sale, assignment, or transfer, which consent will not unreasonably be withheld. If CONSULTANT is acquired or purchased by any other company, corporation, person, or entity, then CITY has the right to terminate this Agreement, immediately.

16. Qualified Personnel. CONSULTANT shall provide qualified individuals who, at all times, will faithfully, competently and to the highest applicable professional standard of ability, experience and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this Agreement.

17. Conflicting Use and Service. CONSULTANT shall not use any vehicle, equipment, personnel, and other facilities, which are dedicated to CITY for performing services under this Agreement for any use whatsoever, other than as provided for in this Agreement without the prior written approval of CITY. CONSULTANT shall not provide services similar to those provided to CITY

pursuant to this Agreement to any other person, agency or entity within the jurisdiction of CITY.

18. Independent Contractor. CONSULTANT'S relationship to CITY in performance of this Agreement is that of an Independent Contractor.

The personnel performing services under this Agreement shall at all times be under CONSULTANT'S exclusive direction and control, and are employees of CONSULTANT and not employees of CITY.

CONSULTANT shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers compensation, and similar matters.

CONSULTANT shall notify its employees by written notice of any and all obligations in connection with their employment are those of CONSULTANT and not CITY.

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

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 which may constitute such a conflict of interest with CITY. It is understood and agreed that CONSULTANT will be engaged in the practice of providing consulting services and may continue such practice during the period of this Contract except as provided in this Section.

20. Release of Information. All information gained by CONSULTANT in performance of this Agreement shall be considered confidential and shall not be released by CONSULTANT without CITY'S prior written authorization. CONSULTANT, its officers, employees, agents, or subcontractors, shall not without written authorization from City Administrator or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

CONSULTANT shall promptly notify CITY if CONSULTANT, its officers, agents, or subcontractors are served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, CITY'S right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

21. Insurance. 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 CITY:

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

b. Coverage shall be at least as broad as:

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

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

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

c. CONSULTANT shall maintain limits not less than:

- General Liability: Two Million Dollars ($2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, then either the general aggregate shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- Automobile Liability: One Million Dollars ($1,000,000) per accident for bodily injury and property damage.

- Employer's Liability: One Million Dollars ($1,000,000) per accident for bodily injury or disease.

d. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officials, officers, employees and volunteers; or CONSULTANT shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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

   - 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 CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT.

   - For any claims related to this project, CONSULTANT'S insurance coverage shall be primary insurance as respects CITY, its officials, officers, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officials, officers, employees, or volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it.

   - Written notice shall be given to CITY by CONSULTANT in the event any insurance policy required by this clause is canceled by either party. If CONSULTANT cancels said insurance, 30-days' prior written notice shall be given to CITY. If the insurance carrier cancels said insurance, notice shall be given as soon as practicable, but no less than 15 days after notice of cancellation is received by CONSULTANT. In the event said insurance is cancelled, CONSULTANT shall, prior to the cancellation date, submit to CITY new evidence of insurance meeting the requirements and in the amounts herein established.

f. Insurance shall be placed with insurers with a current A.M. Bests rating of no less than A:VII.

g. Professional Liability "errors and omissions" insurance shall be placed with insurer or insurers satisfactory to CITY, with limits of liability not less than One Million Dollars ($1,000,000.00), to cover all insurable claims for professional services rendered by CONSULTANT pursuant to this Agreement.

h. CONSULTANT shall furnish CITY with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by CITY before Consulting Services commence. CITY reserves the right to require at anytime complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

i. 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.

22. Ownership of Documents. All documents, computer programs, plans, designs and other intellectual property prepared by CONSULTANT pursuant to this Agreement shall become the property of CITY upon full and complete compensation to CONSULTANT for services performed herein. CONSULTANT will take such steps as are necessary to perfect or to protect the ownership interest of CITY in such property. CONSULTANT may retain copies of said original documents for CONSULTANT'S file.

23. Indemnities. CONSULTANT shall perform all services hereunder 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 any act or omission of CONSULTANT, or its officers, employees, contractors or agents, in the performance of this Agreement; provided, that the obligation to indemnify and hold harmless is only to the extent CONSULTANT or any of its officers, employees, contractors or agents caused the Damages.

24. CalPERS Eligibility Indemnification. In addition to Section 23., the PARTIES acknowledge CITY is a participant in the California Public Employees Retirement System ("CalPERS"), and as such, has statutory obligations regarding pension contributions to CalPERS on behalf of qualifying employees. Notwithstanding any other agency, State or federal policy, rule, regulation, law or ordinance to the contrary, CONSULTANT and any of its officers, employees, agents, and subcontractors providing service under this AGREEMENT shall not qualify, or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITY, including, but not limited to, eligibility to enroll in CalPERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contributions or employee contributions for CalPERS benefits.

In the event CONSULTANT or any of its officers, employees, agents, or subcontractors under this AGREEMENT claims to be eligible for enrollment in

CalPERS as an employee of CITY, CONSULTANT, upon CITY's written notice of the claim, agrees to assume CITY's defense of the claim with attorneys chosen solely by CONSULTANT. CITY agrees to fully cooperate in the defense of the claim, however CONSULTANT shall have sole control of the defense and resolution of the claim. In the event that the claim is settled or a final, enforceable decision by a court of competent jurisdiction determines the claimant is eligible for enrollment in CalPERS as an employee of CITY, CONSULTANT agrees to pay the settlement or determination on behalf of CITY; provided, that the PARTIES also understand and agree if CONSULTANT or any of its officers, employees, agents, or subcontractors under this AGREEMENT is determined by a final, enforceable decision by a court of competent jurisdiction to be eligible for enrollment in CalPERS as an employee of CITY, CONSULTANT shall reimburse, indemnify and hold harmless CITY for the payment of any employee and employer contributions for CalPERS benefits made by CITY on behalf of CONSULTANT or its officers, 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. CONSULTANT is not responsible for any CITY defense or investigation costs prior to receipt of written notice of the claim. Additionally, CONSULTANT is not responsible for any CITY fees, costs or expenses concerning the claim after CONSULTANT assumes the CITY's defense, except to the extent of the proviso above.

25. 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 insure 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.

26. Warranty Against Contingent Fees. CONSULTANT warrants 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, CITY shall have the right to annul this Agreement without liability, or at its discretion to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

27. Compliance with Law. CONSULTANT shall, at its sole cost and expense, comply with all CITY, County, State and Federal ordinances and statutes 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 be a party thereto or not, that CONSULTANT has violated any such ordinance or statute, shall be conclusive of that fact as between CONSULTANT and CITY.

28. 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, if in State court, regardless of where else venue may lie.

29. Precedence. In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits or documents incorporated by reference, the provisions in the numbered sections shall prevail over those in the Exhibits and the provisions of the Exhibits shall prevail over the documents incorporated by reference.

30. Time is of the Essence. Time is of the essence of this Agreement.

31. 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.

32. 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.

33. Designated Representative and Notices. Any notice required pursuant to this Agreement shall be mailed, first class postage pre-paid, to the following addresses:

CITY OF LOMPOC	CONSULTANT
Kurt Latipow	JAS Pacific
Fire Chief	PO Box 2002
115 South G Street Plaza	Upland, CA 91785
Lompoc, CA 93436	

34. Entire Agreement. This Agreement represents the complete understanding between the PARTIES with respect to the matters set forth herein. No amendment or modification of this Agreement shall be valid unless evidenced in writing and executed by the PARTIES.

35. Authority. The PARTIES warrant and represent 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 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.

36. Invalidation in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. CITY'S failure to insist in one or more instances upon the performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of CITY's right to such performance by CONSULTANT.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement to be executed and entered into this _____ day of _____, 2015.

CITY OF LOMPOC,

By: _____

ATTEST:

_____
Stacey Alvarez
City Clerk

APPROVED AS TO FORM:

_____
Joseph W. Pannone
City Attorney

Jason Addison Smith Consulting Services, Inc, dba JAS Pacific

By: _____
Jason Addison Smith,
Its _____

By: _____
_____
Its _____