



DEPARTMENT OF PUBLIC WORKS

REQUEST FOR PROPOSALS

FOR PROFESSIONAL CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES

FOR THE CONSTRUCTION OF

LAMBERT PARK IMPROVEMENT PROJECT, CIP 819

MAY 2019

IMPORTANT DATES

RFP ISSUED	May 16, 2019
REQUEST FOR INFORMATION DEADLINE: 5:00 PM	May 30, 2019
RELEASE OF INFORMATION REQUESTED	June 4, 2019
PROPOSAL DUE DATE/SUBMISSION DEADLINE: 5:00 PM	June 11, 2019
AWARD DATE	July 2019
APPROXIMATE START DATE	July / August 2019

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REQUEST FOR PROPOSALS FOR PROFESSIONAL CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES

LAMBERT PARK IMPROVEMENT PROJECT CIP NO. 819

1. Overview

The City of El Monte, County of Los Angeles, State of California (“City”) is soliciting proposals from qualified consultant firms for Construction Management and Inspection Services for the Lambert Park Improvement Project, CIP 819 (Project). Services include, but not limited to:

Providing constructability review of the plans, specifications and cost estimate (PS&E); overseeing construction coordination meetings with the contractor and stakeholders; coordination of materials submittals; providing construction inspection and reporting; schedule tracking; review and recommend approval of contractor payment requests; oversight of contractors surveying, staking and assurance of monument preservation; review, negotiate, and recommend approval of contract change orders; coordination with utilities and other agencies; assuring contractor labor compliance; records management; and assist in the required billing(s) for fund reimbursement. The project’s construction contract administration shall be in conformance to the APWA green book and the City of El Monte’s local standards. The improvements will be constructed at Lambert Park located at 11431 McGirk Avenue, City of El Monte.

The Project is to be funded using AQMD Grant Funds, HRP Grant Funds, Los Angeles County Excess Funds, Los Angeles County Prop A Funds, and City collected Quimby Funds. This project is subject to local, County, and state regulations and procurement requirements.

The Lambert Park improvement project has been designed to be constructed in one or two phases. The City has secured funding for Phase 1 and is active in securing funding for Phase 2 with the expectation the City will know if Phase 2 funding is secured within 60 days of the construction Notice to Proceed. If Phase 2 funding is secured, both phases would be constructed as one project.

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

2.0 Scope of Services

The City is seeking a qualified proposer to provide technical professional Construction Management and Inspection Services related to the proposed Lambert Park Improvement Project including but not limited to: park construction, new building construction, existing building renovation, site demolition, earthwork and site grading, utilities, electrical facilities renovations and improvements, playgrounds and exercise area, sports field construction, landscape and irrigation installation, electrical facilities improvements, concrete improvements, and parking lot improvements.

The project may be constructed in one or two phases based on funding availability. Funding for Phase 1 improvements has been secured. Funding for Phase 2 improvements is actively being pursued and the City anticipates knowing if Phase 2 funding is secure within 120 days of the Notice to Proceed for Construction.

Phase 1 improvements consist of but not limited to: park construction, new building construction, site demolition, earthwork and site grading, utilities, electrical facilities renovations and improvements, playgrounds and exercise area, landscape and irrigation installation, electrical facilities improvements, concrete improvements, and parking lot renovation.

Phase 2 improvements consist of but not limited to: park construction, existing building renovation, site demolition, earthwork and site grading, utilities, electrical facilities renovations and improvements, sports field construction, landscape and irrigation installation, electrical facilities improvements, concrete improvements, and parking lot improvements.

Plans and specifications for Phase 1 and Phase 2 will be made available upon request. Please contact Alan Palermo at apalermo@elmonteca.gov and request link to download pdf files.

Engineer's Estimate for Phase 1 is \$3.55 million, and Phase 2 is \$3.65 million. The construction is anticipated to be complete within 135-170 working days (135 working days for Phase 1 only, 170 working days for Phase 1 and Phase 2 if funding is secured for Phase 2). In general the City of El Monte uses the "Standard Specifications for Public Works Construction", and the "Standard Plans for Public Works Construction", as the basis of a project's plans, specifications, and estimate. Other standard drawings used in design are referenced on the plans and specifications.

The selected consultant shall provide one qualified Registered Civil Engineer serving in the capacity as Construction Manager responsible for Inspection and Contract Management for the construction of the project. Responsibilities include but not limited to:

- Attend all project related meetings.
- Provide a constructability review of the project plans, specifications, and engineer's estimate.
- Maintaining project files.
- Supervise construction observation/inspection.
- Review and file construction inspector's daily reports.
- Review and track the contractor's construction schedule.
- Assure contractor adheres to labor compliance requirements.
- Issue a weekly working day statement
- Coordinate with the City's Project Manager, utility companies, and other agencies. Assist in acquiring all necessary permits with respective agencies.
- Review and track submittal approvals.
- Provide public outreach as needed.
- Review and make recommendation for contractor progress payments.
- Review and make recommendation regarding the contractor's request for a contract change order.
- Maintain a set of "as-built" plans.
- Arrange for a final walk through inspection and prepare a "punch-list".
- Preparation of documents as required by auditors (as needed)

Task 1 – Meetings: The selected consultant will meet with City personnel for an initial kick-off meeting.

Once the contractor is awarded a contract the consultant will schedule a pre-construction conference inviting all of the Project's stakeholders. In addition, the selected consultant shall conduct weekly coordination meetings with the contractor and stakeholders that will be involved with the next week's work. The consultant shall prepare agendas and minutes of all meetings. The contractor will be required to provide a "look ahead" schedule at each weekly meeting that the selected consultant shall review and provide comment. These meetings may be held at the El Monte City Hall, 11333 Valley Boulevard, El Monte, CA. However the meeting location may be scheduled for an alternate site if agreed by the contractor and approved by the City.

Task 2 – Construction Management: The selected consultant must provide a qualified Registered Civil Engineer serving as a construction manager having at least 10 years of experience with similar projects to be responsible for the following tasks:

- **Task 2a - Constructability Review:** The construction manager shall be responsible for the review of the design plans, specifications, and engineer's estimate at the 100% design milestones to advice on the constructability of the design and offer recommendations to improve construction efficiencies and/or reduce impacts to property owners, business and traveling public. These reviews shall take no longer than two (2) weeks to complete. The consultant shall meet with the Project Manager and City to discuss their comments.

Task 2b - Supervision of Construction Inspection. The construction manager shall supervise the work of the project construction inspector. Review inspector's daily reports and provide copies to the City on a weekly basis.

- **Task 2c – Construction Schedule:** The construction manager shall review the contractor's project schedule and confirm that tasks are scheduled within appropriate timeframes with the least impact to the public. On a weekly basis the construction manager shall review the contractor's weekly look ahead schedule to confirm it is in compliance with the original schedule and that coordination with utility companies and agencies has been performed. If the weekly look ahead schedule is not in compliance with the original schedule, direct the contractor to make suitable adjustments.
- **Task 2d – 3 Week Look Ahead Work Schedule:** The construction manager shall prepare, maintain, and update a 3 week look ahead schedule and issue to the contractor and to the City weekly.
- **Task 2e – Coordination:** The construction manager shall be the City's representative to assure contractor coordination with the design team, utility companies, other agencies, and City personnel.

As part of this task the construction manager shall review and track all submittals by the contractor. A tracking log shall be prepared to document, at a minimum: The date the submittal was delivered; who the submittal was transmitted to for comment/approval; and when the submittal was returned with comment or approval.

- **Task 2f – Review Contractor Payment and Contract Change Order Requests:** The construction manager shall review all contractor payment requests and reconcile item quantities with field measurements. Once the reconciliation is complete and the contractor agrees the construction manager shall provide a written recommendation to the City for payment. The construction manager's recommendation process shall take no longer than one (1) work week. If the contractor's payment request is in error the construction manager shall reject the request in writing stating the reason for rejection.

The construction manager shall review all contractor contract change order requests to confirm it is a valid request not covered by the plans and specifications. The construction manager shall also forward all requests to the design engineer for their input to the requests validity and cost. If the request is valid and a reasonable cost established the construction manager shall forward the change order request to the City recommending approval.

- **Task 2g – Review on Contract Claims:** The construction manager shall be responsible in working with the contractor and resolving any issues prior to claims. The construction manager shall assist with City personnel in recommending the best solution to resolve disputed claims. Resolution of disputed claims shall be approved by the City Engineer or its designee.

- **Task 2h – Final Walk Through and “Punch-List”:** The construction manager shall arrange for a final walk through inspection with the contractor and prepare a “punch-list” of items needing to be addressed to complete the work.
- **Task 2i – “As-built” Plans:** The construction manager shall maintain a set of “as-built” plans. These plans shall be submitted to the City once the project is completed.
- **Task 2j – Public Outreach:** The construction manager shall be responsible to keep the adjacent residents and property owners apprised of the progress of construction. This task may include but is not limited to the: Handing out of City approved flyers to the properties along the project route describing the proposed work assuring the contractor informs residents/businesses of localized work that may impact their property; and responding to complaints.
- **Task 2k – Survey** – The selected consultant shall monitor all activities related to the contractor’s survey work including but not limited to verification of field work, survey records, monumentation, etc.

Task 3 – Construction Inspection and Reporting: The selected consultant shall provide experienced construction observation/inspection as required to assure compliance with the plans and specifications as needed/during all times the contractor is working, and such work requires inspection. Construction inspector shall have the full knowledge in the day to day operations and activities, coordination of all construction methods required for construction of the improvements included in the Lambert Park Improvement Plans. It is anticipated/expected most of the work will occur during the day. The consultant shall report the daily progress of the work on forms approved by the City, produced by the consultant documenting the same information. The consultant shall document all personnel and equipment used for the day. The construction inspectors report will need to incorporate photos, before, during and after construction. The format of the inspector’s daily report will need to be approved by the City. Copies of these completed forms shall be submitted to the City on a weekly basis.

Task 4 – Labor Compliance: The selected consultant shall enforce the contractor’s submittal of monthly certified payrolls from both the prime contractor and all subcontractors. The consultant shall review the payrolls to confirm the contractor is meeting contract and project requirements. The prime contractor shall be responsible to assure corrections of any payroll that does not meet contract or State requirements, including making additional payments to employees, if necessary. All correspondence and corrections with and by the contractor shall be documented and forward to the City. Consultant will need to inform the city as soon as the consultant discovers the discrepancies or labor compliance violations. The consultant shall submit a monthly labor compliance report to the City. The report shall include certified payrolls, correspondence corrections, consultant letter certifying the review and labor compliance in accordance to the State regulations.

Task 5 – Geotechnical and Materials Testing: The selected consultant shall provide geotechnical and materials testing to assure the contractor's construction methods and materials meet the requirements of the plans and specifications.

Task 6 – Survey – The selected consultant shall monitor all activities related to the contractor's survey work including but not limited to verification of field work, survey records, monumentation, etc. as required/needed for this project.

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

3.0 Proposal Format

All proposals shall include the following information and comply with the associated page limit restrictions. Note that 1 page includes the front side of an 8.5x11 sheet of paper and the cover does not constitute a page.

- a) Cover Letter. Maximum one (1) page cover letter signed by an officer of the firm, binding the proposer to all of the commitments made in the submittal. The letter shall include name, address and phone number of the person authorized to represent the proposer and shall include the following Statement:
 - i. I HAVE READ UNDERSTOOD, AND AGREED TO ALL STATEMENTS IN THIS REQUEST FOR PROPOSAL AND ACKNOWLEDGE RECEIPT OF ALL ADDENDUMS/AMENDMENTS AS WELL AS TO THE TERMS, CONDITIONS, AND ATTACHMENTS REFERENCED.
- b) Proposer's Background. Maximum two (2) page background on the proposer and its area(s) of professional expertise relevant to this RFP. An additional one (1) page may be included to highlight the background of each proposed sub-consultant to be used by the proposer and the specific task(s) or functions the sub-consultant will perform.
- c) Qualifications and Experience of Proposer's Personnel. Maximum three (3) page summary of the relevant experience, work history, training, education and special certifications of the proposer's personnel who will be performing the professional services contemplated under this RFP on the proposer's behalf. Briefly discuss the Consultant team's qualifications and experience with projects of a similar magnitude and nature. Proposers shall provide identical information for all sub-consultants' performing any of the tasks or services contemplated under this RFP on the proposer's behalf. The summary shall also include the office location of key personnel proposed to work on this contract. Relevant experience can include proposer's overall experience, experience with similar projects and the experience of individuals on the proposed team. Show how the proposer's experience relates to the demands of this project.
- d) Project Approach. Maximum three (3) page summary of the proposed approach Project. The proposer shall explain the way in which the proposer will provide their services requested under this RFP and represent the City in completing all of the tasks called for under the RFP in a timely manner and within budget. Approach should also demonstrate proposer's ability to provide the required services to keep the selected contractor on schedule and budget. Include a brief overview of the Consultant's understanding of the project. The content will reflect the particular viewpoint of the Consultant.
- e) Proposed Personnel. Maximum two (2) page resume for the Construction Manager and one (1) page resume for each of the other key personnel, including significant sub-consultants who will be performing work/providing services on this

project/contract. Resumes for corporate leadership should not be included unless said individuals will be performing substantial work on this project. The designated Construction Manager shall be the primary contact with the City during the contract period and shall function in that capacity while employed by the firm. In addition, the City must approve changes of personnel.

- f) Quality Assurance/Quality Control Procedures. Maximum one (1) page brief description of the consultant's approach to implement a Project-specific Quality Control Plan. Describe the major elements and steps of the quality assurance / quality control (QA/QC) program and procedures that will be followed for each deliverable (i.e. engineering discipline review, coordination review, constructability review, QA/QC control review, etc.).
- g) References. Each proposal must include at least five (5) public agency references going back at not more than five (5) years from the issuance of this RFP in which the proposer was engaged to perform tasks similar to those requested under this RFP. References should place an emphasis on past projects in which the personnel to be used by proposer for this project were deployed. The references should include the name, title and contact information of the public agency officer or employee responsible for overseeing the proposer's work.
- h) Schedule Control. Time is of the essence. It is critical the proposer describe methods that can be used to keep the construction on schedule within maximum of two (2) pages. The proposer shall illustrate methods they have used to assist a contractor to meet their proposed schedule. Discuss previous projects where the consultant was able to avert a potential delay by implementing project management techniques
- i) Fee Schedule/Cost Proposal. Maximum 2-page detailed cost estimates for each fee schedule requested to perform specific Tasks identified in the RFP and a schedule of rates for each proposed personnel that may be tasked to complete the Project. The Task-specific cost estimate shall be separated by include an estimate of the number of hours per staff member by proposed task and clearly identify an hourly rate schedule for the proposed staff. The proposal shall indicate the compensation structure for performing specific services identified in Tasks 1 through 6 (e.g. Not-to-Exceed hourly rate structure) for each Task and each Phase assuming each phase is constructed separately and consecutively. Include a deduct should both phases be constructed concurrently. The proposal shall also include costs and expenses related to photocopying, postage, travel, etc. (i.e. Reimbursement expenses). To the extent that a proposal contemplates the use of subconsultants to perform any one or more of the above described tasks on the proposer's behalf, the proposal shall include a List of Subconsultants identifying all subconsultants and state the fee for each subconsultant in the Fee Schedule under the appropriate Task under which the service will be provided. In so far as the proposer's proposal contemplates an increase in compensation rates or charges prior to the completion of Tasks 1 through 6, and during the term of the portion of

the PSA or any extension term, the proposal shall clearly indicate when such increases will take effect and by how much.

- i. The Fee Schedule/Cost Proposal shall be delivered in a separate sealed envelope which is plainly marked on the outside **“LAMBERT PARK IMPROVEMENT PROJECT, CM AND INSPECTION SERVICES, CIP 819”** and addressed to the above-mentioned location. The envelope shall contain the name and address of the consultant clearly marked on the outside.
- ii. Submit a separate Fee Schedule for:
 - i. Phase 1 Only
 - ii. Phase 2 Only (Could take place after Phase 1 is constructed)
 - iii. Phase 1 and 2

4.0 Evaluation Criteria

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

- a) Expertise, Experience & Training Plus Prior Contracting History (50%) – The expertise, experience and training of the proposer and its key personnel, previous and recent experience with similar work / similar fields and qualifications on Park Improvement Projects and depth of the staff that will perform the work on this project. This factor includes evaluation of the proposer's prior contracting history, including the review of the proposer's certifications relating to false claims, debarment and civil litigation.
- b) Project Approach (30%) – The proposer's responsiveness in developing a comprehensive plan while meeting regulatory requirements and the City's specific needs.
- c) Schedule Control (10%) – Proposal for completing the project in a timely manner, inclusive of the proposer's ability to identify critical paths for the timely and competent completion of all work contemplated by the Project and documented previous similar project experience where projects were completed on or ahead of schedule.
- d) Compliance with RFP (10%) – The ability of the proposer to comply with all instructions set forth under this RFP as well as the proposer's ability to agree to all of the terms and conditions of the attached PSA without modification, particularly as relates to indemnification, insurance requirements and standards of care.

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

5.0 Selection Process

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

6.0 Proposal Requirements

The Consultant's proposal must be comprehensive, concise and to the point. Current company brochures and resumes of key personnel should be included as well as examples of previous work. However, a proposal is a voluntary response on the part of a Consultant, and this RFP does not commit the City to pay any costs incurred in its preparation. The City reserves the right to accept or reject optional elements of this proposal, or the proposal in part, or its entirety.

This RFP is a solicitation for proposals only, and is neither intended, not to be construed as an offer to enter into an agreement or engage in any formal rule competitive bidding or negotiation pursuant to any statute, ordinance or regulation.

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

Four (4) hardcopies and one digital copy of the complete proposal must be received prior to the time and date specified. No exceptions to this requirement will be considered. The digital copy of the proposal shall be Portable Document Format (PDF) and submitted on a Compact Disc (CD), Digital Versatile Disc (DVD), or USB drive.

Mail or hand-deliver (No faxes) the proposal to the attention:

City of El Monte
Public Works Department – Engineering Division
City Hall West
11333 Valley Boulevard
El Monte, CA 91731-3293

ATTN:Braden Yu, P.E.
Public Works & Utilities Director

Subject: **CONSTRUCTION MANAGEMENT RFP – LAMBERT PARK IMPROVEMENT PROJECT, CIP 819**

Proposal and Fee Schedule will be accepted by the City on or before **5:00 p.m.** (local time) on **Tuesday, June 11, 2019**. Proposal and Fee Schedule shall be delivered in separate sealed envelopes which are plainly marked on the outside “**CONSTRUCTION MANAGEMENT RFP – LAMBERT PARK INTERSECTION IMPROVEMENT PROJECT, CIP 819**” and addressed to the above-stated location. The envelopes shall contain the name and address of the consultant clearly marked on the outside. Proposals received after this date and time will be returned to the consultant unopened.

Proposals may be submitted via personal delivery, overnight courier (e.g., FedEx or UPS) or U.S. Mail. Proposals must be received by or before the Submission Deadline. Proposals that are deposited with an overnight courier or post marked prior to the Submission Deadline but received after the Submission Deadline will not be considered by the City.

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

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

- g) The City reserves the right to approve or disapprove of particular subcontractors, joint venture partners, or other proposed team members.
- h) The City reserves the right to evaluate responses in terms of the best interests of the City, applying criteria provided in this RFP and any other criteria the City, in its sole discretion, deems pertinent.
- i) By the submission of a proposal, each proposer accepts and agrees to execute a written Professional Services Agreement (PSA) in the form attached hereto as Exhibit 1. By submission of a proposal, each proposer agrees to execute a PSA with the City in the form attached hereto as Exhibit 1, inclusive of all stated terms and conditions relating to indemnification, required insurance and standard of care requirements. If a proposer is unable to agree to any of the terms or conditions of the PSA in the form attached hereto, the proposer must identify the provision(s) in question and provide an explanation as to why the proposer cannot comply with such provisions. If a proposer's objection to a certain provision of the PSA is merely a question of added cost, the proposer shall indicate in the proposal the difference in cost associated with complying with the provision(s) versus the cost associated with the City's waiver or modification of the provision(s). The City shall be under no obligation to make modifications to the PSA after a contract has been awarded and proposers shall be deemed to have incorporated all costs associated with compliance with the PSA into their proposal. A proposer's inability to comply with one or more provisions of the PSA shall be a factor that will be considered by the City in determining which proposal will serve the best interest of the City when all other factors are taken into account.
- j) All proposals must remain valid for a minimum period of ninety (90) calendar days after the Submission Deadline. Responses may not be modified or withdrawn by the proposer during this period of time except in accordance with this RFP and with written permission granted by the City.
- k) All questions or requests for clarification shall be submitted via email to Alan Palermo at apalermo@elmonteca.gov by the REQUEST FOR INFORMATION DEADLINE. All questions received by this deadline will be addressed and posted on the City's website (www.ci.el-monte.ca.us) by the RELEASE OF INFORMATION REQUESTED DATE.
- l) If it becomes necessary to revise any part of this RFP, an addendum will be posted on the City's website. It shall be the sole responsibility of the proposer to check for any addendums to the RFP that may be issued by the City.
- m) It is presumed that each proposer has read and is thoroughly familiar with the scope of services to be performed under this RFP.
- n) The proposer agrees that, if a contract is awarded to a proposer, the proposer shall make no claim against the City or any of the funding agencies because of

any estimate or statement made by any employees, agents, or consultants of the City which may prove to be erroneous in any respect.

- o) Proposers may withdraw their proposal prior to the Submission Deadline.
- Fee Schedule/Cost Proposal.

Provide detailed cost estimate(s) as described in Section 3i.

7.0 Insurance Requirements

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

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

ATTACHMENT A

FORMS

INSURANCE: CG2010

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

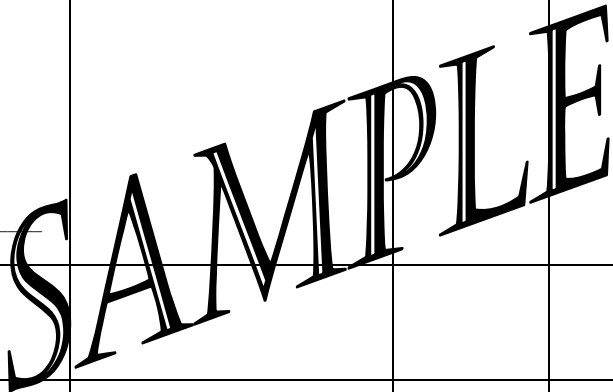
INSURED

- INSURER A** *GENERAL LIABILITY CARRIER MUST HAVE A*
- INSURER B** *CURRENT A.M. BEST RATING OF "A VI" OR HIGHER.*
- INSURER C** *WORKERS' COMPENSATION CARRIER MUST HAVE A*
- INSURER D** *CURRENT A.M. BEST RATING OF "A-VII" OR HIGHER.*
- INSURER E** *CARRIERS MUST BE ADMITTED IN CALIFORNIA.*

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS <i>MINIMUM ACCEPTABLE LIMITS</i>	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <hr/> GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE	\$1,000,000.
					FIRE DAMAGE (Any one fire)	\$ 50,000.
					MED EXP (Any one person)	\$ 5,000.
					PERSONAL & ADV INJURY	\$1,000,000.
					GENERAL AGGREGATE	\$2,000,000.
					PRODUCTS-COMP/OP AGG	\$2,000,000.
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY	EA ACC AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR. <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	\$
					AGGREGATE	\$
						\$
						\$
	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
					E.L. EACH ACCIDENT	\$1,000,000.
					E.L. DISEASE-EA EMPLOYEE	\$1,000,000.
					E.L. DISEASE - POLICY LIMIT	\$1,000,000.
	OTHER					



DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

THE CITY OF EL MONTE IS HEREBY NAMED AS ADDITIONAL INSURED. SEE ATTACHED ADDITIONAL INSURED ENDORSEMENT. (MUST BE FORM CG2010 OR EQUIVALENT.)

***10 days in the event of non-payment of premium**

CERTIFICATE HOLDER

ADDITIONAL INSURED:INSURED LETTER: _____

**CITY OF EL MONTE
PUBLIC WORKS ENGINEERING DEPARTMENT
11333 VALLEY BOULEVARD
EL MONTE, CA 91731**

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, **BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.**

AUTHORIZED REPRESENTATIVE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

**CITY OF EL MONTE
PUBLIC WORKS ENGINEERING DEPARTMENT
11333 VALLEY BOULEVARD
EL MONTE, CA 91731**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

SAMPLE

EXHIBIT 1

PROFESSIONAL SERVICES AGREEMENT SAMPLE



20 [REDACTED]

PROFESSIONAL SERVICES AGREEMENT

(Engagement: *Replace with Description of Engagement*)

(Parties: The City of El Monte – *Replace with Name of Consultant*)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this _____ day of _____ 2014 (hereinafter, the “Effective Date”), by and between the CITY OF EL MONTE, a municipal corporation (“CITY”) and [REDACTED] (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.

RECITALS

This Agreement is made and entered into with respect to the following facts:

WHEREAS, CITY wishes to engage CONSULTANT to provide *Generally Describe the Type of Work to be performed in abbreviated fashion*; and

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

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

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

WHEREAS, execution of this Agreement was approved by the City Council at its [REDACTED] meeting of [REDACTED] 20 [REDACTED] under Agenda Item [REDACTED].

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

1.

ENGAGEMENT TERMS

1.1. SCOPE OF SERVICES: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONSULTANT agrees to perform the services and tasks set forth under that certain proposal dated [REDACTED] 20 [REDACTED] and entitled [REDACTED] which is attached hereto as Exhibit “A” (hereinafter referred to as the “Scope of Services”). CONSULTANT further agrees to furnish to CITY all labor, materials,

For internal purposes only:

Contract No. [REDACTED]

tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Services. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Services shall hereinafter be referred to generally by the capitalized term "Work."

1.2. PROSECUTION OF WORK: The Parties agrees as follows:

- A. Time is of the essence of this Agreement and each and every provision contained herein. The Work shall be commenced within [REDACTED] () calendar days of CITY's issuance of a written Notice to Proceed and shall be completed at the earliest feasible time practicable, but in no event by a date later than [REDACTED] from the date of CITY's issuance of a Notice to Proceed (hereinafter, the "Completion Date"). CITY, in its reasonable discretion, may grant CONSULTANT additional time to complete the Work, provided (i) no grant of additional time shall exceed a period of [REDACTED] () calendar days from the original Completion Date; and (ii) CONSULTANT shall have provided CITY with a written request for additional time no less than [REDACTED] () calendar days prior to the original Completion Date, which notice shall specify the reason(s) why additional time is needed, how much additional time is needed and what measures CONSULTANT has taken to mitigate the need for additional time. The granting of such additional time by the CITY shall in no way entitle CONSULTANT to compensation in excess of the Contract Fee, defined below, in so far as the need of additional time is not reasonably attributable to CITY;
- B. CONSULTANT shall perform the Work continuously and with due diligence so as to complete the Work by the Completion Date. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other consultants, contractors or agents;
- C. CONSULTANT shall not claim or be entitled to receive any compensation or damage because of the failure of CONSULTANT or its subcontractors or subconsultants, to have related services or tasks completed in a timely manner;
- D. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT's employees; and
- E. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

1.3. EXTRA WORK; COMPENSATION FOR EXTRA WORK:

- A. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. For the purposes of this Agreement, the term "Extra Work" means any additional work, services or tasks not set forth in the Scope of Work but later determined by City to be necessary. Consultant shall not undertake nor shall Consultant be entitled to compensation for Extra Work without the prior written authorization of the City. Extra Work does not include any labor, materials, tools, supplies, equipment, services, tasks or incidental and customary

For internal purposes only:

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work undertaken to competently perform and timely complete the Work and related tasks set forth in the Scope of Work.

- B. Payments for any Extra Work shall be made to Consultant on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally.

1.4. COMPENSATION: Consultant shall be compensated for the performance of the services and tasks that comprise the Work in accordance with the hourly compensation schedule set forth under page [REDACTED] of the Scope of Work under the heading [REDACTED]. The foregoing notwithstanding, Consultants' total compensation for performing the Work shall not exceed the aggregate sum of [REDACTED] (\$ [REDACTED]) (hereinafter, the "Contract Price"). The Parties agree that the Contract Price includes compensation for all labor, materials, tools, supplies, equipment, business licenses and such other incidental and customary work necessary to competently perform and fully complete the Work as well as compensation for all specifically delineated expenses set forth in the Scope of Work. All related costs, travel expenses, fees in the development of the Work shall be burdened by the Consultant and not be reimbursable to the City. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the Contract Price unless the availability of funds for the added expenditure is first reviewed by the Finance Department of the City and unless such added expenditure is specifically approved in advance and in writing by the City.

1.5. PAYMENT OF COMPENSATION: Following the conclusion of each calendar month, CONSULTANT shall submit to CITY a itemized invoice indicating the services and tasks performed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONSULTANT's monthly compensation is a function of hours worked by CONSULTANT's personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each task and service performed and a grand total for all services performed. Within thirty (30) calendar days of receipt of each invoice, CITY shall notify CONSULTANT in writing of any disputed amounts included in the invoice. Within forty-five (45) calendar day of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.

1.6. ACCOUNTING RECORDS: CONSULTANT shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY shall have the right to access and examine such records, without charge, during normal business hours. CITY shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

1.7. ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all

tasks set forth in the Scope of Services, CONSULTANT shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT's cessation or abandonment.

2.

PERFORMANCE OF AGREEMENT

2.1. CITY'S REPRESENTATIVES: The CITY hereby designates Raúl Godinez, II, the City Manager and the Frank Senteno, the Director of Public Works (hereinafter, the "CITY Representatives"), to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief CITY Representative. The CITY Representatives or their designee shall act on behalf of the CITY for all purposes under this Agreement. CONSULTANT shall not accept directions or orders from any person other than the CITY Representatives or their designee.

2.2. CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates [REDACTED] to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee shall supervise and direct the performance of the work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequence and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONSULTANT Representative shall constitute notice to CONSULTANT.

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

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

- A. CONSULTANT shall perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession;
- B. CONSULTANT shall perform all Work in a manner reasonably satisfactory to the CITY;
- C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code section 1090 and the Political Reform Act (Government Code section 81000 et seq.);

- D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- E. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- F. All of CONSULTANT's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

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

2.5. ASSIGNMENT: The skills, training, knowledge and experience of CONSULTANT are material to CITY's willingness to enter into this Agreement. Accordingly, CITY has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.

2.6. CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent contractor basis and not as an employee. CONSULTANT reserves the right to

perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not employees of CITY and shall at all times be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.

2.7. REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the CITY Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONSULTANT and shall not be re-assigned to perform any of the Work.

2.8. COMPLIANCE WITH LAWS: CONSULTANT shall keep itself informed of, and in compliance with, all applicable Federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT's compliance with applicable laws shall include, without limitation, compliance with all applicable Cal/OSHA requirements.

2.9. NON-DISCRIMINATION: In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.

2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONSULTANT and all persons retained or employed by CONSULTANT shall have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by contract or otherwise, unless such authority is expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by CITY in writing.

3.
INSURANCE

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

- A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance (“CGL Coverage”) as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
- B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
- C. Workers’ Compensation Insurance/ Employer’s Liability Insurance: A policy of workers’ compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement.
- D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT’s profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.

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

3.3. REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers who, according to the latest edition of the Best’s Insurance Guide, have an A.M. Best’s rating of no less than A:VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor’s rating of no less than

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BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the CITY Representatives are authorized to authorize lower ratings than those set forth in this Section.

3.4. PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT shall be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.

3.5. WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT or CONSULTANT's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY.

3.6. VERIFICATION OF COVERAGE: CONSULTANT acknowledges, understands and agrees that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding CITY's financial well-being and, indirectly, the collective well-being of the residents of the CITY. Accordingly, CONSULTANT warrants, represents and agrees that it shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **These certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any work or any of the Work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

4.

INDEMNIFICATION

4.1. The Parties agree that CITY, the CITY's elected and appointed officials, officers, employees, agents and authorized volunteers (hereinafter, the "City Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the City Indemnitees with the fullest protection possible under the law. CONSULTANT acknowledges that CITY would not enter into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect CITY as set forth herein.

4.2. Work of Contractor's Design Professionals Services: The duty to indemnify, defend and hold harmless as set forth under this subsection shall apply to the negligence, recklessness or willful misconduct of any individual who qualifies as a "design professional" within the meaning of subsection (c)(2) of section 2782.8 of the California Civil Code in so far as such negligence, recklessness or willful misconduct occurs in the performance work or activities that must be

those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents and authorized 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.

4.7. As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, 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.

4.8. As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, the duties to indemnify, defend and hold harmless as set forth under this Section, shall survive the early termination or normal expiration of this Agreement and shall be in addition to any other rights or remedies which the CITY may have at law or in equity.

SAMPLE
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TERMINATION

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

5.2. EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of

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

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

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

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

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

6.

MISCELLANEOUS PROVISIONS

6.1. DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of CITY without restriction or limitation upon their use or dissemination by CITY. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONSULTANT in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to CITY, a perpetual license for CITY to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONSULTANT shall

For internal purposes only:

Contract No. [REDACTED]

require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONSULTANT in the performance of this Agreement.

6.2. CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT shall not use CITY’s name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.

6.3. FALSE CLAIMS ACT: CONSULTANT warrants and represents that neither CONSULTANT nor any person who is an officer of, in a managing position with, or has an ownership interest in CONSULTANT has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., section 3789 et seq. and the California False Claims Act, Government Code section 12650 et seq.

6.4. NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose.

SAMPLE

CONSULTANT:

Name of Vendor

Attn: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

CITY:

City of El Monte

Name of Department

El Monte City Hall - West

11333 Valley Boulevard

El Monte, CA 91731

Attn: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

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

6.5. COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.

6.6. SUBCONTRACTING: CONSULTANT shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval

of CITY. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.

6.7. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS: CITY reserves the right to employ other contractors in connection with the various projects worked upon by CONSULTANT.

6.8. PROHIBITED INTERESTS: CONSULTANT warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONSULTANT, to solicit or secure this Agreement. Further, CONSULTANT warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.9. TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.

6.10. GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the law of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.

6.11. ATTORNEYS' FEES: If either Party commences an action against the other Party, whether legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.

6.12. SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.

6.13. NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

6.14. CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.

6.15. SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

For internal purposes only:

Contract No.

6.16. AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.

6.17. CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.

6.18. INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.

6.19. ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between CITY and CONSULTANT prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.

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

SAMPLE

[SIGNATURE PAGE TO FOLLOW]

For internal purposes only:

Contract No.

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

NAME OF VENDOR HERE

By: _____
Raúl Godinez, II, City Manager

By: _____

Date: _____

Name: _____

Title _____

Date: _____

APPROVED AS TO FORM:

By: _____

Date: _____

SAMPLE

For internal purposes only:

Contract No.

EXHIBIT "A"
(SCOPE OF WORK)

SAMPLE