



DEPARTMENT OF PUBLIC WORKS, TRANSPORTATION SERVICES DIVISION  
REQUEST FOR QUALIFICATIONS (RFQ) TO PROVIDE PROFESSIONAL  
SERVICES:

DRAFTING A REQUEST FOR PROPOSAL (RFP), OVERSEEING THE RFP BIDDING  
PROCESS, AND THE DESIGN AND CONSTRUCTION OF THE CITY'S RENEWABLE  
NATURAL GAS STATION

AUGUST 9, 2022

THE TENTATIVE SCHEDULE AND DESCRIPTION OF EVENTS FOR THIS  
PROCESS IS [ALL TIMES ARE PACIFIC TIME]:

RELEASE OF REQUEST FOR QUALIFICATIONS	AUGUST 9, 2022
DEADLINE FOR SUBMITTING WRITTEN QUESTIONS	1:00 PM AUGUST 16, 2022
RESPONSE / ISSUANCE OF ADDENDUM	5:00 PM AUGUST 22, 2022
RFQ DUE DATE / SUBMISSION DEADLINE	5:00 PM AUGUST 30, 2022
ANTICIPATED AWARD DATE/DATE FOR RECOMMENDATION TO CITY COUNCIL FOR AWARD	SEPTEMBER 20, 2022
PROFESSIONAL SERVICES AGREEMENT – CONTRACT COMMENCEMENT	OCTOBER 3, 2022

# CITY OF EL MONTE

## REQUEST FOR QUALIFICATIONS (RFQ)

August 9, 2022

### **DRAFTING A REQUEST FOR PROPOSAL, OVERSEEING THE RFP BIDDING PROCESS, AND THE DESIGN AND CONSTRUCTION OF THE CITY'S RENEWABLE NATURAL GAS STATION**

**Submittal of Proposals:** To be accepted and considered, provide three (3) bounded copies and one (1) unbounded original, four (4) copies total, and one PDF copy on a flash drive of the completed proposal which must be enclosed in a sealed package and addressed as stated on the cover sheet. Proposals are not to exceed 30 pages in length (single-sided), this requirement excludes the cover page, cover letter and table of contents. The outside of the submittal copy package must be clearly marked: **“SOQ FOR PROFESSIONAL CONSULTING SERVICES WITH EXPERTISE IN DRAFTING REQUEST FOR PROPOSALS AND OVERSEEING THE DESIGN AND CONSTRUCTION OF RENEWABLE NATURAL GAS STATION – AUGUST 2022”**

Proposals must be received no later than 5:00 pm, PST on **Tuesday, August 30, 2022.**

**Addressed to:** City Clerk  
City of El Monte  
City Hall East  
11333 Valley Boulevard  
El Monte, CA 91731  
Attn: Sarah Zadok, Transportation Operations Manager

The Statement of Qualification (SOQ) must be received by or before the Submission Deadline. SOQs that are post marked after the Submission Deadline will not be considered by the City. Submitted SOQs shall be maintained as confidential records of the City up to the Submission Deadline. Firms may withdraw, modify and/or resubmit a SOQ prior to the Submission Deadline but not after. Firms shall be bound to the terms of the RFQ and their SOQ following the Submission Deadline, however, the City, in its sole and absolute discretion, reserves the right to accept post deadline modifications if it is determined that such modifications is in the best interests of the City. The City also reserves the right to waive minor non-substantive informalities or allow the firms to correct them.

Questions or clarifications regarding this Request for Qualifications must be submitted no later than 1:00 pm, PST on Tuesday, August 16, 2022 via PlanetBids. In PlanetBids – Select **Ask Question**. You may be prompted to log in if you have not already done so. Enter your first question and select **Done**. You may ask as many questions as necessary by selecting **Add**. You can edit or delete questions in your

list. Once you have asked all your questions select **Submit**.

Responses to any inquiries will be issued with an Addendum posted on PlanetBids no later than 5:00 pm, PST on Monday, August 22, 2022.

### **NOTICE REGARDING DISCLOSURE OF CONTENTS OF DOCUMENT**

All responses for the Request of Qualifications (RFQ) accepted by the City of El Monte ("City") shall become the exclusive property of the City. At such time as the Transportation Operations Manager recommends a consultant to City Council, all Statement of Qualifications (SOQs) to the RFQ accepted by the City shall become a matter of public record and shall be regarded as public, with the exception of those elements of each proposal which are defined by the contractor as business or trade secrets and plainly marked as "Trade Secret", "Confidential" or "Proprietary." Each element of the proposal which a consultant desires not to be considered a public record must be clearly marked as set forth above, and any blanket statement (i.e., regarding entire pages, documents or other non-specific designations) shall not be sufficient and shall not bind the City in any way whatsoever. If disclosure is required or permitted under the California Public Records Act or otherwise by law, the City shall not in any way be liable or responsible for the disclosure of any such records or part thereof.

## Table of Contents

I.	BACKGROUND.....	5
II.	SCOPE OF SERVICES.....	6
III.	QUALIFICATION FORMAT.....	9
IV.	EVALUATION CRITERIA.....	11
V.	SELECTION PROCESS.....	12
VI.	QUALIFICATION REQUIREMENTS.....	12
VII.	CONSULTANT’S PERFORMANCE.....	14
VIII.	INSURANCE REQUIREMENTS.....	15
IX.	EXHIBIT A – PROJECT SITE.....	16
X.	EXHIBIT B – TENTATIVE PROJECT SCHEDULE.....	18
XI.	EXHIBIT C –SAMPLE PROFESSIONAL SERVICES AGREEMENT.....	20

## REQUEST FOR QUALIFICATIONS

### I. BACKGROUND

The City of El Monte (hereinafter referred to as the “City”) is located in the San Gabriel Valley, approximately 12 miles east of downtown Los Angeles. El Monte is the tenth largest city in Los Angeles County with an approximate population size of 116,000 (U.S. Census). The city is surrounded by the cities of Arcadia, Rosemead, South El Monte, Temple City and unincorporated Los Angeles County.

The City encompasses two (2) primary watersheds – San Gabriel River (approx. 1,577 acres) and Los Angeles River (4,548 acres) and the tributary area of Legg Lake to the south. The City occupies approximately ten square miles and is primarily built-out, with a few remaining undeveloped parcels. The City is mostly residential, with a mixed-use of commercial businesses and a minor number of industrial parcels. The City was incorporated in 1912 as a general law city and operates under the City Mayor and City Council form of government. The City is governed by one (1) mayor, a four (4) member City Council and is administered by the City Manager.

The City of El Monte operates its own local transit services. El Monte Transit Services provides transportation to residents and local transit passengers to work-sites, transit transfer points, local schools, recreation facilities and major shopping areas. The City is also serviced by Foothill Transit, Norwalk Transit and Los Angeles Metro.

The Public Works Transportation Services Division will utilize a consultant(s) to supplement its internal capabilities. The City of El Monte is requesting a Statement of Qualifications (SOQ) and a fee/rate schedule to provide expertise in drafting a Request for Proposal (RFP), overseeing the RFP bidding process and the design and construction of a Renewable Natural Gas (RNG) Station. It is the City’s objective to establish a Professional Services Agreement for one (1) year with the option of two (2) one-year extensions thereafter.

The preparation and submission of the SOQ will be at the total expense of the Consultant. There is no expressed or implied obligation for the City to reimburse responding Consultants for any expense incurred in the preparation of SOQs in response to this RFQ. All proposals submitted to the City shall become properties of the City and will not be returned. If any information in your proposal is confidential and/or proprietary, please further submit a separate, redacted copy for servicing public records requests.

The City reserves the right to reject any or all SOQ’s, in whole or part, to waive any informality in any proposal, and to accept the proposal which, in its discretion, is in the best interest of the City. Any Consultant may withdraw their SOQ, without obligation, at any time prior to the scheduled closing time for receipt of proposals. A withdrawal will not be effective unless written notice is received prior to the closing date. SOQ’s shall later be referred to the City Council for appropriate action.

## **II. SCOPE OF SERVICES**

The City of El Monte is seeking SOQ's from prospective firms ("Consultants") with extensive experience working with public agencies to provide professional services. In addition to specific services identified in this RFQ, it is the intent of the City that the selected firm will provide additional related support, as needed, based on an approved schedule of hourly rates or prior negotiated project specific fees.

The City of El Monte seeks to construct a Renewable Natural Gas (RNG) Station for its transit bus fleet and open the station to other Compressed Natural Gas (CNG) fleets. The City of El Monte intends to obtain professional services from a qualified firm to provide specialized services to draft the Request for Proposal (RFP) for the design and build of the RNG Station, assist with RFP bidding process, oversee awarded contractor's design and construction of the station, work within grant guidelines and any relevant tasks. Best industry practices and/or best management practices may require additional services not explicitly enumerated. The proposer should identify any additional services required, price them and explain them in their response.

The Consultant shall provide a services schedule with revisions and updates to the City prior to commencement. All schedules and revisions thereto shall be subject to the approval of the Transportation Operations Manager and/or Transportation Analyst and arranged to meet project timeline(s).

### **A. Service Requirements**

The Consultant is responsible for ensuring that all work is performed in full compliance with City, County, State and Federal noise ordinances, permits and environmental clearance.

The Consultant will be responsible for the contractor to meet the requirements below, but not limited to:

#### **Due Diligence**

- Geotechnical Investigation
- ALTA/NSPS Survey
- All permits for this project
- Drawings
- Site Survey(s)
- Estimated project timeline
- Task Project Management

#### **Construction**

- Publicly accessible
- Saw Cut/Trenching for all underground work

- All concrete work
- Demo/Remove existing pavement & concrete
- Storm drain System
- 3-dispenser islands
- CNG concrete pad
- Dryer concrete pad
- Inlet Pressure Regulator
- Storage Vessels/ Priority panel foundations
- Fencing
- All Electrical work
- Bollards through-out the station

### **Equipment**

- Electrical Transformer
- Canopy
- Payment System
- Signage
- Security equipment (i.e., cameras and fencing)
- 3-dual hose dispensers
- Dual 125 HP Compressor with 4 door panel
- Dryer
- Storage Vessels
- Require a 3-year warranty at minimum

The Scope of Work, as may be modified through negotiation and/or by written addendum issued by the City, will be made a part of the Agreement. The selected firm will be expected to furnish all necessary personnel to provide the following services:

### **Project Management**

In general, the Consultant shall perform Project Management Services for the design of an RFP to design and construct an RNG station, shall oversee the RFP bidding process and the actual design and construction of the RNG Station. The Proposed Project Manager shall be responsible to manage the following tasks, but not limited to:

1. Upon contract commencement, coordinate weekly and/or bi-weekly meetings with City staff (i.e., Transportation Operations Manager, Transportation Analyst, Public Works staff, etc.).
2. Recommend and assist in the implementation of goals and objectives; establish schedules and methods for planning, design, construction of a renewable natural gas station;
3. Prepare a Request for Proposal, review and assist in the evaluations of bidder proposals;

4. Coordinate and lead all project meetings and public outreach;
5. Attend Capital Improvement Project (CIP) Status Project meetings to update City Staff project status, budget, schedule, etc.;
6. Review work plans, monitor progress and authorize payment requests according to contract terms and conditions;
7. Be the City's liaison with the awarded contractor, local utilities companies, and all other relevant stakeholders in this project;
8. Review contractors' design plans and specifications at various stages of development for conformance to budget funding, program and design standards, completeness, accuracy and recommend changes, additions or corrections while monitoring contractors' cost estimates and schedules;
9. Assist in the preparation of City Council Agenda reports in consultation with Transportation Services staff;
10. Attend City Council and other City meetings as required by the Transportation Operations Manager;
11. Review and verify Contractor's invoices and recommend approval for payment;
12. Present Project in coordination with Contractor and City staff in Public Outreach events, as needed;
13. Coordinate bid advertisements, attend pre-bid conferences with contractors and consultants on projects, assist in the evaluation of bids and make recommendation for award of contract;
14. Coordinate signing of contracts with contractors and attend pre-construction meetings with consultants, contractors and subcontractors;
15. Review and recommend for payment periodic requisitions, invoices and supporting data from contractors, consultants and testing labs, and review field inspection reports;
16. Oversee close-out of projects and all necessary work required for City Council to accept the project;
17. Assist City staff with the following grant requirements for this project: adhere to guidelines, agreement requirements, pre- and post-project inspection, and report due after project is complete and commissioned.

A consultant with experience in RFPs for the design and build of a natural gas station is preferred. Proposed project manager(s) shall have a minimum of five (5) years' experience in the oversight of Project Management and Construction Management for a natural gas station project for public agencies.

The City reserves the right to delete specific task(s) and/or line items at no additional cost.

### III. QUALIFICATION FORMAT

All firms shall include the following information and comply with the associated page limit restrictions to a maximum of 30 pages total. Note that one (1) page includes the front side of an 8.5"x11" sheet of paper and the cover page, cover letter and table of contents is excluded from the 30-page limit requirement. **The proposal shall be organized and submitted with the following items:**

- 1) **Cover Page**
- 2) **Table of Contents**
- 3) **Cover Letter.** Maximum 1-page cover letter signed by an officer of the firm, binding the firm to all of the commitments made in the submittal. **Indicate in the cover letter on the subject line the service(s) your firm in submitting the SOQ.**

The letter shall include name, address and phone number of the person authorized to represent the firm and shall include the following Statement:

- a. I HAVE READ UNDERSTOOD, AND AGREED TO ALL STATEMENTS IN THIS REQUEST FOR QUALIFICATIONS AND ACKNOWLEDGE RECEIPT OF ALL ADDENDUMS/AMENDMENTS AS WELL AS TO THE TERMS, CONDITIONS, AND ATTACHMENTS REFERENCED.
- 4) **Firm's Background.** Background on the firm and its area(s) of professional expertise relevant to this RFQ.
  - 5) **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 RFQ on the proposer's behalf. Briefly discuss the Consultant team's qualifications and experience with program management 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 RFQ 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 programs and the experience of individuals on your proposed team. Show how your experience relates to the demands of the services to be provided. Professional civil engineering licenses in the consultant's specific discipline relative to the discipline the SOQ(s) being submitted is required. The City of El Monte encourages the use of services provided by small business enterprises (SBEs) and disadvantaged business enterprises (DBEs) for whenever possible.

- 6) **Proposed Personnel.** Resumes for the Project Manager, Construction Manager and Engineer's, and 1-page resume for each of alternate personnel, which will be performing the majority of the work on this contract. Resumes for corporate leadership should not be included unless said individuals will be performing substantial work on this program. The designated Project 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.
- 7) **Scope of Work.** Describe the methods by which your firm will fulfill the services requested in the Scope of Services and subsequent sections. Provide a statement of the service(s) that differentiate your firm from other respondents. Describe any innovations, improvements or cost savings measures that demonstrate your firm's ability to continuously evaluate and improve its methods of service delivery.
- 8) **Implementation Schedule.** Include detailed implementation schedule with an estimated project start date of October 11, 2022 and note key project milestones and timelines for deliverables. Identify any assumptions used in developing the schedule.
- 9) **References.** Each firm must include at least three public agency references going back no more than five (5) years from the issuance of this RFQ in which the firm was engaged to perform tasks similar to those requested under this RFQ. References should place an emphasis on past programs in which the personnel to be used by 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 with contact information.
- 10) **Fee/Rate Schedule.** A detailed all-inclusive schedule of rates for each proposed personnel that may be tasked to complete the Project. The Task-specific shall clearly identify an hourly rate schedule for the proposed staff

members. The rate schedule shall also include costs and expenses related to photocopying, postage, travel, etc. (i.e., Reimbursement expenses), no addition reimbursement will be provided. To the extent that a prime consultant contemplates the use of sub-consultants to perform above described services on the proposer's behalf, the firm shall include the name and resume of the sub-consultant(s) identifying all sub-consultants and state the fee for each sub-consultant in the Fee Schedule for the next 3 years. In so far as the firm's qualifications contemplates an increase in compensation rates or charges during the term of the portion of the PSA or any extension term, the firm shall clearly indicate when such increases will take effect and by how much.

The Fee/Rate Schedule shall be delivered in a separate PDF file which is clearly named "**PROFESSIONAL FEE SCHEDULE – ABC CONSULTING**". The cover letter shall contain the name and address of the consultant.

- i. Provide your fees for the proposed services. Fee quotes should be detailed by service.
- ii. Outline billing and payment expectations, including timing and method of payment.
- iii. Describe any remaining fees not previously detailed in the above.

**11) City Professional Services Agreement.** The City will require the successful company to execute a Professional Services Agreement with the City. Please review the attached draft agreement in Exhibit B and identify any questions, changes or areas of concern in your proposal to the City. Any/all requests for changes to the agreement must be included with the responsive proposal. A company's failure to respond with proposed changes to the draft agreement indicates in their concurrence with its terms and conditions.

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

#### **IV. EVALUATION CRITERIA**

Each firm shall be evaluated on the basis of the proposer's expertise, experience and training and the expertise of its key personnel along with prior contracting history, approach to the program, Fee/Rate Schedule and compliance with the RFQ requirements including the terms of the attached PSA.

City staff will review each SOQ for completeness and content. Each response will be evaluated based upon the relevant qualifications and experience of the consultant. The RFQ response review will focus upon the following criteria:

1. Qualification, Staff, Experience: Does the proposed personnel offer the quality of services required for the types of services listed in the Scope of Work? Do the proposed personnel have local experience? Do the qualifications of key personnel to be assigned to the anticipated projects coincide with tasks listed in the Scope of Work? Do assigned personnel have requisite education, experience and professional qualifications? Ability to respond to request for service in a timely manner.
2. Quality: Has the proposed personnel demonstrated the ability to successfully provide services as described herein? Are the individual's references from past clients and associates favorable?
3. Value: Ability to perform services at a fair and reasonable/competitive fee schedule.

## **V. SELECTION PROCESS**

A selection committee, comprised of City staff will review the SOQ's. Firms will be ranked based on the evaluation criteria stated above and the selection committee may choose to interview several of the top ranked firms. However, at its sole discretion the selection committee may dispense with interviews and select a proposer to perform the work.

## **VI. QUALIFICATION REQUIREMENTS**

The SOQ must be received by or before the Submission Deadline. SOQs that are post marked after the Submission Deadline will not be considered by the City. Submitted SOQs shall be maintained as confidential records of the City up to the Submission Deadline. Firms may withdraw, modify and/or resubmit a SOQ prior to the Submission Deadline but not after. Firms shall be bound to the terms of the RFQ and their SOQ following the Submission Deadline, however, the City, in its sole and absolute discretion, reserves the right to accept post deadline modifications if it is determined that such modifications is in the best interests of the City. The City also reserves the right to waive minor non-substantive informalities or allow the firms to correct them.

1. Firms shall be solely and exclusively responsible for all costs incurred in connection with the preparation and submission of the SOQ; demonstrations; interviews; preparation of responses to questions and requests for additional information; for contract discussions; or for anything in any way related to this RFQ. The City is not liable for any costs incurred by a SOQ in response to this RFQ. Whether or not a firm is awarded a contract pursuant to this RFQ, no firm shall be entitled to reimbursement for any costs or expenses associated with the firm's participation in this RFQ process.

2. Late SOQs will not be considered.
3. The City reserves the right to reject any and all SOQs received as a result of this RFQ. 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 Fee/Rate Schedule. 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, quality of service, work history and other factors which the City may consider relevant and important in determining which SOQ is best for the City.
4. The City reserves the right to cancel or modify this RFQ. There is no guarantee that the City will award contract.
5. The City reserves the right to investigate the qualifications of any proposer under consideration including proposed subcontractors 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 RFQ.
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 RFQs 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 RFQ is legally privileged under the California Public Records Act. By submission of a SOQ, proposers acknowledge and agree that their SOQ and any information contained therein may be disclosed by the City 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 best interests of the City, applying criteria provided in this RFQ and any other criteria the City, in its sole discretion, deems pertinent.
9. By the submission of a SOQ, each proposer accepts and agrees to execute a written Professional Services Agreement (PSA) in the form attached hereto as Exhibit A. By submission of a SOQ, each proposer agrees to execute a PSA with the City in the form attached hereto as Exhibit A, inclusive of 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 SOQ 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 make modifications to 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 SOQ. A firm'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 SOQ for the RFQ will serve the best interest of the City when all other factors are considered.

10. All SOQs 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 SOQ and with written permission granted by the City.
11. **All questions or requests for clarification shall be submitted via PlanetBids by the REQUEST FOR INFORMATION DEADLINE. All questions received by this deadline will be addressed and posted on the City's website ([www.ci.el-monte.ca.us](http://www.ci.el-monte.ca.us)) and PlanetBids by the RELEASE OF INFORMATION REQUESTED DATE.**
12. If it becomes necessary to revise any part of this RFQ, an addendum will be posted on the City's website and PlanetBids. It shall be the sole responsibility of the proposer to check for any addendums to the RFQ that may be issued by the City.
13. It is the responsibility of potential firm to be thoroughly familiar with the scope of services to be performed under this RFQ.
14. Proposers may withdraw their SOQ prior to the Submission Deadline.

## **VII. Consultant's Performance**

As needed, the City's representative and the Consultant shall meet in-person, over the phone or by other communication means for the purpose of discussing work-plan, timelines, design and construction. The Consultant shall notify and report to the City all vandalism, potential health and safety hazards and anything that could be deemed an inconvenience to the City and the general public within a 24-hour period. Such information shall be reported to the Public Works and Utilities Department via City approved communication device and number or its City designated representative.

1. Consultant will complete all assigned work per the City's standards to ensure the proposed project is on schedule, within guidelines, constructed and commissioned within the given time-frame.
2. Consultant shall complete a service checklist of work performed for each and all dates of work and submit within five (5) working days at the end of each billing period.
3. All calls and similar (email) requests from the City shall be responded to by Consultant within 24 hours with subsequent timeline acceptable by the City for resolution of the subject matter.
4. Inspections shall be made independently by the Transportation Services Division and by the Consultant prior, during and after the construction of the RNG Station.
5. If the Consultant's conduct, performance or work does not meet the City's Standards, the Consultant will be notified in writing and given 24 hours to take any required corrective action. If for any reason the Consultant is unable or unwilling to comply with the demand, the City may take the necessary steps to rectify the situation. Any costs incurred by the City may be deducted from the Contractor's monthly invoice.

## **VIII. INSURANCE REQUIREMENTS**

The selected consultant shall provide the following at the time of contract execution.

Insurance coverage must include naming the City of El Monte as additional insured (Form CG2010 or Equivalent), policy number, expiration date, and amounts (limits). *GENERAL LIABILITY CARRIER MUST HAVE A CURRENT A.M. BEST RATING OF "A VI" OR HIGHER. WORKERS' COMPENSATION CARRIER MUST HAVE A CURRENT A.M. BEST RATING OF "A-VII" OR HIGHER. CARRIERS MUST BE ADMITTED IN CALIFORNIA. MINIMUM ACCEPTABLE LIMITS: GENERAL LIABILITY; GENERAL AGGREGATE \$2,000,000 AND PRODUCTS-COMP/OP AGG \$2,000,000. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY: E.L. EACH ACCIDENT \$1,000,000 AND E.L. DISEASE-EA EMPLOYEE \$1,000,000 AND E.L. DISEASE – POLICY LIMIT \$1,000,000.* Sample is available upon request.



**TRANSPORTATION SERVICES DIVISION**

**REQUEST FOR QUALIFICATIONS**

**EXHIBIT A**

**PROJECT SITE**

**EXHIBIT A**

PROPOSED PROJECT SITE: 3990 ARDEN DRIVE, EL MONTE, CA 91731





**TRANSPORTATION SERVICES DIVISION**

**REQUEST FOR QUALIFICATIONS**

**EXHIBIT B**

**TENTATIVE PROJECT SCHEDULE**

**EXHIBIT B**

**RENEWABLE NATURAL GAS STATION PROJECT**

**CAPITAL IMPROVEMENT PROJECT NO. 010**

**TENTATIVE PROJECT SCHEDULE**

**As of August 9, 2022**

<b>Project Activity</b>	<b>Schedule Date</b>
Release of Request for Qualifications	August 9, 2022
Deadline for Submitting Written Questions	1:00 PM August 16, 2022
Response / Issuance of Addendum	5:00 PM August 22, 2022
RFQ Due Date / Submission Deadline	5:00 PM August 30,2022
Anticipated Award Date / Date for Recommendation to City Council for Award	September 20, 2022
Professional Services Agreement – Consultant’s Contract Commencement	October 3, 2022
Consultant to Draft a Request for Proposal	October 3 <sup>rd</sup> – November 3, 2022
Internal RFP Review	November 3 <sup>rd</sup> – November 17, 2022
Publish RFP	November 21, 2022
RFP Submission Deadline	5:00 PM December 12, 2022
Tentative Interviews for RFP Proposers	December 19, 2022
Tentative Recommendation to City Council for Award of the RFP to design and construct the RNG Station	January 10, 2023
Awarded Contractor to Commence Work	February 8, 2023



**TRANSPORTATION SERVICES DIVISION**

**REQUEST FOR QUALIFICATIONS**

**EXHIBIT C**

**PROFESSIONAL SERVICES AGREEMENT SAMPLE**



2022

PROFESSIONAL SERVICES AGREEMENT

(Engagement: **INSERT ENGAGEMENT**)

(Parties: **INSERT CONSULTANT NAME** and City of El Monte)

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2022 (hereinafter, the "Effective Date") by and between the CITY OF EL MONTE, a municipal corporation (hereinafter, "CITY") and **INSERT CONSULTANT NAME**, (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 professional consulting services **INSERT THE KIND OF SERVICES REQUIRED**; and

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

WHEREAS, **this Agreement was approved by the City Manager pursuant to her authority under Section 3.24.070(B) of the El Monte Municipal Code. OR IF OVER \$30,000: WHEREAS, the execution of this Agreement was approved by the El Monte City Council** at its Regular Meeting of \_\_\_\_\_, 2022 under Agenda Item No. \_\_\_\_\_.

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 WORK:

- A. Subject to the terms and conditions of this Agreement, CONSULTANT agrees to provide the services and tasks described in that certain Request for Qualifications of CITY entitled "**INSERT TITLE OF REQUEST FOR QUALIFICATIONS**", (hereinafter, "CITY RFQ") and the written proposal of CONSULTANT entitled "**INSERT TITLE OF PROPOSAL**" (hereinafter, the "CONSULTANT Proposal") dated **INSERT DATE OF PROPOSAL**. **The CITY RFQ and the CONSULTANT Proposal are attached and incorporated hereto as Exhibit "A" and "B" respectively.** The term "Scope of Work"

shall be a collective reference to the CITY RFQ and the CONSULTANT PROPOSAL.

- B. The capitalized term “Work” shall be a collective reference to all the various services and tasks referenced in the Scope of Work. In the event of any conflict or inconsistency between the provisions of the document entitled CITY RFQ and the provisions of the document entitled CONSULTANT PROPOSAL, the requirements of the document entitled CITY RFQ shall govern and control but only to the extent of the conflict or inconsistency and no further. In the event of any conflict or inconsistency between the provisions of the Scope of Work and the provisions of this Agreement to which the Scope of Work is attached, the provisions of this Agreement shall govern and control.

## 1.2 PROSECUTION OF WORK; TERM OF AGREEMENT; OPTION TO RENEW

- A. Time is of the essence of this Agreement and each and every provision contained herein. The Work shall be commenced within three (3) calendar days of CITY’s issuance of a Notice to Proceed. CONSULTANT shall complete the various tasks identified in the Scope of Work within the timeframes set forth in the Scope of Work and consistent with the schedule of work in that certain document dated \_\_\_\_\_, 2022 (hereinafter the “Project Schedule”) attached hereto as **Exhibit “C”**;
- B. This Agreement shall have a term of one (1) year commencing on the Effective Date (hereinafter the “Term”). The Term may be extended for a maximum of two (2) one-year extensions at the option of the CITY, for a maximum Term of three (3) years, provided that CITY provides the CONSULTANT with written notice of CITY’s intent to exercise CITY’s options to extend the term of the AGREEMENT no less than thirty (30) days prior to the expiration of the Term or any prior extension term. In the event CITY exercises its options to extend this AGREEMENT, all terms, conditions, and provisions of this AGREEMENT shall remain in effect and govern the duties, responsibilities, and liabilities of the parties hereto;
- C. As set forth in the Scope of Work, CONSULTANT shall abide by and comply with the CITY’s purchasing guidelines (hereinafter, “CITY Purchasing Guidelines”) attached hereto as **Exhibit “D”**;
- D. As further set forth in the Scope of Work, CONSULTANT shall abide by the application provisions and compliance terms of the **Carl Moyer Program Application and Carl Moyer Program Agreement**, attached hereto and incorporated herein respectively as **Exhibit “E”** and **Exhibit “F”**;
- E. CONSULTANT shall perform the Work continuously and with due diligence so as to complete the Work within the timeframes set forth in CONSULTANT’s Proposal. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other

consultants, contractors or agents

- F. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other consultants, contractors or agents;
- G. 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;
- H. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT's employees; and
- I. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

1.3 COMPENSATION: CONSULTANT shall perform the Work in accordance with "INSERT TITLE OF COMPENSATION DOCUMENT" (hereinafter, the "COMPENSATION RATE"). The foregoing notwithstanding, CONSULTANT's total compensation for the performance of all Work contemplated under this Agreement, will not exceed the total budgeted aggregate sum of INSERT WRITTEN AMOUNT (\$ INSERT NUMBER) (hereinafter, the "Not-to-Exceed Sum") during the prosecution 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.

1.4 PAYMENT OF COMPENSATION: Following the conclusion of the work requested in Section 1.1, 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 compensation is a function of hours worked by CONSULTANT's personnel, the invoice should indicate the number of hours worked, 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.

1.5 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.

- 1.6 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 Work, 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 **INSERT CITY REPRESENTATIVE** (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 **INSERT CONSULTANT REPRESENTATIVE**, 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 their designee will supervise and direct the performance of the Work, using their 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 their 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) calendar 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 fail or refuse 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. [The key personnel for performance of this Agreement are as follows: [INSERT NAME AND TITLE IF RELEVANT].
- 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 to 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 shall have minimum limits of no less than Two Million Dollars (\$2,000,000.00) 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.
- D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT will procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage will have minimum limits of no less than Two Million Dollars (\$2,000,000.00) per claim.
- 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. 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 CONSULTANT 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 Event of Default 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 1.4, 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:

<p><b>CONSULTANT:</b>  <b>INSERT CONSULTANT NAME</b>  <b>INSERT ADDRESS</b></p> <p>Attn: <b>INSERT PERSON OF CONTACT NAME</b>  <b>Phone: INSERT PHONE NUMBER</b></p>	<p><b>CITY:</b>  City of El Monte  <b>CITY DEPARTMENT</b>  <b>Attn: DEPARTMENT DIRECTOR</b>  11333 Valley Blvd.  El Monte, CA 91731  Phone: <b>CITY PHONE NUMBER</b></p>
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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 FORCE MAJEURE: The Completion Date shall be extended in the event of any delays due to unforeseeable causes beyond the control of CONSULTANT and without the fault or negligence of CONSULTANT, including but not limited to severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the CITY, if the CONSULTANT shall within three (3) calendar days of the commencement of such delay notify the City Representative in writing of the causes of the delay. The City Representative shall ascertain the facts and the extent of delay and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the City Representative such delay is justified. The City Representative's determination shall be final and conclusive upon the parties to this Agreement. In no event shall CONSULTANT be entitled to recover damages against the CITY for any delay in the performance of this Agreement, however caused, CONSULTANT's sole remedy being extension of the Agreement pursuant to this Section.
- 6.21 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 NAME**

By: \_\_\_\_\_  
Alma K. Martinez, City Manager

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

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

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

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

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

**EXHIBIT "A"**  
**CITY RFQ**

**EXHIBIT "B"**  
**CONSULTANT PROPOSAL**

**EXHIBIT "C"**  
**PROJECT SCHEDULE**

**EXHIBIT "D"**  
**CITY PURCHASING GUIDELINES**

**EXHIBIT "E"**  
**CARL MOYER PROGRAM APPLICATION**

**EXHIBIT "F"**  
**CARL MOYER PROGRAM AGREEMENT**