



Community and Economic Development Department

REQUEST FOR PROPOSALS

HOMELESSNESS PROGRAMS COMMUNICATION SERVICES

March 2021

IMPORTANT DATES

RFP ISSUED	March 11, 2021
QUESTIONS/COMMENTS DEADLINE: 5:00 PM	March 22, 2021
CITY RESPONSES TO QUESTIONS/COMMENTS	March 25, 2021
PROPOSAL DUE DATE/SUBMISSION DEADLINE: 5:00 PM	April 1, 2021
AWARD DATE	April 15, 2021
APPROXIMATE START DATE	April 29, 2021

REQUEST FOR PROPOSALS

HOMELESSNESS PROGRAMS COMMUNICATION SERVICES

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1. Overview

The City of El Monte, County of Los Angeles, State of California ("City") is soliciting proposals from qualified consultant firms for implementation and managing communication services for the TriCity Homelessness Cohort. Services include, but are not limited to: developing a communications plan; developing and overseeing social media and website management solutions; and content creation and design.

The City has partnered with the cities of Baldwin Park and South El Monte as the "TriCity Homelessness Cohort," working collectively to combat homelessness in the region. The Cohort is working together to develop and implement a plan that will: 1) increase the supply of supportive and interim housing for people experiencing homelessness at a regional level; and 2) enhance availability and access to homeless services to prevent and combat homeless in the region. The City intends to obtain a professional consulting firm's services to assist the City in developing and managing the communications services of the City's Homeless Plan and the TriCity Homelessness Cohort Plan.

All projects that will help combat and prevent homelessness and are funded through the San Gabriel Valley Council of Governments (SGVCOG) must be completed by May 31, 2022. The City has received \$20,000 from the SGVCOG Homeless Plans Implementation Funds for the communications services program.

All services performed by the consultant or any sub-consultant shall be provided in a manner consistent with the level of care and skill exercised by members of the consultant's or the respective sub-consultant's profession. Such services shall be performed under the direct supervision of qualified and experienced personnel.

2. Scope of Services

The selected proposer shall provide one qualified consultant serving in the Manager's capacity to oversee the required tasks and perform project management. Responsibilities include but not limited to the following:

- Website and social media creation and management
- Administer social media and website
- Create a content calendar
- Maintain communication with clients as needed

Task 1. Communications Planning

Communication Planning

- Review existing TCHC documents to inform communication goals.
- Facilitate 24 meetings/conversations to solicit additional data.
- Communications Logic Model: Distill data collected to inform a TCHC Communications Logic Model that illustrates goals, outcomes, strategies, and timeline.

- Develop a 12-month communications implementation plan that utilizes specific strategies to achieve identified goals.
- Propose a scope of work and budget to implement the TCHC communication plan for 12 months.

Task 2. Social Media Set-up

Research Social Media Handle

- Conduct an audit of available social media handles and present recommendations.
- Secure chosen username and/or handle across all platforms.

Secure Assets Storage

- Create and organize a cloud based drive to house and organize all social media content and assets (e.g. logos, photos, etc.) onto the existing TCHC G-drive. The content will be uploaded and maintained by the TCHC on an ongoing basis.

Setup Profiles

- Set-up new TCHC social media pages on Facebook, Instagram, and Twitter utilizing newly created branding assets.

Setup Social Media Accounts

- Using secured username, create and manage Facebook, Instagram, and Twitter accounts of social media outlets.
- Secure authorization for paid social media advertising.
- Integrate social media accounts within the newly created TCHC website.

Create Content Calendar

- Develop a tailored content calendar that will provide a framework for posting weekly, monthly, and yearly frequency of postings. The content calendar should discuss the frequency of different types of posts.
- Provide weekly, monthly, and yearly postings on Facebook, Instagram, and Twitter, consistent with the framework identified in the content calendar.

Deliverables:

- List of recommended social media handle(s) for Facebook, Instagram, and Twitter accounts
- TCHC account pages/profiles on [which platforms]
- TCHC accounts and profiles for Facebook, Instagram and Twitter
- Content Calendar

Task 3. Website and Contact Management Solutions

Preliminary Research and Discovery

- Review and research TCHC written website specifications, goals, needs, challenges, and preferred functionality. The website must include a Content Management System (CMS) and Contact Relationship Management (CRM) system that can be managed through the site and through which city staff has administrative access.
- Develop proposed designs or design renderings for the website for consideration at the design kick-off meeting.
- Finalize TCHC website specifications.

Strategic Planning

- Prepare materials for and host online design kick-off meeting with TCHC staff/ project committee to review and evaluate data gathered from the Discovery Phase and proposed designs or design renderings.

Website Design and Layout Wireframing

- Draft the website concept design for review.
- Provide the TCHC team with online access to the website design and prototype for review and feedback before moving forward with custom frontend and backend programming. The website must be able to be managed by the City following the end of the contract.

Frontend & Backend Programming

- Integrate the approved design and wireframing within the new system.

Quality Assurance (Beta) and Launch

- Host a development (test) version of what will become the new website for comments from TCHC staff and update based on comments.
- Provide TCHC staff with administrative access to the Content Management System (CMS) and Contact Relationship Management (CRM).
- Create user accounts for TCHC staff and others as directed by TCHC staff with custom user access and permissions.
- Launch website.

Training on CMS & CRM Portal

- Provide two-hour end-user trainings on the CMS and CRM portals for up to a total of 10 trainings. The training should include the backend CRM, running queries for specific contacts, creating follow-ups and mass email using CRM, and drafting and publishing newsletters. The Cities Graphics team will assist with the maintenance of the website.
- Provide training for website administrators on website maintenance (e.g. CMS tools, routine maintenance, website content updates, and the procedures to create and post new content onto existing pages).

Hosting/Maintenance/Security

- Identify a web hosting platform that will provide space on a dedicated and secure server for the TCHC website. The web platform should also use the latest open source technologies that require frequent updates and maintenance to maintain standards and security which must happen automatically. The web hosting platform should also have the necessary approach to identifying vulnerabilities.
- A vulnerability scanner that analyzes and searches the dedicated server to search for known vulnerabilities (e.g., open ports, insecure software configurations, and susceptibility to malware infections). The web hosting platform should also have continuous monitoring to address potential issues before they arise.

Deliverables:

- Draft and final report on website specifications, goals, needs, challenges, and preferred functionality
- Meeting materials, meeting agenda & meeting notes for website design kick-off meeting
- Draft website concept design
- Testable prototype website
- Website wireframe
- Beta website, including CRM/CMS portals accessible to TCHC staff
- Training materials for trainings on usage of the CRM/CMS portals
- Trainings on CRM/CMS portals
- Live website

3. Proposal Format

All proposals shall include the following information and comply with the associated page limit restrictions. The entire proposal shall be limited to 10 pages or less. Note that one (1) page includes the front side of an 8.5" x 11" sheet of paper, and the front and back cover does not constitute a page. However, the Table of Contents, Appendices, Exhibits, Resumes, Title pages, and blank pages will all

count toward the 10 page limit. Points will be deducted from your proposal if the specified page limits are exceeded.

- 1) **Cover Letter.** Maximum one (1) page cover letter signed by an officer of the firm, binding the proposer to all of the commitments made in the submittal. The letter shall include name, address, and phone number of the person authorized to represent the proposer and shall include the following Statement:
 - a. I HAVE READ UNDERSTOOD, AND AGREED TO ALL STATEMENTS IN THIS REQUEST FOR PROPOSAL AND ACKNOWLEDGE RECEIPT OF ALL ADDENDUMS/AMENDMENTS AS WELL AS TO THE TERMS, CONDITIONS, AND ATTACHMENTS REFERENCED.
- 2) **Proposer's Background.** Maximum of two (2) page background on the proposer and its area(s) of professional expertise relevant to this RFP. An additional one (1) page may be included to highlight each proposed sub-consultant's background to be used by the proposer and the specific task(s) or functions the sub-consultant will perform.
- 3) **Qualifications and Experience of Proposer's Personnel.** Summary of the relevant experience, work history, training, education, and special certifications of the proposer's personnel who will be performing the professional services contemplated under this RFP on the proposer's behalf. Briefly discuss the Consultant team's qualifications and experience with projects of a similar magnitude and nature. Proposers shall provide identical information for all sub-consultants' performing any of the tasks or services contemplated under this RFP on the proposer's behalf. The summary shall also include the office location of key personnel proposed to work on this contract. Relevant experience can include your company's overall experience, experience with similar projects, and the experience of individuals on your proposed team. Show how your experience relates to the demands of services to be provided.
- 4) **Project Approach.** Summary of the proposed approach to providing management services for this Project. The proposer shall explain how the proposer will complete all of the tasks called for under the RFP. Include a brief overview of the understanding of the Project. The content will reflect the particular viewpoint of the consultant.
- 5) **Proposed Personnel.** Resumes for the Manager and each of the other *key personnel* shall not exceed one (1) page, including sub-consultants, which will be performing the majority of the work on this project/contract. Resumes for corporate leadership should not be included unless said individuals will be performing substantial work on this Project. The designated Manager shall be the primary contact with the City during the contract period and shall function in that capacity while employed by the firm. In addition, the City must approve changes of personnel.
- 6) **References.** Each proposal must include at least three (3) public agency references going back to not more than five (5) years from the issuance of this RFP in which the proposer was engaged to perform tasks similar to those requested under this RFP. References should emphasize past projects in which the personnel to be used by the proposer for this Project were deployed. The references should include the name, title, and contact information of the public agency officer or employee responsible for overseeing the proposer's work.
- 7) **Fee Schedule/Cost Proposal.** A detailed cost estimate for performing specific tasks identified in the RFP and a schedule of rates for each proposed personnel that may be tasked to complete

the Project. The fee schedule/cost proposal shall be submitted separately and will not count toward the 10 page proposal page limit. The Task-specific cost estimate shall include an estimate of the number of hours per staff member by the proposed task and clearly identify an hourly rate schedule for the proposed staff. The proposal shall indicate the compensation structure for performing specific services identified in Tasks 1 through 3 (e.g., flat lump sum or hourly rate structure) for each Task. The proposal shall also include costs and expenses related to photocopying, postage, travel, etc. (i.e., Reimbursement expenses).

To the extent that a proposal contemplates the use of sub-consultants to perform any one or more of the above-described tasks on the proposer's behalf, the proposal shall include a list of sub-consultants identifying all sub-consultants and state the fee for each sub-consultant in the Fee Schedule under the appropriate Task under which the service will be provided. In so far as the proposer's proposal contemplates an increase in compensation rates or charges prior to the completion of Tasks 1 through 3, and during the term of the portion of the PSA or any extension term, the proposal shall clearly indicate when such increases will take effect and by how much.

- a. The Fee Schedule/Cost Proposal shall be submitted separately and titled "**FIRM NAME - COST PROPOSAL FOR THE TRICITY HOMELESSNESS COHORT COMMUNICATIONS SERVICES**"

- 8) **False Claims, Debarment and Civil Litigation History.** Each proposer shall be required to complete and submit along with their proposal the certification forms relating to false claims, debarment and civil litigation history which are attached here to as Attachments "D", "E" and "F".
- 9) **Conflict of Interest Disclosure Statement.** Each proposer shall complete the "Conflict of Interest Disclosure Statement" attached hereto as Attachment "G". City reserves the right to disqualify any proposer who fails to submit and/or sign the Conflict of Interest Disclosure Statement. Proposers are directed to be reasonably thorough and detailed in listing and describing the nature of any relationship the proposer has with a Conflicted Consultant or a Potentially Adverse Client, as those terms are defined under the Conflict of Interest Disclosure Statement. Similarly, proposers are directed to be reasonably thorough and detailed in describing what measures the proposer has taken to avoid, neutralize or mitigate a potential conflict.

The City reserves the right to delete specific task(s).

4. Evaluation Criteria

Each proposal shall be evaluated based on the proposer's expertise, experience, and training, and the expertise of its key personnel along with prior contracting history, approach to the Project, cost, proposed schedule, and compliance with the RFP requirements, including the terms of the attached PSA. Each such factor shall be weighted by the City as follows:

	Evaluation Criteria	Points Possible
A	Thoroughness and completeness of the proposal	10
B	Experience, references, and overall qualifications	40

C	Project approach – responsiveness in addressing the <i>Scope of Work</i>	30
D	Cost of services	20
Total Points Possible		100

Consultants should thoroughly address the above selection criteria to receive the maximum possible points.

5. Selection Process

A selection committee comprised of City staff will review the proposals. Proposals will be ranked on qualifications, and the selection committee may choose to interview several of the top-ranked proposers. However, at its sole discretion, the selection committee may dispense with interviews and select a proposer to provide the required services.

6. Proposal Requirements

The consultant's proposal must be comprehensive, concise, and to the point. A proposal is a voluntary response on the part of a Consultant, and this RFP does not commit the City to pay any costs incurred in its preparation. The City reserves the right to accept or reject optional elements of this proposal, or the proposal in part, or its entirety.

This RFP is a solicitation for proposals only, and is neither intended nor construed as an offer to enter into an agreement or engage in any formal rule competitive bidding or negotiation pursuant to any statute, ordinance, or regulation.

All data, documents, and other products used or developed during the project will become the property of the City.

Proposals must be submitted using the following methods:

Four (4) printed copies and one (1) electronic copy of the proposal must be received prior to the Submission Deadline. Proposals shall be submitted to the following address:

Subject: RFQ – HOMELESSNESS PROGRAMS CONSULTING SERVICES
ATTN: Betty Donavanik, Director of Community and Economic Development
City of El Monte
Community and Economic Development – Housing Division
City Hall West
11333 Valley Boulevard
El Monte, CA 91731-3293

Proposals may be submitted via personal delivery, overnight courier (e.g., FedEx or UPS) or U.S. Mail. Proposals **must** be received by or before 5:00 p.m. on **Thursday, April 1, 2021** (the Submission Deadline). Proposals that are deposited with an overnight courier or post marked prior to the Submission Deadline but received after the Submission Deadline will **not** be considered by the City.

Accordingly, although delivery via overnight courier and U.S. Mail is permitted, it is strongly suggested that proposers consider a package tracking method to better ensure that proposals are received in a timely manner, on or before the Submission Deadline.

Submitted proposals shall be maintained as confidential records of the City up to the Submission Deadline. Proposers may withdraw, modify and/or resubmit a proposal prior to the Submission Deadline but not after. Proposers shall be bound to the terms of their proposal following the Submission Deadline; however, in its sole and absolute discretion, the City reserves the right to accept post-deadline modifications if it is determined that such modifications are in the best interests of the City. The City also reserves the right to waive minor non-substantive informalities or allow the proposer to correct them.

- 1) Proposers shall be solely and exclusively responsible for all costs incurred in connection with the preparation and submission of the proposals; demonstrations; interviews; preparation of responses to questions and requests for additional information; for contract discussions; or anything in any way related to this RFP. The City is not liable for any costs incurred by a proposer in response to this RFP. Whether or not a proposer is awarded a contract pursuant to this RFP, no proposer shall be entitled to reimbursement for any costs or expenses associated with the proposer's participation in this RFP process.
- 2) Late proposals will not be considered.
- 3) The City reserves the right to reject any and all proposals received as a result of this RFP. The City's potential award of a contract will not be based on any single factor, nor will it be based solely or exclusively on the lowest cost proposal. If a contract is awarded, it will be awarded to the proposer who, in the judgment of the City has presented an optimal balance of relevant experience, technical expertise, price, quality of service, work history, and other factors which the City may consider relevant and important in determining which proposal is best for the City.
- 4) The City reserves the right to cancel or modify this RFP. There is no guarantee that the City will award a contract.
- 5) The City reserves the right to investigate any proposer's qualifications under consideration, including proposed sub-contractors and parties otherwise related to the proposer, and require confirmation of information furnished by a proposer or require additional evidence of experience and qualifications to provide the services or otherwise discharge the obligations required by this RFP.
- 6) Following the Submission Deadline, the City, pursuant to the California Public Records Act (Govt. Code Section 6250 et seq.) reserves the right to make copies of all submitted proposals available for inspection and copying by any interested member of the public, except to the limited extent the City determines that any information contained in a proposal is legally privileged under the California Public Records Act. By submitting a proposal, proposers acknowledge and agree that the City may disclose their proposal and any information contained therein to interested members of the public, including other proposers.
- 7) The City reserves the right to approve or disapprove of particular subcontractors, joint venture partners, or other proposed team members.

- 8) The City reserves the right to evaluate responses in terms of the City's best interests, applying criteria provided in this RFP and any other criteria the City, in its sole discretion, deems pertinent.
- 9) By submitting a proposal, each proposer accepts and agrees to execute a written Professional Services Agreement (PSA) in the form attached hereto as Exhibit 1. By submitting a proposal, each proposer agrees to execute a PSA with the City in the form attached hereto as Exhibit 1, including all stated terms and conditions relating to indemnification, required insurance, and standard of care requirements. If a proposer is unable to agree to any of the terms or conditions of the PSA in the form attached hereto, the proposer must identify the provision(s) in question and provide an explanation as to why the proposer cannot comply with such provisions. If a proposer's objection to a certain provision of the PSA is merely a question of added cost, the proposer shall indicate in the proposal the difference in cost associated with complying with the provision(s) versus the cost associated with the City's waiver or modification of the provision(s). The City shall be under no obligation to modify the PSA after a contract has been awarded, and proposers shall be deemed to have incorporated all costs associated with compliance with the PSA into their proposal. A proposer's inability to comply with one or more provisions of the PSA shall be a factor that will be considered by the City in determining which proposal will serve the best interest of the City when all other factors are taken into account.
- 10) All proposals must remain valid for a minimum period of ninety (90) calendar days after the Submission Deadline. Responses may not be modified or withdrawn by the proposer during this period of time except in accordance with this RFP and with written permission granted by the City.
- 11) All questions or requests for clarification shall be submitted via email to bdonavanik@elmonteca.gov by the REQUEST FOR INFORMATION DEADLINE. All questions received by this deadline will be addressed and posted on <https://www.ci.el-monte.ca.us/547/News-Notices> by the RELEASE OF INFORMATION REQUESTED DATE.
- 12) If it becomes necessary to revise any part of this RFP, an addendum will be posted on <https://www.ci.el-monte.ca.us/547/News-Notices>. It shall be the proposer's sole responsibility to check for any addendums to the RFP that may be issued by the City.
- 13) It is presumed that each proposer has read and is thoroughly familiar with the scope of services to be performed under this RFP.
- 14) The proposer agrees that, if a contract is awarded to a proposer, the proposer shall make no claim against the City or any of the funding agencies because of any estimate or statement made by any employees, agents, or consultants of the City which may prove to be erroneous in any respect.
- 15) Proposers may withdraw their proposal prior to the Submission Deadline.

ATTACHMENT "A"

Professional Services Agreement Sample



2021
PROFESSIONAL SERVICES AGREEMENT
(Engagement: _____)
(Parties: _____)

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this _____ day of _____ 2021 (hereinafter, the "Effective Date") by and between the CITY OF EL MONTE, a municipal corporation (hereinafter, "CITY") and CONSULTANT NAME, a California corporation (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.

RECITALS

WHEREAS, CITY requires conceptual and feasibility design services;

WHEREAS, CITY staff has determined that CONSULTANT possesses the experience, skills and training necessary to competently provide such services to CITY;

WHEREAS, this Agreement was approved by the City Manager pursuant to the authority under Section 3.24.080 of the El Monte Municipal Code;

WHEREAS, CONSULTANT submitted a proposal, dated _____, which attached hereto as **Exhibit "A,"** in response to the City's _____ request for qualifications for _____ services; 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 TERM: This Agreement shall have a term commencing from _____ to _____ (hereinafter, the "Term"). Nothing in this Section shall operate to prohibit or otherwise restrict the CITY's ability to terminate this Agreement at any time for convenience or for cause as provided under Article V (Termination), below.

1.2 SCOPE OF SERVICES:

A. Subject to the terms and conditions of this Agreement, CONSULTANT agrees to provide the services and tasks described **Exhibit "A"** hereto.

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."

1.3 PROSECUTION OF WORK:

- A. CONSULTANT shall perform the Work contemplated under this Agreement on an as-needed, as requested basis. Nothing in this Agreement shall be construed to grant CONSULTANT the exclusive right to perform any of the types of services or tasks contemplated under this Agreement nor shall anything in this Agreement be construed to entitle CONSULTANT to the receipt of any sums under this Agreement, except to the extent CITY requests the performance of any Work in the manner described below and such Work is in fact performed and completed by CONSULTANT and accepted by CITY.
- B. CONSULTANT shall perform the Work continuously and with due diligence so as to complete the Work by the completion date indicated in each Work Order. 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.

1.4 COMPENSATION: CONSULTANT's total compensation for the performance of all Work contemplated under this Agreement, will not exceed the budgeted sum of **TWENTY THOUSAND DOLLARS (\$20,000)** (hereinafter, the "Not-to-Exceed Sum") during the Term of this Agreement, 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 expiration of this Agreement, 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.

1.5 PAYMENT OF COMPENSATION: The Not-to-Exceed Sum will be paid to

CONSULTANT in monthly increments as the Work is completed. Following the conclusion of each calendar month, CONSULTANT will 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 should 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 will notify CONSULTANT in writing of any disputed amounts included in the invoice. Within forty-five (45) calendar days of receipt of each invoice, CITY will pay all undisputed amounts included on the invoice. CITY will not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.

- 1.6 ACCOUNTING RECORDS: CONSULTANT will 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 will have the right to access and examine such records, without charge, during normal business hours. CITY will further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.7 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 will 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 will 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 REPRESENTATIVE: The CITY hereby designates the City Manager and designee (hereinafter, the "CITY Representative") to act as its representative for the performance of this Agreement. The CITY Representative or their designee will act on behalf of the CITY for all purposes under this Agreement. CONSULTANT will not accept directions or orders from any person other than the CITY Representative or their designee.
- 2.2 CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates _____, to act as its representative for the performance of this Agreement (hereinafter,

“CONSULTANT Representative”). CONSULTANT Representative will have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee will supervise and direct the performance of the Work, using his best skill and attention, and will 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 will 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 will be available to CITY staff and the CITY Representative at all reasonable times. All work prepared by CONSULTANT will be subject to inspection and approval by CITY Representative or his or her designees.

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

- A. CONSULTANT will perform all Work skillfully, competently and to the highest standards of CONSULTANT’s profession;
- B. CONSULTANT shall at all times employ such force, plant, materials, and tools as will be sufficient in the opinion of the CITY to perform the Services within the time limits established, and as provided herein. It is understood and agreed that said tools, equipment, apparatus, facilities, labor, and material shall be furnished and said Services performed and completed as required by the Agreement, and subject to the approval of the CITY’s authorized representative.
- C. CONSULTANT will perform all Work in a manner reasonably satisfactory to the CITY;
- D. CONSULTANT will 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.) CONSULTANT shall be liable for all violations of such laws and regulations in connection with Services. If CONSULTANT performs any work knowing it to be contrary to such laws, rules and regulations, CONSULTANT shall be solely responsible for all costs arising therefrom;
- E. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- F. 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

- G. 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 will be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONSULTANT will 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 will be commenced immediately upon their discovery by either Party and will 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 will 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 will 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 will be ineffective, null and void and will constitute a material breach of this Agreement.
- 2.6 SUBSTITUTION OF KEY PERSONNEL: CONSULTANT has represented to CITY that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, CONSULTANT may substitute other personnel of at least equal competence upon written approval of CITY. In the event that CITY and CONSULTANT cannot agree as to the substitution of key personnel, CITY shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fails or refuses to perform the Services in a manner acceptable to the CITY, or who are determined by the CITY to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the

CONSULTANT at the request of the CITY.

- 2.7 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work will 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 will at all times be under CONSULTANT's exclusive direction and control. CONSULTANT will pay all wages, salaries and other amounts due such personnel and will assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT will 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.
- 2.8 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 will be promptly removed by CONSULTANT and will not be reassigned to perform any of the Work.
- 2.9 COMPLIANCE WITH LAWS: CONSULTANT will 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 will include, without limitation, compliance with all applicable Cal/OSHA requirements and applicable regulations of the Federal Department of Housing and Urbanization.
- 2.10 NON-DISCRIMINATION: CONSULTANT represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.
- 2.11 INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and will at all times remain, wholly independent

contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT will 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 will 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 will procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONSULTANT will 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 will 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 will 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 will 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 will 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.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance will 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 will 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 will 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 will 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 will be in excess of CONSULTANT's insurance and will not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement will 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, its officials, officers, employees, agents and volunteers.
- 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 will 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 will be signed by a person authorized by that insurer to bind coverage on its behalf, and will be on forms provided by the CITY if requested.** All certificates of insurance and endorsements will 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 will also provide CITY with certified copies of all required insurance policies and endorsements.
- 3.7 FAILURE TO MAINTAIN COVERAGE: In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONTRACTOR or CITY will withhold amounts sufficient to pay premium from

Consultant payments. In the alternative, CITY may cancel this Agreement effective upon notice.

- 3.8 SPECIAL RISKS OR CIRCUMSTANCES. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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. Notwithstanding the foregoing, to the extent CONSULTANT's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the CITY, its officials, officers, employees, agents or volunteers.
- 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 to CONSULTANT under this Agreement, any amount due to CITY from CONSULTANT as a result of CONSULTANT's failure to either pay CITY promptly for any costs associated with CONSULTANT's obligations to indemnify the CITY Indemnitees under this Article, or 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 herein 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 immediately terminate this Agreement at any time for convenience and without cause by giving prior written notice of CITY's intent to terminate this Agreement which notice shall specify the effective date of such termination. Upon such termination for convenience, CONSULTANT will 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 will 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, will 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") will occur. For all Events of Default, the Party alleging an Event of Default will give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which will 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 will be cured, which will 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 will 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 will 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 will 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
 - 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 will 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 will include, but will 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 Work; (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 will 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 1.5, above, will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will not operate to terminate any Article, Section or provision contained herein which provides that it will survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data will 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 will require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY will 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 will not be disclosed by CONSULTANT without prior written consent by CITY. CITY will grant such consent of disclosure as legally required. Upon request, all CITY data will be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT will 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 will 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:
Consultant Firm
Consultant Firm Address
Attn: Consultant Representative

CITY:
City of El Monte
City Hall West
11333 Valley Blvd.
El Monte, CA 91731
Attn: Community and Economic
Development
Phone: (626) 258-8626

Such notices will 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 will fully cooperate with one another, and will take any additional acts or sign any additional documents as are reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.6 SUBCONTRACTING: CONSULTANT will 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, will 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 will 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, will 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 will be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, will 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, will 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, legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation will 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 will 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 will not be construed in favor of, or against, either Party but will 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 will continue in full force and effect.
- 6.16 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement will 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 will 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 will control.
- 6.19 ENTIRE AGREEMENT: This Agreement, including all attached exhibits, constitutes 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, which may have been entered into between CITY and CONSULTANT prior to the execution of this Agreement. Any statements, representations, or other agreements, whether oral or written, made by either Party that is not embodied herein will not be valid or binding on the Parties. No amendment, modification or supplement to this Agreement will be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.16, above.
- 6.20 COUNTERPARTS: This Agreement will be executed in three (3) original counterparts each of which will be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterpart will be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart will be delivered to CONSULTANT and the remaining two original counterparts will be retained by CITY.

(SIGNATURES ON NEXT 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 FIRM:

By: _____
Alma K. Martinez, City Manager

By: _____

Name: _____

Date: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

By: _____
Joaquin Vazquez, Deputy City Attorney

Date: _____

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT "A"

SCOPE OF WORK

EXHIBIT "B"

PROPOSAL

ATTACHMENT "B"

False Claims Act Certification

SECTION 00470

FALSE CLAIMS

Bidders/Proposers shall provide either the certification requested below or the information requested on the next page. **Failure to certify or provide the requested information may result in a determination that the Bidder/Proposer is non-responsive. Failure to fully and accurately provide the requested certification or information may result in a determination that the Bidder/Proposer is not responsible.**

“False Claims Act”, as used herein, is defined as either or both the Federal False Claims Act, 31 U.S.C. Sections 3729 et seq., and the California False Claims Act, Government Code Sections 12650 et seq.

FALSE CLAIMS ACT CERTIFICATION

If the Bidder/Proposer has no False Claims Act violations as described above, complete the following:

I, _____, hereby certify that neither
(print name of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

(Bidder/Proposer name as shown on Bid/Proposal)

nor _____
(name of responsible managing person licensed by Contractors' State License Board)

has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act as defined above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day _____ at _____
(month and year) (city and state)

by _____
(signature of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

FALSE CLAIMS ACT VIOLATIONS

With regard to any determinations by a tribunal or court of competent jurisdiction that the False Claims Act, as defined above, has been violated by (1) the Bidder/Proposer submitting this Bid/Proposal, including any person who is an officer of, or in a management position with, or has an ownership interest in the contracting entity which is submitting this Bid/Proposal, or (2) the qualifying person licensed by the State Contractors' License Board to perform the work described in the Bid/Proposal, including any such person when they were an officer, manager, owner, or responsible managing employee of a construction contractor other than the Bidder/Proposer submitting this Bid/Proposal, Bidder/Proposer shall provide on the following page labeled “False Claim Act Violations Information:” (1) the date of the determination of the violation, (2) the identity of tribunal or court and the case name or number, if any, (3) the identity of government contract or project involved, (4) the identity of government agency involved, 5) the amount of fine imposed, and (6) any exculpatory information of which the City should be aware.

False Claims

FALSE CLAIMS ACT VIOLATIONS INFORMATION

(1) Date of determination of the violation:

(2) Identity of tribunal or court and the case name or number, if any: _____

(3) Government contract or project involved: _____

(4) Government agency involved: _____

(5) Amount of fine imposed: _____

(6) Exculpatory information: _____

Declaration: I declare under penalty of perjury that the above information is true and correct.

Executed this _____ day of _____ at _____
(month and year) (city and state)

by _____
(signature of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

ATTACHMENT "C"

History of Debarment Certification

SECTION 00473

DEBARMENTS

Bidder/Proposer shall provide either the certification requested below or the information requested on the next page. **Failure to provide such certification or information may result in a determination that the Bidder/Proposer is nonresponsive. Failure to fully and accurately provide the requested certification or information may result in a determination that the Bidder/Proposer is not responsible.**

For the ten (10) years preceding the date this Bid/Proposal is due, identify on the following page any debarment by any Federal, State, or local public agency arising out of the performance of a construction contract (1) by the Bidder/Proposer submitting this Bid/Proposal, including any person who is an officer of, or in a management position with, or has an ownership interest in the contracting entity which is submitting this Bid/Proposal, or (2) by the qualifying person licensed by the Contractors' State License Board to perform the work described in the Bid/Proposal, including any debarment of any such person when they were an officer, manager, owner, or responsible managing employee of a construction contractor other than the Bidder/Proposer submitting this Bid/Proposal. Provide on the following page labeled "Debarment Information:" (1) the date of debarment and the duration of the debarment, (2) the project name or contract from which the debarment arose, (3) the identify of the debarring agency, (4) stated reason for debarment, and (5) any exculpatory information of which the City of El Monte should be aware.

HISTORY OF DEBARMENT CERTIFICATION

If the Bidder/Proposer has no debarments to report as described above, complete the following:

I, _____, hereby certify that neither
(print name of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

(Bidder/Proposer name as shown on Bid/Proposal)

nor _____
(name of responsible managing person licensed by Contractors' State License Board)

has been debarred as described above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____ at _____
(month and year) (city and state)

by _____
(signature of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

DEBARMENT INFORMATION

(1) Date and duration of debarment: _____

(2) Project name or contract involved: _____

(3) Debarring agency: _____

(4) Stated reason for debarment: _____

(5) Exculpatory information: _____

Declaration: I declare under penalty of perjury that the above information is true and correct.

Executed this _____ day of _____ at _____
(month and year) (city and state)

by _____
(signature of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

ATTACHMENT "D"

Civil Litigation History

SECTION 00471

CIVIL LITIGATION HISTORY

Bidder/Proposer shall provide either the certification requested below or information requested on the next page. **Failure to provide such certification or information may result in a determination that the Bidder/Proposer is nonresponsive. Failure to fully and accurately provide the requested certification or information may result in a determination that the Bidder/Proposer is not responsible.**

For the two (2) years preceding the date of submittal of this Bid/Proposal, identify any civil litigation arising out of the performance of a construction contract within the State of California in which the (1) Bidder/Proposer submitting this Bid/Proposal, including any person who is an officer of, or in a management position with, or has an ownership interest in the contracting entity which is submitting this Bid/Proposal, or (2) the qualifying person licensed by the State Contractors' License Board to perform the work described in this Bid/Proposal, including any such person when they were an officer, manager, owner, or responsible managing employee of a construction contractor other than the Bidder/Proposer submitting this Bid/Proposal, was a named plaintiff or defendant in a lawsuit brought by or against the Owner. Do not include litigation which is limited solely to enforcement of mechanics' liens or stop notices. Provide on the following page labeled "Civil Litigation History Information:" (1) the name and court case identification number of each case, (2) the jurisdiction in which it was filed, and (3) the outcome of the litigation, e.g., whether the case is pending, a judgment was entered, a settlement was reached, or the case was dismissed.

CIVIL LITIGATION CERTIFICATION

If the Bidder/Proposer has no civil litigation history to report as described above, complete the following:

I, _____, hereby certify that neither
(print name of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

(Bidder/Proposer name as shown on Bid/Proposal)

nor _____
(name of responsible managing person licensed by the Contractors' State License Board)

has been involved in civil litigation as described above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____ at _____
(month and year) (city and state)

by _____
(signature of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

Civil Litigation History

CIVIL LITIGATION HISTORY INFORMATION

(1) Name of Case: _____

Court case identification number: _____

(2) Jurisdiction in which case was filed: _____

(3) Outcome of the case: _____

(1) Name of Case: _____

Court case identification number: _____

(2) Jurisdiction in which case was filed: _____

(3) Outcome of the case: _____

Declaration: I declare under penalty of perjury that the above information is true and correct.

Executed this _____ day of _____ at _____
(month and year) (city and state)

by _____
(signature of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

ATTACHMENT "E"

Conflict of Interest Disclosure Statement

CONFLICT OF INTEREST DISCLOSURE STATEMENT

(Subject Project: RFQ to Provide On-call Architectural and Landscape Review Services)

Proposer's Name: _____ ("Proposer")

This Conflict of Interest Disclosure Statement relates to that certain City of El Monte's Request for Qualifications to Provide On-call Architectural and Landscape Review Services (hereinafter, the "RFQ").

Proposer is advised that certain consulting firms will not be allowed to submit qualifications in response to the RFQ or participate on any proposer's team for the RFQ because of the consultant's participation in the preparation of the RFQ and/or their participation in the review, evaluation and selection of professional consulting firms who will be submitting responses to the RFQ. The conflicted firm(s) is/are:

(hereinafter, the "Conflicted Consultant(s)").

Proposers must also disclose any contractual arrangements or other representation the Proposer currently has or will have during the performance period of the agreement contemplated under the RFQ.

Proposers must also identify all municipalities or other public agencies, or development projects in the City of El Monte that the proposer is under contract with or will be under contract with during the performance period of this RFQ to provide consulting services similar to those contemplated under this RFQ. For purposes of this disclosure statement any of the entities referenced under this paragraph may be referred by the term "Potentially Adverse Client".

1. Required Disclosure of Conflicts

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the proposer's team (including the proposer, Principal/Major Participants, proposed Subconsultants and proposed Subcontractors, and their respective chief executives, directors, and other key personnel for the project) which may result, or could be viewed as, a conflict of interest in connection with this RFQ, either with a Conflicted Consultant or a Potentially Adverse Client.

Proposer should disclose (a) any current contractual relationships with a Conflicted Consultant or Potentially Adverse Client, (b) any past, present, or planned contractual or employment relationships with any officer or employee of a Conflicted Consultant or Potentially Adverse

Client and (c) any other circumstances that might be considered to create a financial interest in the contract by any member, officer or employee of a Conflicted Consultant or Potentially Adverse Client if Proposer is awarded a contract under the RFQ.

Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, a Conflicted Consultant. Proposer should also disclose contractual relationships (i.e. joint ventures) with any Conflicted Consultant as well as Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, a Conflicted Consultant. Proposer should also disclose contractual relationships (i.e. joint ventures) with any Conflicted Consultant as well as relationships wherein a Conflicted Consultant is a contractor or consultant (or Subcontractor or Subconsultant) to the proposer or a member of the proposer's team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps the Proposer has taken or will take to avoid, neutralize, or mitigate any conflict of interest described herein.

3. Certification

The undersigned hereby certifies and declares under penalty of perjury that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature: _____

Name: _____

Title: _____

Company
Name: _____

Date: _____, 20____

City will evaluate each proposer's relationship with a Conflicted Consultant or a Potentially Adverse Client identified, above, to determine whether the conflict is sufficiently direct and/or material as to merit disqualification of the proposer from consideration under this RFQ. City will evaluate whether measures taken by a proposer to avoid, neutralize or mitigate an actual or potential conflict are reasonably adequate to avoid an actual or potential conflict. Potentially conflicted proposers will provide City with any such additional information as the City may request to better evaluate the existence of a direct and/or material conflict and the failure to provide such additional information to the reasonable satisfaction of City shall be grounds for disqualification. The City shall issue its determination in writing. Parties who may wish to protest the City's determination must file a written protest within the time period specified in the RFQ for protests.