



CITY OF EL MONTE

DEPARTMENT OF HUMAN RESOURCES

REQUEST FOR PROPOSALS (RFP)

WORKERS' COMPENSATION THIRD PARTY ADMINISTRATOR SERVICES

March 5, 2025

IMPORTANT DATES:

**SOLICITATION
ISSUANCE
DATE:**

**03/13/25
10:00 AM**

**PROPOSAL
SUBMISSION
DEADLINE:**

**04/10/25
12:00 PM**

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1. **INTRODUCTION**

1.1 **GENERAL SOLICITATION INFORMATION**

The City of El Monte ("City"), on behalf of the **Human Resources Department**, is hereby soliciting competitive proposals from qualified Third Party Administrators for Workers' Compensation Claims Management Services, as summarized below in the Solicitation Objectives and detailed further in Section 3 Areas of Interest/Scope of Work.

This solicitation identifies the Areas of Interest/Scope of Work, Timeline/Schedule, Proposal Submission Requirements, Summary Evaluation Process, and Terms and Conditions the City will use to select, and recommend a contract be awarded to, one (1) or more Consultants to provide the services identified herein for the benefit of the City and the community it serves.

The City is interested in discovering all of the Consultants' capabilities related to the specified Areas of Interest/Scope of Work and associated pricing to enable informed decisions and potentially proceed to more specific negotiations on contract development with one (1) or more qualified Consultants to this solicitation.

Proposals submitted in response to this solicitation may be sub-divided and/or combined with other proposals, at the City's sole discretion. Those Consultants who submit proposals agree to do so without legal recourse against the City, its Officials, Directors, Officers, Employees and Agents for rejection of their proposal(s) or for failure to execute or act on their proposal for any reason. This solicitation is for proposals only and is neither intended nor to be construed as an offer to enter into a contract or engage in any formal rule competitive bidding or negotiation pursuant to any statute, ordinance, or regulation. The City reserves the right to cancel this solicitation at any time, reject any and all proposals, and to waive irregularities.

Responses to this solicitation are due to be submitted on or before **12:00 PM on Thursday, April 10, 2025**, as described below in Sections III through VI.

1.2 **SOLICITATION OBJECTIVES**

The City is requesting proposals from highly qualified firms to serve as the City's Workers' Compensation Third Party Administrator of Record and to provide workers' compensation claims management services in support of the City's Workers' Compensation programs. The City is seeking a firm with extensive experience and proven success in delivering the services outlined in the Scope of Services. The successful bidder will work under the general direction of the Human Resources/Risk Management Director and in close coordination with Human Resources/Risk Management staff.



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1.3 DURATION OF ENGAGEMENT

The engagement is anticipated to have a duration of approximately **five (5) years**, commencing June 1, 2025 and ending June 30, 2030. The engagement term may be subject to change at the City's sole and absolute discretion.

2. BACKGROUND INFORMATION

2.1 ABOUT THE CITY OF EL MONTE

The City, incorporated in 1912, is located in the San Gabriel Valley region of Los Angeles County. The City serves approximately 109,450 residents in a land area of approximately 9.6 square miles. El Monte also has an ethnically diverse and dynamic population with 72% Hispanic, 18% Asian, and 7% White. The land uses within the City limits are approximately 58% residential, 11% retail, 10% industrial, 7% office/retail, and 14% other amenities. The City has maintained a reputation for a "business friendly attitude" by attracting commercial and retail businesses as well as international corporations through its Foreign Trade Zone and has authorized numerous public improvements to provide an attractive and safe environment for its economic growth.

The City is a general law city organized under a City Council/City Manager form of government. The governing legislative body of the City is the seven-member El Monte City Council which is composed of one (1) elected Mayor who serves a two-year term of office, one (1) Mayor Pro Tempore, and five (5) regular councilmembers who serve staggered 4-year terms of office. The City also has an elected City Treasurer and an elected City Clerk, each of whom serve four-year terms of office.

The City provides its own Police services but contracts with the County of Los Angeles for fire services. The City operates its own water system, but the system only serves a portion of the City's residents with the remainder of residents receiving water from various other providers, including the San Gabriel Valley Water Company and various mutual water companies. The City provides public works maintenance services for City streets and other City utilities (e.g., water and sewer lines) and for other City facilities and infrastructure. The City arranges for the collection of solid waste and recyclables for various waste streams through a franchise agreement with a solid waste hauler. The City operates a Parks and Recreation Department which includes the operation and maintenance of multiple City parks as well as a community Aquatic Center and the undertaking of various recreational and other programs for youth, seniors and residents in general. The City also operates its own Dial-A-Ride and fixed route transit systems, including a commuter bus station and transportation maintenance facility with CNG refueling facilities. The City also performs the following functions in-house: General Administration, Human Resources, Land Use Planning, Code Enforcement, Public Works Engineering, Information Technology, Economic Development and centralized Accounting and Finance. The City contracts for legal services and building inspection services. The City has approximately 302 full-time employees.



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2.2 ABOUT THE DEPARTMENT

The **HUMAN RESOURCES DEPARTMENT** works jointly as a strategic partner with all City departments. It has the primary role of supporting the City by providing services related to human resources and risk management to more than 300 full-time employees and approximately 166 part-time employees of the City. Full time employees are represented by four (4) bargaining units: (1) Service Employees International Union Local 721 ("SEIU") General Unit; (2) SEIU General Mid-Management Unit; (3) Police Officers' Association; and (4) Police Mid-Managers' Association. Part-time employees are unrepresented and serve at-will. The City currently has six (6) full-time executive positions which serve at the will and pleasure of the City Manager. Additionally, the City provides benefits to all elected officials including the Mayor, the Mayor Pro-Temp, five (5) City Councilmembers, the City Clerk, and the City Treasurer.

Additional information about the City can be found on <http://www.ci.el-monte.ca.us> and in the Scope of Work that is part of this RFP.



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3. AREAS OF INTEREST/SCOPE OF WORK

The City, on behalf of the **Human Resources/Risk Management Department**, is hereby soliciting competitive proposals for Workers' Compensation Third Party Administrator Services for the purpose(s) of managing the City's workers' compensation claims on its behalf.

A detailed outline of the Services to be provided is fully described in **Appendix A: Areas of Interest/Scope of Work**.

4. TIMELINE / SCHEDULE*

SCHEDULE OF REQUIREMENTS		TARGET DATE(S)
❖	Solicitation Issuance Date	Thursday, March 13, 2025, 10:00am
❖	Submission of Clarifications Questions Deadline	Thursday, March 20, 2025
❖	Proposal Submission Deadline	Thursday, April 10, 2025, 12:00PM
❖	Review & Evaluation of Submitted Proposals	Monday, April 14, 2025 – Thursday, April 17, 2025
❖	Selection of Qualified Consultants for Interview	Thursday, April 17, 2025
❖	Interviews with Qualified Consultants	Week of April 28, 2025
❖	Selection of Consultant(s) for Recommendation & Submission of Selected Consultant(s) to the City Council for Consideration, Approval and Possible Award	Wednesday, May 14, 2025

**Timeline/Schedule is subject to change. It is the Consultant's responsibility to ensure that the most complete and current version of the solicitation, including addenda, have been reviewed.*

5. CLARIFICATION QUESTIONS

No contact shall be made with the Mayor or any Councilmember, Director, Manager, Employee, or Agent of the City regarding this solicitation by Consultants other than the below authorized personnel. Any contact made by the Consultants to unauthorized personnel regarding this solicitation may be grounds for elimination from the selection process.

All inquiries concerning this solicitation shall be emailed to the following recipient(s):



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EMAIL	NAME	POSITION/TITLE	EMAIL
SUBJECT	RFP: Workers' Compensation Third Party Administrator Services		
TO	Rigoberto Gutierrez	Human Resources/ Risk Management Director	rgutierrez@ElMonteCA.Gov
CC	Ruby Romo	Human Resources/Risk Management Analyst	rromo@ElMonteCA.Gov

6. PROPOSAL CONTENT & FORMAT REQUIREMENTS FOR SUBMISSION

Consultants understand and acknowledge that proposals submitted in response to this solicitation will be valid for a period of **ninety (90) days** from the "Proposal Submission Deadline" indicated in the solicitation Timeline/Schedule. Consultants must clearly identify in their proposals if the proposal will be valid for a term less than, or greater than, the **ninety (90) day period**. Submission of a Proposal constitutes acknowledgement that the Consultants have read and agree to be bound by the terms and specifications of this solicitation and any addenda subsequently issued by the City.

6.1 TRANSMITTAL LETTER

The Transmittal Letter must include a brief statement of the Consultant's understanding of the work to be done and commitment to perform the work as scheduled, including:

- statement of work specifications;
- commitment to perform the work within the requested time period (if applicable);
- reference to any proposed contractual terms and conditions required by the Respondent; and
- the legal name of Consultant's, physical street address, the name(s) and title(s) of the individual(s) authorized to represent the Consultant's including telephone number(s) and email address(es).

An officer authorized to bind the Consultant must sign the proposal on behalf of the Consultant and attach the declaration page included in **Appendix B: Non-Collusion Declaration** to the Transmittal Letter. This disclosure must also be obtained by any additional Consultants and subconsultants who will be participating in the work solicited



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6.2 PROPOSAL

6.2.1 TECHNICAL PROPOSAL CONTENT

The purpose of the Proposal is to demonstrate the qualifications, competence, and capacity of the Consultants seeking to provide the solicited services on behalf of the City in accordance with the requirements set forth in this solicitation. As such, the substance of proposals will be weighted higher than the form or manner of presentation. The Proposal should be a clear and concise, yet comprehensive demonstration of the qualifications of the firm, the staff to be assigned to the required work, and examples of the Consultant's relevant experience as it pertains to the required work. Additionally, the Proposal should address all instances outlined in the Areas of Interest/Scope of Work. The proposal should be prepared simply and economically, providing a straightforward, concise description of the Consultant's capabilities to satisfy the requirements of this solicitation.

Proposal submissions must include the following information:

6.2.1.1 *Table of Contents*

A Table of Contents identifying the materials submitted by section and page number. Cross-referencing to section(s) and page number(s) within the solicitation is preferred, though not required.

6.2.1.2 *Areas of Interest/Scope of Work*

The Areas of Interest/Scope of Work must include a description of how Consultant intends to address the requirements of the solicitation, how Consultant meets (or does not meet) each of the objectives of this solicitation, and a detailed description addressing all the Areas of Interest/Scope of Work.

The Consultant may also include additional services, products, tasks, task elements and/or functions that may not be part of, or included in, this solicitation, but are deemed by the Consultant to be pertinent and potentially valuable to the City. These additional items shall be included as a supplemental attachment identified as "Additional Products/Services Offered".

The City will have full discretionary authority to consider, accept and/or reject without cause such supplemental information that is not directly requested, included in, or made part of the solicitation.

6.2.1.3 *Background/Experience:*

The Consultant shall clearly identify all pertinent and relevant experience to the solicited work including, but not limited to, the following:

- i) Consultant shall describe Consultant's experience as it may be applicable to this solicitation, your organizational structure, management qualifications, and other contract-related qualifications, including number of years the Consultant has been in business.



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- ii) Consultant shall identify the principal supervisory, management, and key employees, including engagement partners, managers, supervisors, and specialists who would be assigned to the work depicted in this solicitation. Specify and describe their individual and collective qualifications, education, training, certification (if applicable), and experience and duties related to this solicitation, including the office location(s) where work will be performed, in addition to the physical street address identified in the Transmittal Letter above.
- iii) Consultant shall provide a commitment statement for the retention and use of key employees as proposed, their availability to initiate and sustain the proposal, as well as planned supplemental employees if key personnel are not available to ensure delivery of solicited work. The provisions of any contract resulting from this solicitation shall not prohibit the City from requiring express written permission to alter the list of employees assigned and/or the right to approve or reject replacement employees assigned to the solicited work.
- iv) Consultant shall state whether Consultant will use subcontractor(s)/subconsultant(s) to perform services pursuant to the contract. Should the use of subcontractor(s)/subconsultant(s) be offered, the Consultant shall provide the same assurances of competence for the subcontractor(s)/subconsultant(s), plus the demonstrated ability to manage and supervise the subcontracted work. Subconsultant(s) shall not be allowed to further sub-consult with others for work. The provisions of any contract resulting from this solicitation shall apply to all subcontractor(s)/subconsultant(s) in the same manner as to the Consultant.
- v) Consultant shall indicate any and all pending litigation that could affect the viability of Consultant's proposal, continuance of existing contracts, operation or financial stability.
- vi) Consultant shall provide recent examples of work, not exceeding five (5) instances, performed in the last five (5) years that are the same or similar in nature to the work described in this solicitation. These engagements should be ranked based on total staff hours. Examples should indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the primary client contact.

*Additionally, Consultant must also include a response to the Consultant background document included in **Appendix C: Consultant's Background/Experience Summary**.*

6.2.1.4 References:

- i) Describe whether the Consultant has, within the last five (5) years, rendered any work to the City, either as a Consultant or Subconsultant, either under the current Consultant name or any other name or organization. If so, please provide details (status as prime or subcontractor/subconsultant, brief description of the contract, contract start and end date, the contract administrator name, and total actual contract expenditures).
- ii) If the Consultant has not rendered any work within the last five (5) years to the City, then the Consultant shall provide a list of not less than five (5) client references for whose services similar to those outlined in the RFP are currently being provided. For each reference listed, Consultant shall provide the name of the organization, dates for which the service(s) are being provided, type of service(s) being provided and the name, address and telephone number of the responsible person within the reference's organization.



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The City reserves the right to contact any, or all, of the listed references regarding the work being performed by the Consultant.

6.2.2 FEES/COST PROPOSAL CONTENT

The Fees/Cost Proposal should be made based on good faith estimates and should contain all pricing information related to performing all work contemplated under this solicitation. The Fees/Cost Proposal should include an all-inclusive maximum bid price which accounts for all anticipated costs, both direct and indirect, in addition to a breakdown of specific examples or estimates of the fees, labor rates, and service charges related to the work. The Consultant shall describe how the fees, rates or charges will be determined, including the estimated numbers of hours each employee is anticipated to work in the performance of the solicited work.

The City shall not be liable for any costs incurred by any Consultant or subconsultant(s) in preparing any information for submission in connection with this solicitation process or any and all costs resulting from responding to this solicitation. Any and all such costs whatsoever shall remain the sole responsibility of the Consultant and subconsultant(s) and should not be included in the proposal.

The City may require certain performance assurances from Consultants prior to entering negotiations for work that may result from this solicitation. Such assurances may potentially include a requirement that Consultants provide some form of performance security.

*Additionally, Consultants must also include a response to the cost proposal document included in **Appendix D: Cost Proposal Summary**.*

6.2.3 CONTRACT PROVISION CONTENT

If the City chooses to select Consultant and recommend for award under this solicitation, the Consultant will be subject to the terms and conditions of the City contract as attached hereto as **Appendix E: City Contract Template**. Consultant is required to include a redline markup and supporting commentary with the submitted proposal identifying any exceptions to the terms and conditions identified therein. Additionally, the Consultant shall provide any supplemental contractual forms as may be required by the Consultant to perform work for, or on behalf of, the City.

7. PROPOSAL SUBMISSION DELIVERY REQUIREMENTS

No contact shall be made with the Mayor or any Councilmember, Director, Manager, Employee, or Agent of the City regarding this solicitation by the Consultant other than the authorized personnel on the next page. Any contact made by the Consultant to unauthorized personnel regarding this solicitation may be grounds for elimination from the selection process.

Consultant is responsible for checking the City's website for the issuance of any solicitation documents, including any addenda issued in conjunction with or subsequent to issuance of the solicitation prior to submitting a proposal. The Consultant is responsible for ensuring all addenda/changes to the solicitation and its respective documents have been



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reviewed and that the proposal submitted reflects those addenda/changes. Any proposal submitted without the requirement(s) stipulated in addenda to the solicitation may be considered non-responsive.

All Proposals must be submitted by or before the time and date specified in the Timeline/Schedule. **PROPOSALS WILL NOT BE ACCEPTED THEREAFTER.** All proposals received after the specified time and date will be returned unopened to the submitter. **FAXED PROPOSALS WILL NOT BE CONSIDERED. POSTMARKS WILL NOT BE ACCEPTED.** No verbal extension of any deadline shall be binding or valid upon the City. Any and all deadline extensions authorized by the City shall be made in the form of a written addendum signed by the authorized personnel and shall be applicable as to all proposers.

7.1 ELECTRONIC SUBMISSION REQUIREMENTS

The City will be advertising the Solicitation on the City's website at [Request for Proposals | El Monte, CA \(elmonte.ca.us\)](https://www.elmonte.ca.us). It is the proposer's responsibility to ensure that the most complete and current version of the solicitation, including addenda, have been downloaded.

One (1)] electronic copy of Consultant's proposal and any supporting documentation must be submitted by no later than the time and date indicated in the Timeline/Schedule.

Please submit via email to the following individuals:

Rigoberto Gutierrez, HR/RM Director

rgutierrez@elmonteca.gov

Ruby Romo, HR/RM Analyst

rromo@elmonteca.gov

7.2 PHYSICAL COPY SUBMISSION REQUIREMENTS

Submitted proposals should be prepared simply and economically, without the inclusion of unnecessary promotional materials.

Three (3) hard copies of Consultant's proposal, including a transmittal letter of authentic offer, and any supporting documentation is required to be submitted with the electronic copy of your submittal, by no later than the time and date indicated in the Timeline/Schedule, to the following address:

MAILING INSTRUCTIONS



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**ATTACHMENTS TO
INCLUDE:**

- Transmittal Letter
- Technical Proposal
- Cost Proposal
- Any Additional Supporting Documentation as Required in the solicitation

MAILING ADDRESS:

City of El Monte
Office of the City Clerk
SUBJECT: Workers' Compensation Third Party Administrator Services Proposal
ATTN: Rigoberto Gutierrez, HR/RM Director
11333 Valley Boulevard
El Monte, California 91731

All information received by the City in response to this solicitation will be subject to the California Public Records Act and may be subject to the California Brown Act. Additionally, all submissions may be subject to review in the event of an audit.

8. EVALUATION CRITERIA

Proposals submitted in response to this solicitation will be reviewed by an Evaluation Panel made up of representatives of the City. The City and Evaluation Panel shall determine at their sole discretion the value of any and/or all proposals including price and non-price attributes.

The Evaluation Panel, on behalf of the City, will perform an initial screening evaluation to identify and eliminate any proposals that are, for example, not responsive to the solicitation, do not meet the minimum requirements set forth in the solicitation, are not economically competitive with other proposals, or are submitted by Consultants that lack appropriate creditworthiness, sufficient financial resources, or qualifications to provide dependable and reliable work as contemplated under this solicitation. The City and Evaluation Panel shall reserve the right to submit follow up questions or inquiries to request clarification of information submitted and to request additional information from any one or more of the Consultants.

The City and Evaluation Panel reserve the right, without qualification and in their sole discretion, to accept or reject any or all proposals for any reason without explanation to the Consultant or to make any award to that Consultant who, in the opinion of the City and Evaluation Panel, will provide the most value to the City. The City also reserves the right to make an award, at its sole discretion, irrespective of price or technical ability, if the City determines that such an action would be in the best interest of the City.

The City and Evaluation Panel, at their sole discretion, reserves the right to select a "Short List" of qualified firms who will be formally interviewed as part of the final selection, as deemed necessary by the City.

Evaluations will be based on the following criteria:



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ITEM #	CRITERIA	MAXIMUM POINTS
1.	<p>Specialized Experience & Capabilities: Firms will be evaluated on their professional capacity to undertake the Scope of Work, including:</p> <ul style="list-style-type: none"> • Experience, continuity, and expertise of the account team • Established relationships with a wide variety of carriers in the insurance markets 	30
2.	<p>Brokerage and Consulting Services:</p> <ul style="list-style-type: none"> • Plan design analysis, consultation, marketing, and renewals • Innovative/creative approaches to providing the services that support additional efficiencies and/or increased performance capabilities 	30
3.	<p>Pricing Proposal:</p> <ul style="list-style-type: none"> • Each Firm will be evaluated on the competitiveness of its cost and proposal 	15
4.	<p>References:</p> <ul style="list-style-type: none"> • Reference from clients (preferably from other Southern California cities) that demonstrate the Firm is highly qualified 	15
5.	<p>RFP Responsiveness</p> <ul style="list-style-type: none"> • Proposal Requirements: Compliance to the RFP Terms and Conditions 	10
TOTAL POINTS		100

9. TERMS AND CONDITIONS

The City reserves the right to reject any Proposal for any reason without cause. The City reserves the right to enter into relationships with more than one Consultant, may choose not to proceed with any Consultants, with respect to one or more categories of work, decline to enter into any potential engagement agreement or contract with any Consultants, terminate negotiations with any Consultants, and may choose to suspend this solicitation, issue a new solicitation that would supersede and replace this solicitation, or to abandon the solicitation process in its entirety.

The City shall not be liable to any Consultants or subconsultant(s) or party in law or equity for any reason whatsoever for any acts or omissions arising out of or in connection with this solicitation.



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Information in this solicitation is accurate to the best of the City's knowledge but is not guaranteed to be correct. Consultants are expected to complete all of their due diligence activities prior to entering into any final contract negotiations with City.

Submission of a Proposal constitutes acknowledgement that the Consultant has read and agrees to be bound by the terms and specifications of this solicitation and any addenda subsequently issued by the City.

9.1 INSURANCE, LICENSING, OR OTHER CERTIFICATION:

If selected, the Consultant will be required to maintain sufficient insurance, licenses, or other required certifications for the type of work being performed. The City may require specific insurance coverage to be established and maintained during the course of work and as a condition of award or continuation of contract.

Examples of coverage include, but are not limited to, the following:

INSURANCE TYPE	MINIMUM COVERAGE FOR EACH OCCURENCE	MINIMUM COVERAGE FOR AGGREGATE
❖ General Liability	\$1,000,000.00	\$2,000,000.00
❖ Automobile Liability Insurance	-	\$2,000,000.00
❖ Workers Compensation	\$1,000,000.00	\$1,000,000.00
❖ Errors & Omissions	\$2,000,000.00	
❖ Cybersecurity (Including Technology/Professional Liability, Intellectual Property Infringement, and Data Protection)	\$3,000,000.00	\$3,000,000.00

If the Consultant will be utilizing an Umbrella Liability Policy or Excess Liability Policy to supplement any of the above listed coverages, Consultant will be required to disclose such deviations subject to Section 6.2.3 Contract Provision Content and attest that such use of an Umbrella Liability Policy or Excess Liability Policy extends coverage in the same manner as the specified requirements and does not result in limits lower than those required.

Additional insurance requirements may include, but are not limited to, the following:

- An endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 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. The City may, at its sole and absolute discretion, accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition of the Standard & Poor's rating guide.



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9.2 PROPERTY:

9.2.1 CITY-FURNISHED PROPERTY

The City's drawings, specifications, and other media furnished for the Consultant's use shall not be furnished to others without express written authorization from the City.

9.2.2 CONTRACTOR/CONSULTANT/VENDOR-FURNISHED PROPERTY:

Upon completion of all work under any contract developed as a result of this solicitation, ownership, and title to reports, documents, drawings, specifications, estimates, and any other document produced as a result of the contract shall automatically be vested to the City and no further contract will be necessary for the transfer of ownership to the City. The City has the sole right to distribute, reproduce, publish, license, or grant permission to use all or a portion of the deliverable documentation, work product or presentations as it determines in its sole discretion.

The City of El Monte is seeking a third-party administrator to perform the full range of services associated with managing the City's workers' compensation claims on its behalf.

Responsibilities include, but are not limited to:

1. Assisting the City in processing and managing all aspects of workers' compensation claims filed by injured or ill public employees. This includes but not limited to establishing a database record upon receipt of an injury report, determining compensability, setting and updating reserves, reviewing and verifying the details of the claim, arranging for investigation as applicable, ensuring all necessary documentation is provided in a timely manner including all benefit notices, proactively notifying the City and the excess carrier of all claims which exceed or may exceed the self-insurance retention, arranging legal counsel on behalf of the City as applicable, proactively seeking the opportunity to minimize the City's risk through in-depth claims analysis in an effort to identify the most appropriate cost-effective resolution, coordinating the claims process from initiation to resolution always keeping the City abreast of the status and the progression of the claim.
2. TPAs routinely work with claims adjusters, medical providers, injured employees and the City's Risk Management staff to ensure claims are handled appropriately and in a timely manner.
3. TPAs also help minimize the overall cost of workers' compensation which includes but is not limited to negotiating medical treatment costs, advocating for cost-effective rehabilitation services, and identifying fraudulent or unnecessary claims.
4. TPAs also monitor disability status by reviewing medical reports and contacting doctors for updates, pay the permanent disability compensation when appropriate and to the extent required by law or advise the City of the need to adjust payroll records when salary continuation is applicable.
5. TPAs help ensure that injured employees receive their entitled benefits, such as wage replacement and medical care in a timely manner, according to the legal guidelines.
6. TPAs also arranges for attorney representation of the City whenever the need arises, subject approval by the City's Risk Management Committee and City Attorney and further subject to the requirement that all special legal counsel shall be engaged pursuant to a written agreement approved by the City Council.
7. TPAs also assist special legal counsel in preparing cases.
8. TPAs also partner with the City's Risk Management team to help with strategies to reduce the frequency and severity of claims, which can lower the long-term costs of workers' compensation for the City as a whole.
9. TPAs also help ensure the municipality is in compliance with all state and federal workers' compensation laws and regulations.
10. TPAs also investigate the circumstances surrounding each claim to ensure that the injury or illness is work-related and that it meets the criteria for workers' compensation. This process includes gathering witness statements, reviewing medical records, and potentially coordinating with legal counsel should disputes arise.
11. TPAs also manage claims reporting to relevant regulatory bodies, ensuring that the appropriate reports are filed with state workers' compensation boards or other oversight agencies.
12. TPAs will also work in partnership with the City's Risk Management staff to help develop and implement return-to-work programs to support injured employees in safely returning to their duties as soon as they are medically able. These programs can reduce the duration of disability and help employees reintegrate into the workforce, which is beneficial for both the employee and the City.
13. TPAs will also work in partnership with the City's Risk Management staff to help design modified duty assignments or accommodations for employees who are temporarily unable to perform their full job duties.

APPENDIX A: Scope of Work/Areas of Interest

14. TPAs also provide ongoing communication with the injured employee, medical providers, and the public employer throughout the claims process. This includes updating the public employer on the status of claims, providing advice on how to manage injured workers, and offer support for employees navigating the workers' compensation system.
15. TPAs will help keep the City in compliance with CalOSHA by tracking the City's claims which result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, loss of consciousness, or a significant injury or illness diagnosed by a physician, including cases such as diagnosed cancer, chronic irreversible diseases, fractured bones, or punctured eardrums.
16. TPAs will work with the public employer to help identify workplace risks and prevent injuries. This typically includes implementing safety programs, conducting training sessions, and advising on risk mitigation strategies.
17. TPAs will help identify trends in injuries and illnesses to help municipalities address the root causes and reduce the number of claims over time.
18. If disputes arise from a claim—such as a disagreement about the cause of injury, the level of benefits, or the length of time off work—TPAs may manage or coordinate litigation, working with legal counsel to resolve disputes.
19. TPAs can also assist in mediating settlements or defending the public entity in workers' compensation hearings.
20. TPAs will also perform other services related to the workers' compensation claims management area as needed or requested

PRIMARY CONTRACTOR/ CONSULTANT/ VENDOR INFORMATION

CONTRACTOR/ CONSULTANT/ VENDOR NAME	
DBA NAME	
PHYSICAL ADDRESS	
MAILING ADDRESS <i>(If different than Physical Address)</i>	

PRIMARY CONTACT

NAME		POSITION/TITLE	
EMAIL ADDRESS			
PHONE NUMBER & EXTENSION		FAX NUMBER	

SECONDARY CONTACT

NAME		POSITION/TITLE	
EMAIL ADDRESS			
PHONE NUMBER & EXTENSION		FAX NUMBER	

EXPERIENCE

# OF YEARS IN BUSINESS	
# OF YEARS PROVIDING [WORK/SERVICE TYPE] TO PUBLIC SECTOR	
# OF CLIENTS USING [WORK/SERVICE TYPE]	
# OF PUBLIC SECTOR CLIENTS IN CALIFORNIA	
NAMES OF THE LAST FIVE (5) MOST RECENT CONTRACTS	<ol style="list-style-type: none"> 1. 2. 3. 4. 5.
OTHER INDUSTRIES SERVICED <i>(Outside Of Local Government)</i>	
# OF TOTAL EMPLOYEES	
# OF EMPLOYEES ASSIGNED TO SOLICITED WORK/SERVICES	

PARTNERING CONTRACTOR/SUBCONTRACTOR/VENDOR OR SUBCONTRACTOR(S)/ SUBCONSULTANT(S)/ SUBVENDOR(S) INFORMATION

(1)	PARTNERING CONTRACTOR/CONSULTANT/VENDOR OR SUBCONTRACTOR/SUBCONSULTANT/SUBVENDOR NAME	
DBA NAME		
PHYSICAL ADDRESS		
MAILING ADDRESS <i>(If different than Physical Address)</i>		

PRIMARY CONTACT

NAME		POSITION/TITLE	
EMAIL ADDRESS			
PHONE NUMBER & EXTENSION		FAX NUMBER	

EXPERIENCE

# OF YEARS IN BUSINESS	
# OF YEARS PROVIDING [WORK/SERVICE TYPE] TO PUBLIC SECTOR	
# OF PAST PROJECTS PARTNERING WITH PRIMARY CONSULTANT	
OFFICIAL PARTNERSHIP STATUS/CERTIFICATION <i>(If Applicable)</i>	
# OF EMPLOYEES ASSIGNED TO SOLICITED WORK/SERVICES	

APPENDIX C: CONTRACTOR(S)/ CONSULTANT(S)/ VENDOR(S) BACKGROUND/EXPERIENCE SUMMARY

(2)	PARTNERING CONTRACTOR/CONSULTANT/VENDOR OR SUBCONTRACTOR/SUBCONSULTANT/SUBVENDOR NAME	
	DBA NAME	
	PHYSICAL ADDRESS	
	MAILING ADDRESS <i>(If different than Physical Address)</i>	

PRIMARY CONTACT

NAME		POSITION/TITLE	
EMAIL ADDRESS			
PHONE NUMBER & EXTENSION		FAX NUMBER	

EXPERIENCE

# OF YEARS IN BUSINESS	
# OF YEARS PROVIDING [WORK/SERVICE TYPE] TO PUBLIC SECTOR	
# OF PAST PROJECTS PARTNERING WITH PRIMARY CONSULTANT	
OFFICIAL PARTNERSHIP STATUS/CERTIFICATION <i>(If Applicable)</i>	
# OF EMPLOYEES ASSIGNED TO SOLICITED WORK/SERVICES	

APPENDIX C: CONTRACTOR(S)/ CONSULTANT(S)/ VENDOR(S) BACKGROUND/EXPERIENCE SUMMARY

(3)	PARTNERING CONTRACTOR/CONSULTANT/VENDOR OR SUBCONTRACTOR/SUBCONSULTANT/SUBVENDOR NAME	
	DBA NAME	
	PHYSICAL ADDRESS	
	MAILING ADDRESS <i>(If different than Physical Address)</i>	

PRIMARY CONTACT

NAME		POSITION/TITLE	
EMAIL ADDRESS			
PHONE NUMBER & EXTENSION		FAX NUMBER	

EXPERIENCE

# OF YEARS IN BUSINESS	
# OF YEARS PROVIDING [WORK/SERVICE TYPE] TO PUBLIC SECTOR	
# OF PAST PROJECTS PARTNERING WITH PRIMARY CONSULTANT	
OFFICIAL PARTNERSHIP STATUS/CERTIFICATION <i>(If Applicable)</i>	
# OF EMPLOYEES ASSIGNED TO SOLICITED WORK/SERVICES	

APPENDIX C: CONTRACTOR(S)/ CONSULTANT(S)/ VENDOR(S) BACKGROUND/EXPERIENCE SUMMARY

(4)	PARTNERING CONTRACTOR/CONSULTANT/VENDOR OR SUBCONTRACTOR/SUBCONSULTANT/SUBVENDOR NAME	
	DBA NAME	
	PHYSICAL ADDRESS	
	MAILING ADDRESS <i>(If different than Physical Address)</i>	

PRIMARY CONTACT

NAME		POSITION/TITLE	
EMAIL ADDRESS			
PHONE NUMBER & EXTENSION		FAX NUMBER	

EXPERIENCE

# OF YEARS IN BUSINESS	
# OF YEARS PROVIDING [WORK/SERVICE TYPE] TO PUBLIC SECTOR	
# OF PAST PROJECTS PARTNERING WITH PRIMARY CONSULTANT	
OFFICIAL PARTNERSHIP STATUS/CERTIFICATION <i>(If Applicable)</i>	
# OF EMPLOYEES ASSIGNED TO SOLICITED WORK/SERVICES	

APPENDIX D: COST PROPOSAL SUMMARY

TOTAL BID PRICE

\$

[SUBCATEGORY]

\$

[SUBCATEGORY]

\$

ADDITIONAL COMMENTS REGARDING COSTS/RATES

APPENDIX D: COST PROPOSAL SUMMARY

[INSERT BID SHEET OR USE BELOW TEMPLATE]

RATE SCHEDULE / COST BREAKDOWN

POSITION/ TITLE	TOTAL NUMBER OF ASSIGNED STAFF	TOTAL NUMBER OF HOURS	STANDARD HOURLY/ FIXED RATE	TOTAL COST
Partners				
Managers				
Supervisors				
Staff				
Other [Specify]				

OUT OF POCKET EXPENSE TYPE	TOTAL NUMBER OF ASSIGNED STAFF	TOTAL NUMBER OF HOURS/DAYS	STANDARD HOURLY/FIXED RATE	TOTAL COST
Meals and Lodging				
Transportation				
Other [Specify]				



20XX

PROFESSIONAL SERVICES AGREEMENT

(Engagement: **INSERT ENGAGEMENT FOR ON-CALL/ONGOING SERVICES**)
(Parties: **INSERT CONSULTANT NAME** and City of El Monte)

[EDITOR'S NOTE: As part of the response to the City RFP proposer's must identify in their proposal any provisions of this Agreement which the proposer may wish to be modified as a condition of the proposal to the City. City shall be under no obligation to entertain modifications to the contract terms after the deadline for submitting proposals. The foregoing notwithstanding, City reserve the right to make further modifications to this Agreement to conform to the requirements of the City-issued RFP or to include provisions required by federal or State law.]

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this _____ day of _____, 20XX (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 **INSERT THE KIND OF ON-CALL/ONGOING 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

[INSERT ADDITIONAL RECITALS AS WARRANTED]

WHEREAS, this Agreement was approved by the City Manager pursuant to his/her authority under Section 3.24.070(B) of the El Monte Municipal Code. OR IF OVER \$30,000: the execution of this Agreement was approved by the El Monte City Council at its Regular Meeting of _____, 20XX, 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 TERM: This Agreement shall have a term of **[insert # of years]** commencing from the Effective Date (hereinafter, the "Term"). For purposes of this Agreement the capitalized term "Effective Date" shall mean the date the Agreement has been signed by all of the Parties which date shall be the first date appearing in this Agreement, above. 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. **[If applicable: The Term of this**

Agreement shall automatically extend for a maximum of (2) one (1) year extension terms unless CITY issues written notice of its intent not to authorize any such extensions.]

1.2 SCOPE OF SERVICES:

- A. Subject to the terms and conditions of this agreement, consultant agrees to provide the services and tasks described in that certain request for proposals of city entitled “**INSERT TITLE OF CITY REQUEST FOR PROPOSAL**” (hereinafter, “CITY RFP”) and the written proposal of consultant entitled “**INSERT TITLE OF CONSULTANT PROPOSAL**” (hereinafter, the “CONSULTANT PROPOSAL”). The CITY RFP and the CONSULTANT PROPOSAL are attached and incorporated hereto as **Exhibit “A”** and **“B”** respectively. The term “Scope of Services” shall be a collective reference to the CITY RFP and the CONSULTANT PROPOSAL. The capitalized term “Services” shall be a collective reference to all the various services and tasks referenced in the scope of services. In the event of any conflict or inconsistency between the provisions of the document entitled CITY RFP and the provisions of the document entitled consultant proposal, the requirements of the document entitled CITY RFP 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 Services and the provisions of this agreement to which the Scope of Services is attached, the provisions of this agreement shall govern and control.

1.3 PROSECUTION OF SERVICES:

- A. CONSULTANT shall perform the Services contemplated under this Agreement on an ongoing basis during the Term. The foregoing notwithstanding, 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 Services in the manner described below and such Services is in fact performed and completed by CONSULTANT and accepted by CITY. CITY requests for the performance of specific services or tasks contemplated under this Agreement shall be made in the form of a written work order(s) issued by the City Representative (each such written request hereinafter referred to as a “Work Order”). Each Work Order shall include the following information:

1. A detailed description of the specific services or tasks requested;
2. The location of where the particular services or tasks are to be performed, if applicable;
3. A not-to-exceed budget for performing the services or tasks;
4. A timeline for completing the requested services or tasks;
5. Any other information CITY deems necessary and relevant to the requested services or tasks; and
6. The signature of the City Representative, confirming that the services or tasks have been authorized by the City Representative.

- B. CONSULTANT shall not perform any of the Services contemplated under this Agreement without a written Work Order request from the City Representative, containing the information set forth in Section 1.3(A), above;

- C. CONSULTANT shall perform all assigned Services continuously and with due diligence so as to complete all assigned Services 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;
- D. 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;
- E. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT's employees; and
- F. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

1.4 COMPENSATION: CONSULTANT shall perform the Services in accordance with the "**INSERT TITLE OF COMPENSATION DOCUMENT**" which set forth under _____ of _____ (hereinafter, the "Approved Compensation Schedule"). The foregoing notwithstanding, CONSULTANT's total compensation for the performance of all Services contemplated under this Agreement, may not exceed the aggregate sum of **INSERT WRITTEN AMOUNT (\$ INSERT NUMBER)** (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.

[EDITOR'S NOTE: Prior to approval by the City Council, section 1.4 may require modification to confirm to the specific manner by which the compensation arrangement between CITY and CONSULTANT is structured.]

1.5 PAYMENT OF COMPENSATION: 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 any 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 person(s) responsible for performing the Services, 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 Services 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 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 the CITY Representative's 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 the CITY Representative's 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 the Consultant Representative's designee will supervise and direct the performance of the services, using his/her best skill and attention, and will be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all services 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 Services 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/her designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONSULTANT represents, acknowledges, and agrees to the following:
- A. CONSULTANT will perform all Services skillfully, consistent with and adhering to its professional standard of care, that is, the degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality;
 - 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 Services 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 §1090 and the Political Reform Act (Government Code §§81000 *et seq.*) CONSULTANT shall be liable for all violations of such laws and regulations in connection with CONSULTANT's performance of the 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 Services 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, notwithstanding Section 5.2(B), 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 Services under the standard of care as articulated under section 2.4(A).

- 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 **[IF RELEVANT] 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(S) AND TITLE(S)**.

- 2.7 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The services will be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods, and details of performing the Services 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 Services 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 Services 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. Notwithstanding any other city, state, or federal policy, rule, regulation, law, or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors performing the services under this agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by city, including but not limited to eligibility to enroll in the California public employees retirement system (PERS) as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contributions and/or employee contributions for PERS benefits.
- 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 Services 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 Services.
- 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 Services. CONSULTANT's compliance with applicable laws will include, without limitation, compliance with all applicable CAL/OSHA requirements and applicable regulations of the U.S. Department of Housing and Urban Development.
- 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.
- 2.12 SUSPENSION AND DEBARMENT: If at the time this Agreement is executed by the Parties or at any time thereafter any or all of the Services contemplated under this Agreement are paid for in whole or in part using federal funds, CONSULTANT shall certify by signature that CONSULTANT and its principals, as defined in 49 CFR 29.995, and/or affiliates, as defined at 49 CFR 29.905, are not excluded, or disqualified, as defined at 49 CFR 29.940 and 29.945. CONSULTANT may submit proof of non-debarment or suspension by providing a printout or screenshot from the U.S. government's official website (www.SAM.gov) showing CONSULTANT and its principals are not debarred or suspended prior to the execution of this Agreement.

[EDITOR'S NOTE: Prior to approval by the City Council, section 2.12 may be modified further to include additional federal requirements.]

III.

INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Before performing any Services contemplated under this Agreement, 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: For any owned, non-owned, or hired vehicles used in connection with the performance of this Agreement, 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 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 Services 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.
- E. Cyber Security: **[[IF RELEVANT]]** Cyber Security coverage to include technology/professional liability insurance, intellectual property infringement, and data protection liability insurance. CONSULTANT shall procure and maintain coverage for cyber liabilities and financial loss resulting or arising from acts, errors, or omissions, in connection with data maintenance, hosting, software development and other information technology services provided under this agreement. Coverage shall include protection for liability arising from: intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets); breaches of security; violation or infringement of any right, privacy, breach of federal, state, or foreign security and/or privacy laws or regulations including; data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on a third party. The minimum limits shall be three million dollars (\$3,000,000) for each and every claim and in the aggregate.
- 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 a material consideration of this Agreement. Accordingly, CONSULTANT warrants, represents, and agrees that it will furnish CITY with certificates of insurance and endorsements evidencing the coverage required under this Article on ACORD-25 or 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.** Before performing any Services, CONSULTANT shall provide CITY with all certificates of insurance and endorsements referenced herein. Upon CITY's written request, CONSULTANT will also provide CITY with 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. Any amendment to the insurance requirements of this Article shall be memorialized and approved in the form of a written amendment to this Agreement, signed by the Parties. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver will be void or invalid.

IV.
INDEMNIFICATION

- 4.1 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 Services. 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 Services; (ii) CONSULTANT's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONSULTANT's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONSULTANT, whether voluntary or involuntary; and/or (v) 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 Services 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., §§3789 *et seq.* and the California False Claims Act, Government Code §§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:

INSERT CONSULTANT NAME

INSERT ADDRESS

Attn: CONTACT PERSON

Phone: INSERT PHONE

CITY:

City of El Monte

Human Resources/Risk Management

11333 Valley Boulevard

El Monte, CA 91731

Phone: (626) 580-2040

Attn: Rigo Gutierrez, HR/RM Director

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 of the Services contemplated under 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 independent contractors in connection with the various projects worked upon by CONSULTANT.
- 6.8 CONFLICTS OF INTEREST:
- A. 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.
 - B. CONSULTANT may serve other clients, but none whose activities within the corporate limits of CITY or whose business, regardless of location, would place CONSULTANT in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code §81000 *et seq.*

C. CONSULTANT shall not employ any official or employee of the CITY during the Term of this Agreement or any

extension term. No officer or employee of CITY shall have any financial interest in this Agreement that would violate Government Code §§1090 *et seq.* CONSULTANT warrants and represents that no owner, principal, partner, officer, or employee of CONSULTANT is or has been an official, officer, employee, agent, or appointee of the CITY within the twelve-month period of time immediately preceding the Effective Date. If an owner, principal, partner, officer, employee, agent, or appointee of CONSULTANT was an official, officer, employee, agent, or appointee of the CITY within the twelve-month period immediately preceding the Effective Date, CONSULTANT warrants that any such individuals did not participate in any manner in the forming of this Agreement. CONTRACTOR understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and CONSULTANT will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and CONSULTANT will be required to reimburse the CITY for any sums paid to CONSULTANT. CONSULTANT understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code §1090.

- 6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.10 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, 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 deadline for any Services assigned to CONSULTANT may 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. 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: _____

Date: _____