



# **REQUEST FOR PROPOSALS (RFP) HOUSING CONSULTANT SERVICES**

**CITY OF EL MONTE ECONOMIC  
DEVELOPMENT DEPARTMENT  
HOUSING DIVISION**

**JULY 2018**

**Issued on: July 12, 2018**

**Proposals Due: August 1, 2018**

**NOTICE OF REQUEST FOR PROPOSALS  
FOR HOUSING CONSULTANT SERVICES**

**NOTICE IS HEREBY GIVEN** that the City of El Monte (City) will receive proposals for consultant services for the City's housing programs.

Proposals will be received at the El Monte City Hall, City Clerk's Office, City Hall East, 11333 Valley Blvd, El Monte, California 91731 until 4:30 p.m. on Wednesday, August 1, 2018. All proposals must be clearly marked, "**CITY OF EL MONTE HOUSING CONSULTANT SERVICES PROPOSAL – ATTN: CAROL AVERELL**" and shall be delivered to the City Clerk's Office during the business hours of 7:30 a.m. to 5:30 p.m., Monday through Thursday, except holidays.

**POSTMARKS WILL NOT BE ACCEPTED.** Failure of, or disturbances in any mail service is not a legitimate reason for proposals submitted after the above due date. Electronic mail or facsimiles will not be accepted. The City may extend the deadline at its option.

Submit five (5) copies of your Proposal. It should be understood that the final fee will be negotiated with the City. All submitted proposals will be reviewed and analyzed by City staff and the proposals which best meet the City's needs will be selected for further analysis and negotiation. The City reserves the right, in its sole discretion during the selection process, to reject any or all proposals or any portion without exception or explanation.

Parties interested in obtaining a Request for Proposals (RFP) Package (at no cost) should contact the:

Economic Development Department – Housing Division  
11333 Valley Blvd, City Hall West  
El Monte, CA 91731  
(626) 580-2070

A copy of the RFP can also be downloaded from the City's website at:

<https://www.ci.el-monte.ca.us/236/Housing>

For questions regarding this RFP you may contact Lily Flores, Housing Programs Coordinator, at (626) 580-2070.

## **1. GENERAL INFORMATION**

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### **1.0 Purpose of the RFP**

The City of El Monte has issued this Request for Proposals (RFP) to obtain one or more qualified consultants for a variety of tasks in three subject areas:

- Administration
- Technical
- Affordable Housing Management/ Property Management

Though it is conceivable that one consultant (or consulting firm) may be able to perform all services desired, it is likely that consultants will have areas of expertise better suited to one of the above-mentioned major areas. As such, the City of El Monte is likely to select more than one consultant from this process to meet its needs during the current year and up to the next three years. Therefore, proposals will be accepted that cover only a portion of the services being sought. The City encourages proposals from Minority and Women Business Enterprises (MBE and WBE).

This Request for Proposal (RFP) may be viewed and downloaded from the City's website at <https://www.ci.el-monte.ca.us/Bids.aspx>

The City will evaluate submittals with the intent of selecting the most qualified consultant(s). In general, the selected consultant(s) will be highly proactive and will be responsible for assisting staff in managing the City's United States Department of Housing and Urban Development (HUD) budget allocation. Annually, the City receives approximately \$1,700,000 in annual Community Development Block Grant Program (CDBG) funds; \$733,000 in annual HOME Investment Partnerships Program (HOME) funds; and \$143,000 in annual Emergency Shelter Grants Program (ESG) funds. Proposals are for a one (1) year Agreement, with an option to extend up to an additional two (2) years.

## **2. SCOPE OF SERVICES**

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The City is requesting proposals to evaluate, create, and implement housing, community development, public services, and economic development programs to the City's residents. The list below is not inclusive of requirements based on unforeseeable program changes initiated by the City and/or HUD. All work items will be carried out in conjunction with City staff direction, input and review.

**2.0 Program Evaluation Report:** Consultant will provide City staff with a comprehensive evaluation report on the City's compliance with the HUD regulations. The report will include the current status of all City programs, any lapses in Program implementation, as well as recommendations for ensuring compliance with all HUD requirements. The report will be presented to staff within ninety (90) days after the commencement of the Agreement.

- 2.1** Technical assistance to update and/or amend and to obtain HUD approval of the Consolidated Plan, Action Plan, Citizen Participation Plan, Consolidated Annual Performance and Evaluation Report, and other applicable planning, participation, and reporting documents as required by HUD.
- 2.2** Technical assistance in the review of private-public partnerships, site and neighborhood standards, income determinations, and similar program criteria.
- 2.3** Technical assistance with updating the El Monte Housing and Grants Policies and Procedures as needed.
- 2.4** Determining eligible and ineligible CDBG, HOME and ESG activities such as eligible project costs, eligible administrative and planning costs, and similar program criteria.
- 2.5** Provide technical assistance in evaluating affordable housing projects, including maximum subsidy per unit, underwriting requirements, and subsidy layering.
- 2.6** Technical assistance on other federal requirements including: affirmative marketing; minority outreach; environmental review; displacement; relocation; acquisition; opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free work place.
- 2.7** Program Administration Support: CDBG, HOME, and ESG Agreements, Program Integrated Disbursement Information System (IDIS), Program income, inspections, audit, close-out, record-keeping, and performance reports.
- 2.8** Assist in the preparation of all required HUD reports such as the Annual Action Plan and the Consolidated Annual Performance Evaluation Report (CAPER).
- 2.9** Attend necessary City Council and/or Public Hearings and respond to HUD follow-up questions needed to receive the necessary HUD approvals.
- 2.10** Update and maintain the City's project and activity information provided to HUD's mainframe IDIS System.
- 2.11** Train City Staff on IDIS and HUD regulations and requirements as needed.
- 2.12** Gather available and necessary documents for HUD audits, and prepare the follow-up correspondence.
- 2.13** Technical expertise in responding to any HUD audit findings and/or concerns, take corrective actions, answer questions, and follow up with any other information as requested and/or needed.

**2.14** Provide a high standard of care and support to internal customers (such as City elected officials and City staff) and external customers (such as residents, business owners, contractors, developers and staff from municipal, state and federal agencies). In order to effectively provide this support, it is required that the selected consultant hold a combination of 10 office hours at City Hall and 20 remote hours per week.

**2.15** Day-to-day administration, consultation, and coordination with HUD; advise staff of federal and state program compliance issues; prepare amendments to the Consolidated Plan; recommend approval of HUD allowed expenditures; recommended updates for the Housing Rehabilitation Programs and other program brochures, forms, and reference material.

**2.16** Assist staff with Community Housing Development Organization (CHDO) outreach and

**2.17** Knowledge of successor housing agency regulations and legislation, as well as annual reporting requirements.

**2.18** Public Improvements/Public Facilities: As necessary for construction projects, oversee Labor Standards compliance including preparation of notices, bid documents, review of weekly certified payrolls, employee interviews, verification of contractor licensing and debarred status, review bonding, conduct pre-construction conference, issue notice of award, notice to proceed, oversee payments to contractors, approval of change orders, notice of completion, etc.

**2.19** Property Management/Property Disposition: As needed for the management of 11 City-owned affordable housing units including tenant selection, tenant certification, property maintenance, property inspections, and notices. Establish procedures for the disposition of City-owned real property.

**2.20** The selected consultant shall conduct these projects in accordance with state and federal laws and regulations as described in Appendix A.

### ***3. CONSULTANT SELECTION SCHEDULE***

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The City intends to utilize the following planning chart for the timetable and process of evaluating consulting proposals:

Request for Proposals released:	July 12, 2018
Proposals due and received (by 4:30 PM):	August 1, 2018
City Review of Proposals & Interviews:	August 2- 28, 2018
Consultant Selection by:	September 5, 2018
City Council Approval of Agreement:	September 2018

#### **4. PROPOSAL FORMAT GUIDELINES**

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Interested firms are to provide the City with a comprehensive proposal using the following guidelines:

##### **4.0 COVER**

The cover should clearly display the title of this RFP, "City of El Monte Housing Consultant Services Proposal".

Each submittal should have tabs numbered with the following categories:

##### **4.1 EXECUTIVE SUMMARY**

Provide a cover letter that states the title of the RFP. Include the following information:

- Primary contact for the submittal
- Street address(post office boxes are not acceptable)
- Telephone number
- Fax number
- E-mail address
- Web address, if applicable

##### **4.2 INTRODUCTION**

Provide general information about your firm including size, scope of practice, years in business, number of employees and office location(s). State the legal name, address and legal structure of your firm.

##### **4.3 PROGRAM TEAM AND MANAGEMENT**

**4.3.1 Organization:** This section should include a listing of the staff and management proposed for the Services to be provided, as well as an organization chart.

**4.3.2 Prior Experience:** Indicate the relevant experience of the firm in undertaking this work. Provide a description of at least five previous Service Agreements. For each Service Agreement, identify the client and client contact, type of funding, and cost.

**4.3.3 Key Staff:** Indicate the education, registration, licenses and certifications, background and relevant experience of the individuals principally responsible for the completion of the work. Indicate years with your firm and whether qualifying experience was with your firm. Identify the roles, responsibilities and time commitment of all key staff. Include resumes of key staff.

#### **4.4 APPROACHES TO REQUESTED SERVICES**

State your understanding, approach to the services, proposed methodology and any suggestion for the City.

#### **4.5 CITY PROVIDED SUPPORT**

State any support you will require from the City.

#### **4.6 ADMINISTRATIVE REQUIREMENTS**

4.6.1 **Signature:** The Proposal will be signed by a company officer authorized to bind the firm and will contain a statement indicating that the proposal is valid for ninety (90) days.

4.6.2 **Questions Regarding the RFP:** Please direct any question regarding this RFP in writing to Carol Averell, Housing Manager, at [caverell@elmonteca.gov](mailto:caverell@elmonteca.gov)

#### **4.7 COST PROPOSAL**

Proposer will provide a completed Appendix B: Cost Proposal. Provide the City with an annual not to exceed cost for services based the total estimated billable hours. See Section 5.2 for further information.

#### **4.8 REFERENCES**

Provide three (3) client references regarding the firm's performance, including the completion of work of a similar nature. The references shall include the firm's name, contact name, title, and phone number for each of the references.

### **5.0 GENERAL TERMS AND CONDITIONS**

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#### **5.0 AGREEMENTS BETWEEN CONSULTANT AND CITY**

The City intends to award the Agreement to the consultant that it considers will best execute the Scope of Work herein and provide the best overall program services. The City reserves the right to accept other than the lowest priced offer and to reject all proposals that are not responsive to this request.

#### **5.1 COST PROPOSAL**

Cost Proposal will be the consultant's hourly rates to the City for the first year, which will include the Primary Consultant's hourly rate as well as any associates that may work on the City's programs. Cost Proposal Form, Appendix B, is to be submitted

with this RFP. This total amount includes consideration of the additional hours that may be required to complete the Program Evaluation Report within the first 90 days after the commencement of the Agreement.

## **5.2 LATE SUBMITTALS**

It is the consultants sole responsibility to ensure proposals are received at the City Clerk's Office prior to the scheduled closing time specified in this RFP. Submittals will not be accepted after the deadline. Postmarks will not be accepted. Failure of, or disturbances in any mail service is not a legitimate reason for Statements of Proposals to be submitted after the above due date. Emails and facsimiles will not be accepted.

## **5.3 EVALUATION OF SUBMITTALS**

The City will evaluate submittals with the intent of selecting the most qualified consultant. Evaluation criteria include but are not limited to the following:

<u>Evaluation Factor</u>	<u>%Weight</u>
Meaningful experience providing Consulting Services	30
Past record with municipal and/or other government agency agreements	20
Fee Proposal	20
Level of care and support provided to internal and external customers	15
Compliance with RFP and factors determined to be relevant by City	15
Total	100

Note: The apparent most qualified consultant may be selected to be interviewed by City Representatives. The City reserves the right to interview as many or as few proposers as deemed appropriate by the City. The City also reserves the right to make its selection without conducting interviews.

After evaluation of the proposals, negotiation for the price of the agreement will commence with the top ranked consultant based on the submitted cost proposals. If an agreement cannot be reached, negotiations may be initiated with the next ranked consultant.

## **5.4 REJECTION OF PROPOSALS**

The City reserves the right to reject all proposals received in response to this RFP and to waive any informality in any proposal if it is determined to be in the best interest of the City to do so.

## **5.5 PROPOSAL VALIDITY PERIOD**

Submission of a proposal will signify the consultant's agreement that the proposal, and contents thereof, are valid for at least ninety (90) days following the submission of the proposal and will become part of the agreement that is negotiated with the successful consultant.

## **5.6 SUBSTITUTION OF PERSONNEL**

If one or more of the key personnel represented in the proposal becomes unavailable during the course of the programs, then the consultant may substitute other personnel of at least equal competence upon written approval of the City. In the event that the City and consultant cannot agree as to the substitution of key personnel, the City will be entitled to terminate the Agreement for Services with the consultant.

## **5.7 DOCUMENTS TO BE CONSTRUED TOGETHER**

The RFP and all documents incorporated by reference in an agreement entered into between the consultant and the City, and all modifications of said documents, will be construed together as one document.

## **5.8 MINIMUM INSURANCE REQUIREMENTS**

The consultant will maintain at a minimum the insurance requirements specified in the Professional Services Agreement (Appendix C: Sample Service Agreement).

## **5.9 ADDITIONAL SERVICES**

The City will have the right to make alterations, eliminations, and additions to the scope of services. Exercise of such right will in no way void the agreement. The City and the consultant will agree upon the value of such additional services or deleted work prior to proceeding with the said additional services.

## **5.10 SUBMITTALS**

Five (5) copies of the proposal must be received by the date and time specified above in this RFP. Hand deliver, express, or mail proposals only to:

El Monte City Hall City Clerk's Office  
11333 Valley Blvd, City Hall East  
El Monte, California 91731

All proposals must be clearly marked as follows:

**CITY OF EL MONTE HOUSING CONSULTANT SERVICES PROPOSAL – ATTN:  
CAROL AVERELL**

Attachments:

Appendix A: State and Federal Laws and Regulations  
Appendix B: Cost Proposal  
Appendix C: Sample Service Agreement

## **Appendix A**

### **State and Federal Laws and Regulations**

#### **LABOR STANDARDS**

##### **1. State Labor Standards Provisions**

Contractors and subcontractors shall give the following certification to the Grantee and forward this certification to the Grantee within (10) days after the execution of any contract or subcontract.

a) "I am aware of the provisions of Section 1720 et seq. of the California Labor Code which requires that the State prevailing wage rate shall be paid to employees where this rate exceeds the federal wage rate."

b) "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code; and I will comply with such provisions before commencing the performance of the Work of this contract."

c) "It is further agreed that, except as may be provided in Section 1815 of the California Labor Code, the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the subcontract shall forfeit, as a penalty, \$25 for each worker employed in the execution of the subcontract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week and is not paid overtime."

##### **2. Federal labor Standards Provisions (Davis-Bacon and Related Acts)**

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, the Grantee and all contractors and subcontractors of the Grantee engaged under contracts in excess of \$2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3' 5 and 5a governing the payment of wages and the ratio of apprentices and trainees to journeymen: provided, that if wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve the Grantee or any contractor/subcontractor of their obligation, if any, to require payment of the higher rates. The Grantee shall cause

or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of 29 CFR 5.5 and, for such contracts in excess of \$10,000, 29 CFR 5a.3.11

## **EQUAL OPPORTUNITY**

### **1. The Civil Rights. HCD. Age Discrimination and Rehabilitation Acts Assurance:**

During the performance of this Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the Age Discrimination Act of 1975, and the Rehabilitation Act of 1973, and all impending regulations.

### **2. The Training. Employment. and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance:**

a) The work to be performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for Work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

b) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

c) The Grantee will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advertising the said labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d) The Grantee will include these Section 3 clauses in every contract and subcontract for Work in connection with the project and will, at the direction of the State, take

appropriate action pursuant to the contract upon a finding that the Grantee or any contractor or subcontractor is in violation of regulations issued by the Secretary of Housing and Development, 24 CFR Part 135 and, will not let any contract unless the

Grantee or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

e) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the Agreement shall be a condition of the federal financial assistance provided to the project, binding upon the Grantee, its successors, and assigns. Failure to 12

fulfill these requirements shall subject the Grantee, its contractors and subcontractors, its successors, and assigns to those sections specified by the grant or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

**3. State Nondiscrimination Clause:**

a) During the performance of this contract, contractor and its subcontractors 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) or sex. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated there under (California Administrative Code, Title 2, Section 7258.0 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b) This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contracts.

**4. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or More:**

Grantee hereby agrees to place in every contract and subcontract for construction exceeding \$10,000 the Notice of Requirement for Affirmative Action to ensure Equal

Employment Opportunity executive Order 11246), and the Standard Equal Employment Opportunity Construction Contract Specifications. Grantee furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and sub contracts. Grantee shall refer to Chapter V of the State CDBG Grant Management Manual or shall contact the State for further guidance regarding compliance with this requirement.13

## **OTHER REQUIRED FEDERAL PROVISIONS**

### **1. Flood Disaster Protection:**

This Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of Section 102 of said Act.

Any contract or agreement for the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the national Flood Insurance Act of 1968, as amended, 42 USC 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land such flood insurance as required with respect to financial assistance or acquisition or construction purposes under Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided by this Agreement.

### **2. Lead Based Paint Hazards**

The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD lead-Based Paint Regulations, 24 CFR Part 35. Any grants or loans made by the Grantee for the rehabilitation of residential structures with assistance provided under this Agreement shall be made subject to the provisions for the elimination of lead-based paint hazards under subpart B of said

regulations, and the Grantee shall be responsible for the inspections and certifications required under Section 35.14 (f) thereof

3. Compliance with Air and Water Acts:

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

In compliance with said regulations, the Grantee shall cause or require to be inserted in all contracts and subcontracts with respect to any nonexempt transaction there under funded with assistance provided under this Agreement, the following requirements:

a) A stipulation by the contractor or subcontractor or subcontractor that any facility be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

b) Agreement by the contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857c-8), and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318), relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under.

c) A stipulation that as a condition for the award of the contract, prompt notice will be given to any notification received from the Director, office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

d) Agreement by the contractor that he will include or cause to be included the criteria and requirements in paragraphs (a) through (d) of this section in every nonexempt subcontract and requiring that the contractor will take such action as the government may direct as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113 (c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

4. Obligations of Grantee with Respect to Certain Third Party Relationships:

The Grantee shall remain fully obligated under the provisions of the Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the program with respect to which assistance is being provided under this Agreement to the Grantee. Any Grantee shall comply with all lawful requirements of the State necessary to ensure that the program with respect to which assistance is being provided under this Agreement to the Grantee is carried out in accordance with the State's Assurance and Certifications, including those with respect to the assumption of environmental responsibilities of the State under Section 104(h) of the Housing and Community Development Act of 1974.

5. Interest of Certain Federal Officials:

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

6. Interest of Members Officer or Employees of Contractors. Members of Local Governing Body. or Other Public Officials:

No member, officer or employee of the Grantee, or its designees or agents, no member of the governing body of the locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for Work to be performed in connection with the program assisted under the Agreement. The Grantee shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

7. Prohibition Against Payments of Bonus or Commission:

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining HCD approval of the application for such assistance, or HCD approval of the applications for additional assistance, or any other approval of concurrence of HCD required under this Agreement, Title I of the Housing and Community Development Act of 1974, or HCD regulations with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

**Appendix B**

**Request for Proposals**

**Cost proposal form for Housing Consultant Services**

Proposal is based on a one (1) year Agreement with an option to extend up to an additional two (2) years.

<b>Personnel</b>	<b>Hourly Rate</b>	<b>Estimated Weekly Hours</b>

Additional Services (Time and Material):

Authorized Signature: \_\_\_\_\_

Type Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Appendix C

2017  
PROFESSIONAL SERVICES AGREEMENT  
(Engagement:)  
(Parties: City of El Monte and \_\_\_\_\_)

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2017 (hereinafter, the "Effective Date") by and between the CITY OF EL MONTE, a municipal corporation (hereinafter, "CITY") and \_\_\_\_\_ (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 as appropriate.

WHEREAS, the CITY requires professional \_\_\_\_\_; and

WHEREAS, CITY has determined that CONSULTANT possess the skills, experience, and expertise necessary to perform the requested construction management and inspection services; and

WHEREAS, pursuant to his authority under El Monte Municipal Code Section 3.24.070(B), the City Manager has approved the terms of this Agreement.

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 of this Agreement, CONSULTANT agrees to provide the following tasks and services as more particularly described in CONSULTANT's \_\_\_\_\_, 2017 proposal entitled " \_\_\_\_\_," which is attached and incorporated hereto as **Exhibit "A"** (hereinafter, 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." CONSULTANT shall not commence with the performance of the Work until such time as CITY issues a written Notice to Proceed.

12 PROSECUTION OF WORK: The Parties agrees as follows:

- A. Time is of the essence of this Agreement and each and every provision contained herein. The Work shall be commenced within \_\_\_\_\_ (\_\_\_\_\_) calendar days of CITY's issuance of a Notice to Proceed, and shall be completed on a date not more than \_\_\_\_\_ calendar days from the issuance of the Notice to Proceed (the "Completion Date");
- B. CONSULTANT shall perform the Work continuously and with due diligence so as to complete the Work by the Completion Date. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other consultants, contractors or agents;
- C. CONSULTANT shall not claim or be entitled to receive any compensation or damage because of the failure of CONSULTANT, or its subconsultants, to have related services or tasks completed in a timely manner;
- D. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT's employees; AND
- E. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

13 COMPENSATION:

- A. CONSULTANT shall perform all Work in accordance with the hourly rates schedule set forth under page \_\_\_\_\_ under the heading \_\_\_\_\_ of the Scope of Services.
- B. Section 1.3(A) notwithstanding, CONSULTANT's total compensation for the performance of all Work contemplated under the Scope of Services shall not exceed the total budgeted aggregate sum of \_\_\_\_\_ within any single fiscal year (hereinafter, the "Not-to-Exceed Sum"), unless such added expenditure is first approved by the City Council. In the event CONSULTANT's charges are projected to exceed the Not-to-Exceed Sum prior to the completion of any requested Work, 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: The Not-to-Exceed Sum shall be paid to CONSULTANT in monthly increments as the Work is completed. Following the conclusion of each calendar month, CONSULTANT shall submit to CITY an itemized invoice indicating the services performed and tasks completed 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 days 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

- 21 CITY'S REPRESENTATIVE: The CITY hereby designates the City Manager, the Assistant City Manager, the Economic Development Director and the Housing Director (hereinafter, the "CITY Representatives") to act as its representative for the performance of this Agreement. The CITY Representatives 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.

- 22 CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates \_\_\_\_\_ 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.
- 23 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 Representative at all reasonable times. All work prepared by CONSULTANT shall be subject to inspection and approval by CITY Representative or her designees.
- 24 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 Representative in writing and in her 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.

25 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.

26 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.

27. REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the CITY Representative 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 reassigned to perform any of the Work.
28. 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.
29. 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 Representative is 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 it 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

51 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 6.1 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.

52 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 5.2B 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 ten (10) 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 10-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 10-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.i. that exceeds seven (7) calendar days from the end of the initial 10-day cure period; or
  - i. 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.

53 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.

54 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

61 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, designs, 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.

- 62 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 of disclosure as 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.
- 63 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.
- 64 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:**

**CITY:**

City of El Monte  
Economic Development Department  
11333 Valley Boulevard  
El Monte, CA 91731  
Attn: Economic Development Director  
Phone: (626) 580-\_\_\_\_\_

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.

- 65 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as are reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 66 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.
- 67 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.
- 68 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.
- 69 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 610 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.
- 611 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, limit, 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 6.16, 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.

[SIGNATURES ON FOLLOWING PAGE]

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**

**[CONSULTANT NAME HERE]**

By: Jesus M. Gomez  
City Manger

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

