

CITY OF EL MONTE
REQUEST FOR PROPOSALS
FOR
CLASSIFICATION AND COMPENSATION STUDY



PROPOSAL ISSUE DATE: JUNE 6, 2018

PROPOSAL DUE DATE: JULY 5, 2018 BY 5:00 PM

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I. INTRODUCTION

The City of El Monte ("City") is requesting proposals from highly qualified consulting firms to conduct a comprehensive citywide classification and compensation study, as well as a management level organizational assessment.

The selected consultant will perform the services outlined herein under the general direction of the City's Human Resources/Risk Management Director.

It is anticipated that the study will commence in August or September of 2018 and conclude no later than March 31, 2019.

II. BACKGROUND

The City of El Monte is located approximately 10 miles east of the City of Los Angeles in the heart of the San Gabriel Valley. The City is roughly 10 square miles with approximately 120,000 residents, making it the 10th largest city by population in Los Angeles County.

The City currently employs approximately 278 full-time employees within 112 classifications and 213 part-time employees within 35 classifications. Full-time employees are represented by four bargaining units: (1) Service Employees International Union Local 721 ("SEIU") General Unit; (2) SEIU General Mid-Management Unit; (3) Police Officers' Association; and (4) Police Mid-Managers' Association. Part-time employees are unrepresented and serve at-will.

Additionally, the City currently has seven (7) executive classifications, all of which serve at the will and pleasure of the City Manager.

A copy of the City's current organizational chart is included herewith as Appendix A. Additionally, listings of the City's current full-time and part-time classifications are included herewith as Appendix B and Appendix C, respectively.

It is unclear as to when the City last conducted a comprehensive classification and compensation study, particularly with the assistance of professional consulting services.

III. SCOPE OF SERVICE

Classification Study (Component 1A):

1. Recommend appropriate updates to the classification plan for all existing and proposed full-time and part-time classifications. The City is considering the creation/addition of several new classifications to more appropriately align with current service models.
2. Develop a classification structure that includes the establishment of appropriate job families, classification series, career ladders, and internal alignment/equity across departments.
3. Review relevant background materials, including but not limited to, existing job specifications, organizational charts, budgets, salary resolutions and schedules, personnel rules, and memoranda of understanding.
4. Participate in the meet and confer process with representatives of City management and affected employee bargaining units regarding the establishment of the comparator cities/agencies (“labor market”) and methodology to be utilized in both the Classification Study and the Compensation Study.
5. Conduct orientation and briefing sessions with all affected parties, including but not limited to, executives, managers, supervisors, employees, and employee bargaining unit representatives.
6. Develop a comprehensive Job Analysis Questionnaire (“JAQ”) or similar form to be completed by all employees.
7. Conduct interviews with: (i) all employees in single position classifications; (ii) a representative sample of employees in multiple position classifications; and (iii) appropriate management personnel.
8. Conduct desk audits as necessary or as agreed upon by City management and employee bargaining units.
9. Review each job classification against its comparable classification(s) in the established labor market.
10. Recommend allocations of employees to an appropriate job title, job classification, and exempt or non-exempt designation pursuant to the Fair Labor Standards Act (“FLSA”).
11. Recommend appropriate updates to existing classification specifications and the development of new ones, consistent with the City’s current class specification format, to reflect current duties and to include the following:
 - a. Definition of the job classification;
 - b. Comprehensive description of the essential job functions;
 - c. Requirements of education, experience, knowledge, skills, abilities, licenses, and certifications;
 - d. Supervision exercised and received with definition of lead or supervisory roles; and

- e. Working environment and/or conditions, including physical demands in compliance with the Americans with Disabilities Act (“ADA”).
- 12. Present written findings and recommendations in a draft report to representatives of City management and affected employee bargaining units.
- 13. Establish and facilitate an appropriate employee review and appeal process.
- 14. Upon final review and input from the City Manager, present written findings and recommendations in a final report to the City Council.
- 15. Provide appropriate implementation and maintenance materials/resources.

Compensation Study (Component 1B):

- 1. Conduct a comprehensive total compensation survey of comparator cities/agencies for each classification that includes, at a minimum, the following components:
 - a. Base salary;
 - b. Additional types of pay (i.e. longevity, certificate, educational incentive, premium, special assignment, translator/bilingual, shooting, etc.);
 - c. Allowances/stipends/reimbursements (i.e. auto, technology/cell phone, uniform/boots, equipment/tools, etc.)
 - d. Pension/retirement contributions, including city/agency contributions to deferred compensation plans;
 - e. Health benefits for active employees and future retirees (i.e. medical, dental, vision, ancillary, etc.);
 - f. Life and disability insurance;
 - g. Leave benefits, including accrual and pay-out/conversion (i.e. vacation, sick, holiday, personal, bereavement, jury duty, etc.);
 - h. Hiring incentives
- 2. Participate in the meet and confer process with representatives of City management and affected employee bargaining units regarding the establishment of the comparator cities/agencies and methodology to be utilized in both the Classification Study and the Compensation Study.
- 3. Conduct a base salary analysis of market competitiveness.
- 4. Conduct an internal base salary relationship analysis, including the development of appropriate internal relationship standards/guidelines.
- 5. Recommend an appropriate salary range for each classification that reflects the analyses of both the market survey and the internal relationships.
- 6. Conduct a total compensation analysis of market competitiveness from recruitment and retention perspectives, including consideration of tiered benefit levels.

7. Present written findings and recommendations in a draft report to representatives of City management and affected employee bargaining units.
8. Upon final review and input from the City Manager, present written findings and recommendations in a final report to the City Council.
9. Provide appropriate implementation and maintenance materials/resources.

OPTIONAL: Management Level Organizational Assessment (If Requested by City) (Component 2):

1. Review the City's organizational structure to gain an understanding of how the departments, divisions, and work units correlate; review span of control and area of responsibility for each position.
2. Analyze organizational charts, budgets, operational functions, and relevant City programs and reports, and conduct interviews with key management personnel to gain a thorough and comprehensive understanding of the City's current organizational structure.
3. Compare the City's organizational structure to the comparator cities/agencies in the established labor market.
4. Evaluate the City's management level organizational structure using the latest theories and municipal best practices in organizational structure design to determine the most efficient and effective organizational structure.
5. Present written findings, analyses, and recommendations in a draft report to the City Manager.
6. Upon final review and input from the City Manager, present written findings, analyses, and recommendations in a final report to the City Council.

IV. PROPOSAL REQUIREMENTS

Written proposals must include the following information and be organized as follows:

1. **Cover Letter.** The cover letter shall include the name, address, phone number, and signature of the person authorized to bind the Proposer to the terms of the proposal.
2. **Proposer's Background.** A summary of the Proposer's background and their area(s) of professional expertise relevant to this RFP.
3. **Qualifications and Experience of Proposer's Personnel.** A summary of the relevant qualifications and experience, including recent work on projects of a similar magnitude and nature, of the Proposer's team/staff that will be performing the Scope of Work outlined in this RFP on the

Proposer's behalf. The summary shall also include the office location of key staff proposed to perform the tasks/services outlined in this RFP.

4. **Project Approach/Methodology.** A detailed description of the proposed approach/methodology for completing required Components 1A and 1B of the Scope of Work, as well the optional Component 2 outlined in the Scope of Work. The Proposer shall demonstrate their understanding of the needs of the City and the objectives of the work proposed, as well as their ability to timely complete all of the tasks outlined in the Scope of Work.
5. **Project Schedule and Schedule Control.** A detailed project schedule for each of the main components outlined in the Scope of Work in this RFP, outlining the tasks, activities, deliverables, milestones, and durations of each, including overlaps among the three components. Proposers shall allot sufficient time for review and feedback periods, as well as identify reasonably foreseeable delays that may occur, and factor in additional time as may be appropriate.
6. **References.** A minimum of three (3) public agency references for which the same or similar work as requested in this RFP was performed by the team/personnel proposed for El Monte. Such references must be for work completed within the last five (5) years, and include the name, title, and contact information of the public agency officer or employee responsible for overseeing the Proposer's work.
7. **Cost Proposal/Fee Schedule.** A detailed "not-to-exceed" cost proposal for each of the main components outlined in the Scope of Work in this RFP, as well as any specific cost savings associated with including the Organizational Assessment (Component 2) as part of this project. Any proposed payment schedule shall align with the project schedule. In addition, the cost proposal shall include an itemized budget, including all necessary labor costs and expenses (direct and indirect), for each of the main project components. The cost proposal shall state the current hourly rates of all assigned staff/team members, as well as any known increases to said rates scheduled to occur prior to completion of this project.
8. **Validity of Proposal.**
Responses to this RFP shall be valid for a minimum of ninety (90) days. Proposers shall state the length of time for which the proposal shall remain valid. Submissions not valid for at least ninety (90) days will be considered non-responsive.

V. STAFF CONTACT

For all inquiries related to this RFP, please contact Kristen Enomoto at (626) 580-2044 or kenomoto@elmonteca.gov.

VI. ANTICIPATED RFP TIMELINE

Below is the tentative schedule for this RFP:

<u>Date</u>	<u>Action</u>
June 6, 2018	Issuance/Release of RFP
July 5, 2018	Deadline for Submission of Proposals
July 9 - 24, 2018	Selection Committee Review of Written Proposals
Week of August 6, 2018	Selection Committee Interviews of Selected Proposers
August 21, 2018	Final Selection and Award of Contract by City Council

VII. PROPOSAL SUBMITTAL

Ten (10) hard copies and one (1) electronic copy of the proposal shall be submitted in a sealed envelope or package that is marked “**Classification and Compensation Study Proposal**”. Hard copies should be bound and an electronic copy shall be provided on a compact disc or USB device. The electronic device must also be clearly labeled with the name of the Proposer and “Classification and Compensation Study Proposal”. The electronic file shall be in Portable Document Format (PDF). The envelope or package shall bear the name, address, and telephone number of the individual or entity submitting the proposal and shall be addressed as follows:

Office of the City Clerk
Attn: Angela McCray, HR/RM Director
City of El Monte
11333 Valley Boulevard
El Monte, CA 91731

Proposals can be hand delivered or mailed to the address listed above. Proposals will not be accepted by fax or e-mail.

All proposals must be received no later than **5:00 P.M. on July 5, 2018.**

VIII. PUBLIC NATURE OF PROPOSAL MATERIALS

- A. All proposals submitted in response to this RFP shall become the property of the City and may be used by the City for any purpose. Proposals received by the City shall not be returned to the Proposer. If a Proposal contains information that the Proposer considers proprietary and confidential, it shall be the responsibility of the Proposer (and not the City) to specify which items of information are proprietary and clearly identify in writing which specific pieces of information are proprietary at the time the proposal is submitted. It shall be insufficient for the Proposer to merely identify the entire Proposal or an entire page or set of pages as proprietary. With respect to information deemed proprietary, the procedures set forth under subsection (B) below shall be observed. Not-to-exceed sums, hourly rates, and other similar information, that may be set forth in a proposal shall not constitute proprietary information nor shall any information readily available to the general public or any other information not regarded as proprietary and confidential under federal or state law.
- B. To comply with the California Public Records Act (Govt. Code Section 6250, *et seq.*), the City reserves the right to make copies of a Proposer's proposal available for inspection and copying by members of the public (including proposals which may contain information the Proposer regards as proprietary in nature), unless the City's legal counsel determines that the information which the Proposer regards as proprietary may be withheld pursuant to applicable provisions of the California Public Records Act or other applicable state or federal law. In the event the City intends to disclose records containing information the Proposer has specifically identified as being proprietary and confidential, the City shall notify the Proposer in writing of its intent to release such information. The Proposer shall then have five (5) working days after the City's issuance of its notice to give the City written notice of the Proposer's objection to the City's release of proprietary information. The City will not release the proprietary information after receipt of the objection notice from the Proposer unless: (i) the objection notice is not received by City until after the close of business on the 5th day following City's issuance of the notice of intent to disclose; (ii) ordered to release the information by a court of competent jurisdiction; or (iii) the Proposer's objection notice fails to include a fully executed indemnification agreement wherein the Proposer agrees to indemnify, defend and hold harmless the City, and its elected and appointed officials, officers, directors, employees and agents from and against all liability, loss, cost or expense (including attorneys' fees) arising out of any legal action brought to compel the release of records containing the proprietary information which the Proposer wishes to withhold. Again, the Proposer must specifically identify the information it deems proprietary or the City shall release such information upon receipt of a request under the Public Records Act.

IX. PROTEST PERIOD

- A. Any Proposer who objects to a proposal submitted by another Proposer or to the City's consideration of another proposal shall file a written protest by 5:00 p.m. on the fourth (4) calendar day after the Proposal Submission Deadline ("Protest Deadline"). If the Protest Deadline falls on a date that the City is closed for business, the Protest Deadline shall be extended to the next business day. Protests MUST be delivered to the attention of:

Angela McCray, HR/RM Director
City of El Monte
11333 Valley Boulevard
El Monte, CA 91731

- B. Protests may be delivered in person, via regular mail, via overnight courier or personal courier, but must be received by 5pm at or before the Protest Deadline. Protests may not be delivered via facsimile or electronic mail. The City will not consider late protests nor will it consider protests delivered to any other person than the individual listed in subsection (A), above. A copy of the protest and all supporting documents must also be transmitted by fax or by e-mail, by or before the Protest Deadline, to proposer against whom the protest is made. Only persons or entities who have submitted a proposal in response to this RFP shall be eligible to file a protest.
- C. The protest must contain a complete and reasonably detailed statement of the basis for the protest and include all supporting documentation. The protest must refer to the specific portion or portions of a submitted proposal upon which the protest is based. The protest must include the name, address, and telephone number of the person representing the protesting proposer if different from the protesting proposer.
- D. All timely received protests shall be considered by the City. The City may make additional inquiries relating to the grounds of any written protest and may overrule or sustain any written protest as submitted prior to awarding a contract. The disposition of the protest by the City shall be final.
- E. The procedure and time limits set forth in this section are mandatory and are the proposer's sole and exclusive remedy in the event of a protest. The proposer's failure to comply with these procedures shall constitute a waiver of any right to further pursue a protest.

X. EVALUATION CRITERIA

Proposals shall be evaluated based on the following criteria (listed in random order without regard to order of importance):

1. Demonstrated and thorough understanding of the project.
2. Expertise and qualifications of assigned staff, including prior experience in performing similar studies for public sector clients.
3. Overall project design and methodology/approach.
4. Proposed schedule/timeline and projected completion date(s).
5. Total cost and fee schedule.
6. Responsiveness to the requirements of the RFP.
7. Recent references from comparable clients.

The City retains full discretion in determining the applicability and weight of the criteria listed above and is not required to select the lowest cost proposal. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from Proposers, or to allow corrections of errors or omissions.

XI. EVALUATION AND SELECTION PROCESS

A Selection Committee, comprised of key Executive staff and representatives of the City's employee bargaining units, will review and rank proposals based on the evaluation criteria outlined above.

The Selection Committee shall invite the highest-ranking Proposers to an interview. Finalists will be allotted one hour to make a presentation to and answer questions from the Selection Committee. It is expected that key members of the proposed project team will attend the interview. The Selection Committee will recommend the firm considered most qualified to the City Council for approval and award of a Professional Services Agreement. Upon approval by the City Council, a Professional Services Agreement shall be executed in substantially the same form as included herein as Appendix D.

Issued by:

**CITY OF EL MONTE
DEPARTMENT OF HUMAN RESOURCES/RISK MANAGEMENT**

**Angela McCray
Director of Human Resources/Risk Management**

APPENDIX A

ORGANIZATIONAL CHART

Residents

Richard W. Thomas
City Treasurer

Rick Olivarez
City Attorney

City Council
Mayor André Quintero
Mayor Pro Tem Jerry Velasco
Councilman Juventino "J" Gomez
Councilwoman Norma Macias
Councilwoman Victoria Martinez

Jonathan Hawes
City Clerk

ALEX HAMILTON
City Manager

Griselda Contreras
Deputy City Clerk

ALMA MARTINEZ
Assistant City Manager

Bruce Foltz
Director
Finance
Department

Angela McCray
Human Resources/
Risk Management
Department

Alexandra Lopez
Director
Parks & Recreation
Department

Elaine Jeng
Director
Public Works
Department

David Reynoso
Chief
Police
Department

Los Angeles County
Fire Department
(contract)

Jason Mikaelian
Interim Director
Economic
Development
Department

RDA Dissolution

Annual Budget

Employment
Opportunity

Parks &
Recreation

Public Works
Maintenance

Administrative
Services

Community
Development

Successor
Agency

Annual Audit/
Accounting

Employee
Benefits

Community &
Senior Services

Engineering

Investigative
Services

Building

Oversight Board

Purchasing

Bargaining Units'
MOUs

Aquatics

Transportation

Patrol Services

Planning

Business
Licensing

Labor Relations

Environmental
Services

Community
Relations Office

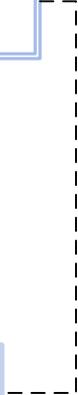
Housing

Treasury

Information
Technology

Code
Enforcement

State
Department of
Finance



APPENDIX B

LIST OF FULL-TIME CLASSIFICATIONS

GENERAL UNIT:

Account Clerk	Public Works Clerk
Accounting Technician	Purchasing Clerk
Administrative Clerk	Records Supervisor
Administrative Technician	Records Technician
Animal Control Officer	Recreation Coordinator
Aquatics Coordinator	Secretary/City Council with Shorthand
Aquatics Maintenance Specialist	Secretary/Archivist
Assistant Planner	Senior Shift Operator
Cashier Clerk	Shift Operator
Cement Mason	Social Worker
Community Wellness & Senior Services Coordinator	Support Services Specialist
Customer Service Representative	Traffic Signal Technician
Department Secretary	Training Clerk
Dispatcher	Transportation Coordinator
Dispatch Shift Supervisor	Transportation Driver
Electrician's Helper	Wastewater Collection Systems Lead
Equipment Service Lead Worker	Wastewater Maintenance I
Equipment Service Worker	Wastewater Maintenance II
Graffiti Abatement Coordinator	Water Meter Reader
Graphic Designer	
Heavy Equipment Mechanic	
Human Resources/Risk Management Specialist	
ID Technician	
Information Technology Programmer	
Irrigation Senior Specialist	
Jailer	
Landscape Technician	
Lead Clerk	
Lead Heavy Equipment Mechanic	
Lead Jailer	
Maintenance Lead Worker	
Maintenance Worker	
Neighborhood Services Clerk	
Neighborhood Services Officer	
NSP Maintenance Lead Worker	
Office Assistant	
Parking Technician	
Payroll Clerk	
Plumber	
Police Recruit	

GENERAL MID-MANAGEMENT UNIT:

Accountant
Accounting Manager
Administrative Analyst
Aquatics Supervisor
Assistant City Prosecutor
Associate Civil Engineer
Associate Planner
Chief Building Official
City Council Liaison
City Engineer
City Planner
Communications Manager
Database Administrator
Deputy City Clerk/Records Manager
Economic Development Senior Manager
Executive Assistant to City Manager
Finance Manager
Grants Manager
Housing Manager
Housing Program Coordinator
Human Resources/Risk Management Analyst
Human Resources/Risk Management Manager
Information Technology Manager
Management Analyst
Neighborhood Services Manager
Parks, Recreation and Community Services Supervisor
Principal Accountant
Public Information Officer
Public Works Inspector
Public Works Maintenance Supervisor
Public Works Maintenance – Field Supervisor
Public Works Operations Superintendent
Purchasing Contract Manager
Recreation Services Manager
Senior Administrative Analyst
Senior Administrative Assistant
Senior Housing Program Coordinator
Senior Information Technology Analyst
Senior Management Analyst
Senior Planner
Senior Project Manager
Transportation Operations Manager
Transportation Senior Program Specialist
Utilities Manager
Water Systems Supervisor

POLICE OFFICERS' ASSOCIATION:

Helicopter Pilot
Police Corporal
Police Officer
Police Officer II
Police Officer/Bonus Assignment
Police Sergeant

POLICE MID-MANAGERS' ASSOCIATION:

Police Captain
Police Lieutenant

EXECUTIVES:

Assistant to the City Manager
Economic Development Director
Finance Director
Human Resources/Risk Management Director
Parks, Recreation & Community Services Director
Police Chief
Public Works & Utilities Director

APPENDIX C

LIST OF PART-TIME CLASSIFICATIONS

Administrative Assistant	Police Dispatcher
Animal Control Officer	Police Pilot
Assistant Swim Team Coach	Pool Manager
Background Investigator	Program Coordinator
Beautification Project Leader	Program Specialist
CARE Management Driver	Records Technician
Case Aide	Recreation Leader I
Graphic Artist	Recreation Leader II
Head Swim Team Coach	Reserve Officer
Instructor Guard	Reserve Officer/Investigator
Intern (College or Graduate)	Senior Instructor Guard
Lifeguard	Senior Nutrition Site Manager
Maintenance Worker	Senior Recreation Leader
Managing Swim Team Coach	Social Worker
Museum Curator	Tactical Flight Officer
Office Assistant	Transit Safety Ambassador
Planning Aide	Transportation Driver
Police Cadet	

APPENDIX D

SAMPLE PROFESSIONAL SERVICES AGREEMENT



PROFESSIONAL SERVICES AGREEMENT

(Name of Consultant – 2018 Citywide Classification and Compensation Study (“Study”))

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this _____ day of _____ 20____ (hereinafter, the “Effective Date”), by and between the CITY OF EL MONTE, a municipal corporation (“CITY”) and [____REPLACE WITH NAME OF CONSULTANT____], a [____REPLACE WITH TYPE OF ENTITY, E.G., CORPORATION? PARTNERSHIP? SOLE PROPRIETORSHIP? ETC.____] (hereinafter, “CONSULTANT”). For the purposes of this Agreement CITY and CONSULTANT may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to CITY or CONSULTANT interchangeably.

WHEREAS, CITY wishes to engage CONSULTANT to provide the following specialized services: _____; and

WHEREAS, CITY’s in-house personnel is presently unable to perform the specialized services and tasks contemplated under this Agreement; and

WHEREAS, CONSULTANT possesses the specialized training, skill, expertise and experience required to perform the services contemplated under this Agreement; and

WHEREAS, CONSULTANT agrees to perform the various services and tasks set forth under this Agreement subject to the terms and conditions set forth herein; and

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, CITY and CONSULTANT agree as follows:

I.
ENGAGEMENT TERMS

- 1.1 SCOPE OF SERVICES: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONSULTANT agrees to perform the services and tasks set forth in Exhibit “A” (hereinafter referred to as the “Scope of Services”). CONSULTANT further agrees to furnish to CITY all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Services. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Services shall hereinafter be referred to generally by the capitalized term “Work.”
- 1.2 TERM: This Agreement shall have a term of **one (1) year** commencing **on the Effective Date, with an option for CITY to extend the term for up to two (2) additional one-year (1-year) terms, if necessary to complete or update the Work.** Nothing in this Section shall operate to prohibit or otherwise restrict CITY’s ability to terminate this Agreement at any time for convenience or for cause.
- 1.3 COMPENSATION:
- A. CONSULTANT shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is **attached hereto as Exhibit “B”** (hereinafter, the “Approved Rate Schedule”).
- B. Section 1.3(A) notwithstanding, CONSULTANT’s total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum of **[REPLACE WITH NOT-TO-EXCEED SUM]** (hereinafter, the “Not-to-Exceed Sum”), unless such added expenditure is first approved by the CITY acting in consultation with the City Manager and the Finance Director. In the event CONSULTANT’s charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, CITY may suspend CONSULTANT’s performance pending CITY approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other CITY-approved amendment to the compensation terms of this Agreement.
- 1.4 PAYMENT OF COMPENSATION: Following the conclusion of each calendar month, CONSULTANT shall submit to CITY an itemized invoice indicating the services and tasks performed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONSULTANT’s monthly compensation is a function of hours worked by CONSULTANT’s personnel, the invoice shall

indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each task and service performed and a grand total for all services performed. Within **thirty (30) calendar days** of receipt of each invoice, CITY shall notify CONSULTANT in writing of any disputed amounts included in the invoice. Within **forty-five (45) calendar day** of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.

- 1.5 ACCOUNTING RECORDS: CONSULTANT shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY shall have the right to access and examine such records, without charge, during normal business hours. CITY shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Services, CONSULTANT shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT's cessation or abandonment.

II.

PERFORMANCE OF AGREEMENT

- 2.1 CITY'S REPRESENTATIVES: The CITY hereby designates the **City Manager and Human Resources/Risk Management Director** (hereinafter, the "CITY Representatives") to act as its representatives for the performance of this Agreement. The City Manager shall be the chief CITY Representative. The CITY Representatives or their designee(s) shall act on behalf of the CITY for all purposes under this Agreement. CONSULTANT shall not accept directions or orders from any person other than the CITY Representatives or their designee(s).
- 2.2 CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates **[_INSERT NAME AND TITLE OF PERSON WHO IS CONSULTANT REPRESENTATIVE FOR PURPOSES OF CONTRACT ADMINISTRATION_]_____** to act as its representative for the performance of

this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONSULTANT Representative shall constitute notice to CONSULTANT.

2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONSULTANT agrees to work closely with CITY staff in the performance of the Work and this Agreement and shall be available to CITY staff and the CITY Representatives at all reasonable times. All work prepared by CONSULTANT shall be subject to inspection and approval by CITY Representatives or their designees.

2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONSULTANT represents, acknowledges and agrees to the following:

- A. CONSULTANT shall perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession;
- B. CONSULTANT shall perform all Work in a manner reasonably satisfactory to the CITY;
- C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
- D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- E. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- F. All of CONSULTANT's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONSULTANT shall perform, at CONSULTANT's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONSULTANT's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONSULTANT's employees, agents, contractors, subcontractors and subconsultants. Such effort by CONSULTANT to correct any errors or omissions shall be commenced immediately upon their discovery by either Party and shall be completed within seven (7) calendars days from the date of discovery or such other extended period of time authorized by the CITY Representatives in writing and in their sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work performed by CONSULTANT or on CONSULTANT's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of CONSULTANT, including but not limited to the representation that CONSULTANT possesses the skills, training, knowledge and experience necessary to perform the Work skillfully, competently and to the highest standards of CONSULTANT's profession.

- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONSULTANT are material to CITY's willingness to enter into this Agreement. Accordingly, CITY has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent contractor basis and not as an employee. CONSULTANT reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not employees of CITY and shall at all times be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other

amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.

- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the CITY Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONSULTANT and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONSULTANT shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONSULTANT and all persons retained or employed by CONSULTANT shall have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by contract or otherwise, unless such authority is expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by CITY in writing.

III. INSURANCE

3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONSULTANT will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONSULTANT shall procure and maintain the following insurance coverage, at its own expense:

A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance (“CGL Coverage”) as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.

B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.

C. Workers’ Compensation Insurance/ Employer’s Liability Insurance: A policy of workers’ compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement.

D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT’s profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.

3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the CITY and CITY’s elected and appointed officials, officers, employees, agents and volunteers as additional insureds.

3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and

authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers who, according to the latest edition of the Best's Insurance Guide, have an A.M. Best's rating of no less than A:VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the CITY Representatives are authorized to authorize lower ratings than those set forth in this Section.

- 3.4 **PRIMACY OF CONSULTANT'S INSURANCE**: All policies of insurance provided by CONSULTANT shall be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
- 3.5 **WAIVER OF SUBROGATION**: All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT or CONSULTANT's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY.
- 3.6 **VERIFICATION OF COVERAGE**: CONSULTANT acknowledges, understands and agrees, that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding CITY's financial well-being and, indirectly, the collective well-being of the residents of the CITY. Accordingly, CONSULTANT warrants, represents and agrees that its shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any work or any of the Work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "CITY Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any

other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the CITY Indemnitees with the fullest protection possible under the law. CONSULTANT acknowledges that CITY would not enter into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect CITY as set forth herein.

- 4.2 To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the CITY Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 CITY shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Article and related to CONSULTANT's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONSULTANT under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.
- 4.6 CITY does not, and shall not waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of

any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the CITY may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: CITY may terminate this Agreement at any time for convenience and without cause by giving CONSULTANT a minimum of five (5) calendar days prior written notice of CITY's intent to terminate this Agreement. Upon such termination for convenience, CONSULTANT shall be compensated only for those services and tasks which have been performed by CONSULTANT up to the effective date of the termination. CONSULTANT may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, CITY may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT shall be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of

Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.

- B. CONSULTANT shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of CITY's issuance of a Default Notice for any failure of CONSULTANT to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONSULTANT is obligated to provide to CITY or CITY's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of CITY's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

In addition to any other failure on the part of CONSULTANT to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONSULTANT shall include, but shall not be limited to the following: (i) CONSULTANT's refusal or failure to perform any of the services or tasks called for under the Scope of Services; (ii) CONSULTANT's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONSULTANT's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation

as relates to CONSULTANT, whether voluntary or involuntary; (v) CONSULTANT's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) CITY's discovery that a statement representation or warranty by CONSULTANT relating to this Agreement is false, misleading or erroneous in any material respect.

- C. CITY shall cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.4, above, shall be cured by CITY within five (5) calendar days from the date of CONSULTANT's Default Notice to CITY.
- D. CITY, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of CITY's intent to suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONSULTANT shall be compensated only for those services and tasks which have been rendered by CONSULTANT to the reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY shall operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:

- i. Upon written notice to CONSULTANT, the CITY may immediately terminate this Agreement in whole or in part;
- ii. Upon written notice to CONSULTANT, the CITY may extend the time of performance;
- iii. The CITY may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONSULTANT's breach of the Agreement or to terminate the Agreement; or
- iv. The CITY may exercise any other available and lawful right or remedy.

CONSULTANT shall be liable for all legal fees plus other costs and expenses that CITY incurs upon a breach of this Agreement or in the CITY's exercise of its remedies under this Agreement.

- G. In the event CITY is in breach of this Agreement, CONSULTANT's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONSULTANT under this Agreement for completed services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI.
MISCELLANEOUS PROVISIONS

6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of CITY without restriction or limitation upon their use or dissemination by CITY. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or

assembled by or on behalf of CONSULTANT in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to CITY, a perpetual license for CITY to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONSULTANT shall require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONSULTANT in the performance of this Agreement.

- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT shall not use CITY's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.
- 6.3 FALSE CLAIMS ACT: CONSULTANT warrants and represents that neither CONSULTANT nor any person who is an officer of, in a managing position with, or has an ownership interest in CONSULTANT has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 et seq. and the California False Claims Act, Government Code Section 12650 et seq.
- 6.4 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:

[_REPLACE WITH Business Name of Consultant_]
[_REPLACE WITH Business Address_]
Attn: [_REPLACE WITH Name/Title of Consultant's chief contact ___]
Phone: [_REPLACE WITH Phone Number_]
Fax: [_REPLACE WITH Fax Number_]

CITY:

City of El Monte
HR/RM Department
11333 Valley Boulevard
El Monte, CA 91731
Attn: Angela McCray
Phone: (626) 580-2040
Fax: (626) ???-????

Email: [REPLACE WITH E-Mail]

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepaid and addressed to the Party at its applicable address.

- 6.5 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.6 SUBCONTRACTING: CONSULTANT shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of CITY. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.7 CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS: CITY reserves the right to employ other contractors in connection with the various projects worked upon by CONSULTANT.
- 6.8 PROHIBITED INTERESTS: CONSULTANT warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONSULTANT, to solicit or secure this Agreement. Further, CONSULTANT warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.10 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court,

venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.

- 6.11 ATTORNEYS' FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.
- 6.12 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.13 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.14 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.15 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.16 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.17 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.18 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.19 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between CITY and CONSULTANT prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment,

modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.

6.20 **COUNTERPARTS:** This Agreement shall be executed in three (3) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart shall be delivered to CONSULTANT and the remaining two original counterparts shall be retained by CITY.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

CITY OF EL MONTE:

By: _____
Alex Hamilton, City Manager

[REPLACE WITH BUSINESS NAME OF CONSULTANT, E.G., ACME CORP., A CALIFORNIA CORPORATION ETC.]:

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____