

CITY OF EL MONTE



**REQUEST FOR PROPOSAL FOR
PROFESSIONAL INDEPENDENT AUDITING SERVICES**

SUBMISSION DEADLINE FOR WRITTEN PROPOSALS: NOVEMBER 21, 2016: 4PM

**11333 Valley Boulevard
El Monte, California 91731**

October 20, 2016

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CITY OF EL MONTE
REQUEST FOR PROPOSAL FOR
PROFESSIONAL INDEPENDENT AUDITING SERVICES

I. INTRODUCTION

A. General Information

The City of El Monte (“City”) is requesting proposals from qualified certified public accountant firms to audit its financial statements for a minimum of three fiscal years, beginning with the fiscal year ending June 30, 2017, with the option of auditing its financial statements for each of the two subsequent fiscal years.

These audits are to be performed in accordance with auditing standards generally accepted in the United States of America, the standards set forth for financial audits contained in Government Auditing Standards (1994) issued by the Comptroller General of the United States, and the U.S. Office of Management and Budget (OMB) Circular A-133 Audits of State and Local Governments and Non-Profit Organizations.

There is no expressed or implied obligation for the City to reimburse responding firms for any expenses incurred in preparing proposals in response to this request for proposals. Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250 et seq.), unless exempt.

To be considered, three (3) copies of a proposal must be received by **Ernestine Jones, Finance Director**, care of the office of the City Clerk located at El Monte City Hall – East, 11333 Valley Boulevard, El Monte, CA 91803 by **4:00 P.M. on November 21, 2016**. The City reserves the right to reject any or all proposals submitted.

During the evaluation process, the City reserves the right, where it may serve the City’s best interest, to request additional information or clarification from Proposers, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all proposals submitted and to use any idea(s) in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in the request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the firm selected.

It is anticipated that City staff will complete its review of proposals and announce a recommendation to the City Council by or before January 5, 2016. Thereafter, it is anticipated that the City Council will consider the award of a contract and approve the execution of the same by or before January 24, 2017. The City reserves the right to reject any or all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any items or combination of items.

B. Duration of Engagement

The engagement is proposed to have a minimum duration of approximately three years commencing with the start of the first fiscal year audit cycle (FY2016 - FY2017) through to second fiscal year audit cycle (FY2017 FY2018) and concluding with the completion of third fiscal year audit cycle (FY2018- FY2019). In the City’s sole and absolute discretion, there is also the prospect of the successful proposer performing audits for two additional fiscal year audit cycles subject the same terms and conditions as agreed upon under the contract awarded to the successful proposer.

II. NATURE OF SERVICES REQUIRED

A. Scope of the Work to be Performed

The City desires Financial Statements to be prepared by the independent auditor and be fully compliant with current GASB requirements for each of the subsequent years of the audit firm’s contract with the City.

The selected independent auditor will be required to perform the following tasks:

The audit firm will perform an audit of all of the funds of the City of El Monte. The City’s Financial Statement will be prepared and processed by the audit firm. The audit firm will render its auditor’s report on the basic financial statement which will include both Government-wide Financial Statements and Fund Financial Statements. The audit firm will also apply limited audit procedures to Management’s Discussion and Analysis (MD&A) and required supplementary information pertaining to the General Fund and each major fund of the City.

The audit firm will perform a single audit on the expenditures of federal grants in accordance with OMB Circular A-133.

The audit firm shall perform agreed-upon auditing procedures pertaining to the City’s GANN Limit (Appropriation Limit) and render a letter annually to the City regarding compliance.

The audit firm shall issue a separate “management letter” that includes recommendations for improvements in internal control, accounting procedures and other significant observations that are considered to be non-reportable conditions. Management letters shall be addressed to the City Manager.

The required services and deliverables are more particularly described in the “Scope of Work,” which is attached hereto as Attachment A.

B. Auditing Standards

To meet the requirements of this Request for Proposals, the audit shall be performed in accordance with all applicable and generally accepted auditing standards including but not limited to:

1. Generally accepted auditing standards as set forth by the American Institute of Certified Public Accounts;

2. The standards applicable to financial audits contained in Government Auditing Standards , issued by the Comptroller General of the United States;
3. The provisions of the Single Audit Act as amended; and
4. The provisions of U. S. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments and Non-Profit Organizations.

C. Working Paper Retention

All working papers and reports must be retained at the auditor's expense for a minimum of seven (7) years, unless the firm is notified in writing by the City of the need to extend the retention period. The auditor will be required to make working papers available to the City or any government agencies included in the audit of federal grants. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

D. Irregularities and Illegal Acts

The auditor firm awarded a contract shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware of to the following parties: City Manager; City Attorney; and the Assistant City Manager.

III. DESCRIPTION OF THE GOVERNMENT

A. Background Information

The City of El Monte is located in San Gabriel Valley region of Los Angeles County. The City serves approximately 115,000 residents in a land area of approximately 9.6 square miles. The City's fiscal year begins on July 1st of each year and ends on June 30th of the year immediately following.

The City of El Monte was incorporated in 1912. El Monte is a general law city organized under a City Council/City Manager form of government. The governing legislative body of the City is the five-member El Monte City Council which is composed of one elected Mayor who serves a two-year term of office and four regular councilmembers who serve staggered 4-year terms of office. The City of El Monte 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 multiple franchise agreements with multiple solid waste haulers. 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 of El Monte has approximately 315 full time employees

B. Fund Structure

The City of El Monte uses the following fund types and account groups in its financial reporting:

<u>Fund Type</u>	<u>Number of Individual Funds</u>
General fund	1
Enterprise funds	2
Internal Service Funds	3
Special Revenue Funds	37
Debt Service Funds	2
Capital Project Funds	1
Fiduciary Funds	2

C. Budgetary Basis of Accounting

The City prepares its budgets on a basis consistent with generally accepted accounting principles.

D. Federal and State Financial Assistance

The City also participates in various federally funded programs and grants that will require audit procedures in accordance with the provisions of the Single Audit Act of 1984 as amended in 1996 and U.S. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments and Non-profit Organizations. The schedule of expenditures of federal award and related auditor’s report, as well as the reports on the internal controls and compliance are not to be included in the CAFR, but are to be issued separately.

E. Pension Plans

The City of El Monte Contributes to the California Public Employees Retirement System (PERS). The City participates in PERS retirement plans with the following formulas:

Misc. 2% at 55 retirement plan (classic); PERS Misc. 2% at 62 retirement plan (PEPRA); Safety 3% at 50 retirement plan (classic) and Safety 3% at 55 retirement plan (PEPRA).

The City of El Monte also has an agreement with Public Agency Retirement System (PARS) as a supplemental retirement to miscellaneous employees.

F. Finance Department Personnel

The Finance Department has sixteen employees headed by the Finance Director. The principal functions performed and the number of budgeted employees assigned to each is as follows:

<u>POSITION(S)</u>	<u>Number of Employees</u>
Finance Director	1
Accounting Manager	1
Principal Accountants	2
Accountant	1
Accounting Technicians	2
Accounting Clerks	6
Customer Service Representatives	2
Senior Administrative Analyst	<u>1</u>
Total	<u>16</u>

G. Computer Systems

The City’s main computerized system is EDEN Systems by Tyler Technologies which operates on a Microsoft SQL Server based platform. The applications operating on this system are general ledger, accounts payable, payroll, project accounting, purchasing and inventory. The City also utilizes HDL Prime for the business licenses.

H. Availability of Prior Reports and Work Papers

Vasquez & Company LLP conducted the City’s most recent audit. The work papers of the previous audits are the property of the previous auditor and can be reviewed by the successful Proposer. The City of El Monte audited Financial Statements and/or CAFR are available for review on the City’s website at <http://www.ci.el-monte.ca.us/Government/Finance.aspx>.

IV. TIME REQUIREMENTS

A. Proposal Calendar

The following is a list of key dates up relating to this Request for Proposals:

Request for proposals issued	October 20, 2016
Due date for submission of questions regarding RFP	November 9, 2016
Due date for submission proposals	November 21, 2016 by 4:00 pm
Anticipated Interview window with certain firms	December 5 to December 9, 2016
City staff recommendation announced	By or before January 5, 2016
Deadline for Submission of written protests to City staff recommendation	2 City business days following announcement of staff recommendation by 4:00 pm
Recommendation submitted to City Council for consideration, approval and possible award	By or before January 24, 2017
Selected Firm Notified	By or before January 26, 2017.

B. Date Audit May Commence

Audit planning, documentation of systems of internal control and compliance and transaction testing should be completed during interim stage. It is expected the City will close its books and be ready for the final audit by end of the second week of October each year.

C. Date Reports Are Due

The firm shall provide all drafts and recommendations for improvements to the Finance Director within a reasonable time period after the last day of field work. The auditor should be available for any meetings that may be necessary to discuss the draft audit reports. Notification of any deficiencies identified should be brought to the Director’s attention within 72 hours. Once all issues of discussion are resolved, the draft completed Financial Statements, Single Audit report and other reports shall be delivered to the Finance Director or designee for review by the second week of November. It is anticipated that this process will be completed and the final products shall be delivered no later than the first Thursday of December of each year. Please refer to the “Scope of Work” in Attachment A for a more detailed breakdown of the proposed Audit Calendar, Benchmarks, and Deliverables.

Please Note: The Auditors may be consulted occasionally throughout the year as an information resource. Auditors may be asked to provide guidance on implementation of Government Account Standards Board (GASB) requirements and specifics of federal and state regulations as they may affect local government accounting. In addition, the auditors may be asked to assist with the implementation of new pronouncements.

V. ASSISTANCE TO BE PROVIDED TO THE AUDITOR AND REPORT PREPARATION

A. Finance Department Assistance

Finance Department staff will be available during the audit to assist the firm by providing information, documentation, and explanations.

B. Work Area, Telephone, and Office Equipment

The City will provide the auditor with reasonable work space, desks and chairs. The auditor will also be provided with access to a telephone, access to the general ledger system, and photocopying machines.

C. Report Preparation

All reports noted in Section II.A. will be prepared and edited by the audit firm. The audit firm will also be responsible for the printing and binding of at least 25 copies of each of the aforementioned. In addition, for each of the aforementioned reports the City will require an electronic version and a camera ready pdf version.

VI. PROPOSAL REQUIREMENTS

A. General Requirements

1. Inquiries concerning the Request for Proposals and the subject of the Request for Proposals must be made via email to:

Ernestine Jones, Finance Director ejones@El Monteca.gov

CONTACT WITH PERSONNEL OF THE CITY OTHER THAN THE ABOVE REGARDING THIS REQUEST FOR PROPOSALS MAY BE GROUNDS FOR ELIMINATION FROM THE SELECTION PROCESS.

2. Submission of Proposal. Three (3) copies of the Proposal shall be received by the City of El Monte **by 4:00 p.m. on November 21, 2016** for a proposal to be considered.

PROPOSALS WILL NOT BE ACCEPTED THEREAFTER. All proposals received after said date and time will be returned unopened to the submitter. FAXED PROPOSALS WILL NOT BE CONSIDERED. POSTMARKS WILL NOT BE ACCEPTED. Please note that your response becomes property of the City of El Monte and a matter of public record. No verbal extension of any deadline shall be binding or valid upon the City. All deadline extensions authorized by the City shall be made in the form of a written addendum signed by the Finance Director and shall be applicable as to all proposers.

The Proposal should be addressed as follows:

**City of El Monte
Attn: Ernestine Jones, Finance Director
c/o Office of the City Clerk
El Monte City Hall – East
11333 Valley Boulevard
El Monte, CA 91803**

B. Format for Technical Proposal

1. Title Page showing the request for proposals subject; the firm's name; the name, address, telephone number and email of the contact person; and the date of the proposal.

2. Table of Contents identifying the materials submitted by section and page number. Cross-referencing to section and page number in the RFP would be helpful.

3. Signed Transmittal Letter briefly stating the Proposer's understanding of the work to be done; the commitment to perform the work within the time period; and the name(s) of the person(s) authorized to represent the Proposer, title, address, and telephone number.

4. Detailed Proposal following the order set forth in Section C below.

C. Contents of Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firm seeking to undertake an independent audit of the City in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more

weight than the form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the Request for Proposals requirements.

The Technical Proposal should address all points outlined in the Request for Proposals (excluding any cost information which should only be included in the Sealed Dollar Cost Bid). The proposal should be prepared simply and economically, providing a straightforward, concise description of the Proposer's capabilities to satisfy the requirements of this request for proposals. While additional data may be presented, the following subjects must be included. They represent the criteria against which the proposal will be evaluated.

1. License to Practice in California

An affirmative statement should be included verifying the firm and all assigned key professional staff are properly licensed to practice in California.

2. Independence

The firm should provide an affirmative statement that it is independent of the City of El Monte as defined by auditing standards generally accepted in the United States of America and the General Accounting Office's Government Auditing Standards.

3. Firm Qualifications and Experience

To qualify the firm must have extensive experience in audits of local governments as well as experience with preparation of Comprehensive Annual Financial Statements in GASB 34 format. The Proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed, and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis. Staff consistency is an important consideration.

The Proposer must provide a list of all current municipal clients.

The Proposer is also required to submit a copy of a report on its most recent external quality control review (peer review), with a statement whether that quality control review included a review of specific government engagements, as required by Government Audit Standards (1994).

The Proposer shall also provide information on the results of any Federal or State desk reviews or field reviews of its audits during the past three (3) years. The Proposer shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with State regulatory bodies or professional organizations.

4. Partner, Supervisory and Staff Qualifications and Experience

Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists who would be assigned to this engagement. Include resumes, indicating whether each such person is registered or licensed to practice as a certified public account in California. Provide information on the government auditing experience of each

person, including information on relevant continuing professional education for the past (3) three years and membership in professional organizations relevant to the performance of this audit.

Provide as much current information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. Indicate how the quality of staff over the term of the agreement will be assured.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the City. However, in either case, the City retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the Proposer provided that replacements have substantially the same or better qualifications or experience.

5. Similar Engagements with Other Government Entities

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (maximum - 5) performed in the last three (3) years that are similar to the engagement described in this request for proposals. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

Please provide a list of not less than five client references for who services similar to those outlined in the RFP are currently being provided. For each reference listed 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. The City reserves the right to contact any or all of the listed references regarding the audit services performed by the Proposer.

6. Specific Audit Approach

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section II of this request for proposals. In developing the work plan, reference should be made to such sources of information as City of El Monte's budget and related materials, organizational charts, manuals, programs, and financial and other management information systems.

Proposers will be required to provide the following information on their audit approach:

- a. Proposed segmentation for the engagement;
- b. Level of staff and number of hours to be assigned to each proposed segment of the engagement;
- c. Sample size and the extent to which statistical sampling is to be used in this engagement;
- d. Type and extent of analytical procedures to be used in this engagement;

- e. Approach to be taken to gain and document an understanding of the City's internal control structure;
- f. Approach to be taken in determining laws and regulations that will be subject to audit test work; and
- g. Approach to be taken in drawing audit samples for purposes of tests of compliance.

7. Identification Anticipated Potential Audit Problems

The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems and any special assistance that will be requested from the City.

NO DOLLAR AMOUNTS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL.

D. Contents of Cost Proposal

1. Breakdown of Costs

The compensation proposal should contain all pricing information related to performing the various services and tasks contemplated under this Request for Proposals. The compensation proposal should include a total all-inclusive maximum bid price (hereinafter, "Not-to-Exceed-Sum") which accounts for all anticipated costs, both direct and indirect. The cost proposal should contain a breakdown for all direct and indirect costs, including all out-of-pocket expenses associated with the following:

- Costs of Citywide Financials and additional required reports
- Single Audit Reports

The cost proposal should include a schedule of all hourly rates of compensation for all personnel assigned to perform work under this agreement with the City, broken down by title/job classification. Additionally, the cost proposal should include the estimated numbers of hours each person is anticipated to work in the furtherance of the annual audit effort and the hours shall be multiplied by the hourly rate to provide a total for each such person as well as a grand total for all personnel hours worked.

The proposal shall state any and all automatic escalators for the proposer's hourly rates, fees or out-of-pocket expenses/reimbursements. However, any automatic escalator increases notwithstanding, the Not-to-Exceed sum shall remain the same for the first two audit year cycles contemplated under this agreement.

The City will not be responsible for expenses incurred in preparing and submitting the technical proposal or the comprehensive dollar cost bid. Such costs should not be included in the proposal.

The cost proposal which must include all anticipated reimbursable expenses should be submitted in the format provided in Attachment B, "Estimate of Cost."

2. Manner of Payment

Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's proposal. Interim billings shall cover a period of not less than a calendar month.

3. Contract Provisions

A copy of the City's Professional Services Agreement is attached as Attachment C. Any exceptions to the terms in Attachment C shall be set forth in the proposal or the proposing firm shall be deemed to have accepted those terms. The usual Engagement Letter may be attached as an exhibit to the contract along with the Scope of Work.

VII. PROTEST PERIOD

Any proposer who objects to a proposal submitted by another proposer or to City staff's recommendation of another proposal shall file a written protest by 4:00 p.m. within three (3) City business days after the date City staff announces its recommendation to the City Council ("Protest Deadline"). Protests MUST be delivered to the attention of: **Ernestine Jones, Finance Director care of the Office of the City Clerk located at El Monte City Hall – East, 11333 Valley Boulevard, El Monte, California 91803.**

Protests MUST be delivered in person, via regular mail, via overnight courier or personal courier, but must be received by the Office of the City Clerk by or before the Protest Deadline. Protests may not be delivered via facsimile or electronic mail. The City will not consider late protests nor will it consider protests delivered to any other person, department division other than the Office of the City Clerk. A copy of the protest and all supporting documents must also be transmitted to the firm recommended by City staff and any other firm against whom the protesting firm wishes to lodge a protest against. Only persons or entities who have submitted a proposal in response to this RFP shall be eligible to file a protest. The copies of the protest and supporting material served upon the firm recommended for approval by City staff and any other firm against whom the protesting firm wishes to lodge a protest may be served via regular mail, overnight courier or fax prior to the Protest Deadline along with a proof of service.

The protest must contain a complete and reasonably detailed statement of the basis for the protest and include all supporting documentation. The protest must refer to the specific portion or portions of a submitted proposal upon which the protest is based. The protest must include the name, address, and telephone number of the person representing the protesting proposer if different from the protesting proposer.

All timely received protests shall be considered by the City. The City may make additional inquiries relating to the grounds of any written protest and may overrule or sustain any written protest as submitted prior to the City Council taking action to award a contract. The disposition of the protest by the City shall be final.

The procedure and time limits set forth in this section are mandatory and are the proposer's sole and exclusive remedy in the event of a protest. The proposer's failure to comply with these procedures shall constitute a waiver of any right to further pursue a protest. The cost of preparing and submitting a protest and serving a copy of the protest upon the proposer(s) against whom the protest is submitted shall be borne entirely by the protester.

VIII. EVALUATION PROCEDURES

A. Review of Proposals

City Staff, consisting at a minimum, of the following, will evaluate submitted proposals:

Ernestine Jones, Finance Director

B. Evaluation Criteria

Proposals will be evaluated using three (3) sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria, which will be considered during the evaluation process.

1. Mandatory Elements
 - a. The audit firm is independent and licensed to practice in California.
 - b. The firm has no conflict of interest with regard to any of the work performed by the firm for the City.
 - c. The firm adheres to the instructions in this request for proposals on preparing and submitting the proposal.
 - d. The firm submits a copy of its last external quality control review report and the firm has a record of quality audit work.
 - e. The firm's past experience and performance on comparable government engagements.
 - f. The quality of the firm's professional personnel to be assigned to the engagement and the quality of the firm's management support personnel to be available for technical consultation.
 - g. Adequacy of proposed staffing plan for various segments of the engagement.
 - h. Thoroughness of approach to conducting the audit of the City and demonstration of the understanding of the objectives and scope of the audit.
 - i. Commitment to timeliness in the conduct of the audit.
 - j. Maximum fees to conduct the audit.
 - k. Ability to meet the requirements of the City's Professional Services Agreement.

Attachment A

Scope of Work of the Audit of the Financial Statements

SCOPE OF WORK

A. Scope of Work

The City of El Monte requires the selected independent auditor to perform the following tasks:

1. The audit firm will perform an audit of all funds of the City. The audit will be conducted in accordance with auditing standards generally accepted in the United States of America and Government Auditing Standards, issued by the Comptroller General of the United States. The audit firm will render their auditors' report on the basic financial statements which will include both Government-Wide Financial Statements and Fund Financial Statements. The audit firm will also apply limited audit procedures to Management's Discussion and Analysis (MD&A) and required supplementary information pertaining to the General Fund and each major fund of the City.
2. To assist with the preparation of the City's Comprehensive Annual Financial Report ("CAFR") in accordance with the requirements of the Governmental Accounting Standards Board and *Governmental Accounting, Auditing and Financial Reporting (GAAFR)*. **The City's Annual Financial Report will be prepared and processed by the audit firm.** The transmittal letter, management's discussion and analysis, and statistical sections will be prepared by the City. The City has received a "Certificate of Achievement for Excellence in Financial Reporting" under the Government Finance Officers Association's (GFOA) award program for the past three fiscal years and plans to continue to submit its CAFR to the awards program in each of the years covered under this proposal.
3. The audit firm shall perform agreed-upon auditing procedures pertaining to the City's GANN Limit (Appropriations Limit) and render a letter annually to the City regarding compliance.
4. The audit firm shall issue a separate "management letter" that includes recommendations for improvements in internal control, accounting procedures and other significant observations that are considered to be non-reportable conditions. Management letters shall be addressed to the City Manager.

B. Required Reports

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue (if applicable):

1. A report on the fair presentation of the government-wide financial statements in conformity with accounting principles generally accepted in the United States of America.
2. A schedule of Federal Financial Assistance and an "in-relation-to" report on the schedule of federal financial assistance, if applicable.
3. A report on the internal control structure used in administering federal financial assistance programs, if applicable.
4. A report on compliance with laws and regulations related to major and non-major federal financial assistance programs, if applicable. This report should include an opinion on compliance with specific requirements applicable to major federal financial assistance programs, a report on compliance with general requirements applicable to major federal financial assistance programs, and a report on compliance with laws and regulations applicable to non-major federal financial assistance program transactions tested.
5. A report on the internal control structure based on the auditor's understanding of the control structure and assessment of control risk.
6. A report on compliance with applicable laws and regulations.

In the required report(s) on internal controls, the auditor shall communicate any reportable conditions found during the audit. Reportable conditions that are also material weakness shall be identified as such in the report. Non-reportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referred to in the report(s) on internal controls.

The report on compliance shall include all material instances of noncompliance. All nonmaterial instances of noncompliance shall be reported in a separate management letter, which shall be referred to in the report on compliance.

C. Reporting to the City Council

Auditors shall assure themselves that the City of El Monte City Council is informed of each of the following:

1. The auditor's responsibility under generally accepted auditing standards.
2. Significant accounting policies.
3. Management judgments and accounting estimates.
4. Significant audit adjustments.

5. Other information in documents containing audited financial statements.
6. Disagreements with management.
7. Management consultation with other accountants.
8. Major issues discussed with management prior to retention.
9. Difficulties encountered in performing the audit.

Additionally, the Auditor shall provide a written statement to the City indicating the firm's independence, with respect to the City, as required by generally accepted governmental auditing standards.

D. Reports

The auditor shall provide the following copies for the Comprehensive Annual Financial Report, Single Audit Reports and management letters.

- 15 bound copies
- 1 unbound copy
- 1 electronic copy in Adobe PDF format

E. Audit Calendar, Benchmarks and Deliverables

The City has arranged the audit calendar with the following priorities in order to meet the City's statutory guidelines:

1. Allow City Staff to properly record all year end entries prior to commencement of year-end audit procedures.
2. Provide audit and finance personnel sufficient time between the first drafts of reports (CAFR and Other Reports) to review and revise drafts and provide City responses to potential findings before Revised Drafts are due.
3. Allow the Finance Director sufficient time to review the final drafts, and discuss the reports with audit and finance personnel.
4. Resolve or respond to all issues for discussion.
5. Provide the City Council with the final CAFR in sufficient time to meet GFOA submission deadlines.
6. File required Federal and State reports in a timely manner and in accordance with established guidelines.

Activity/Benchmark/Deliverable

Date

Interim Audit

Begin after May 1st of each year

Year End Audit

Begin by October 1st of each year

CAFR

Draft to Finance Department

By 2nd Thursday in November of each yr.

Revised Draft to Management

By 4th Tuesday of November of each year

Final Report for City Council Presentation

By 1st Thursday of December of each year

Other Required Reports

Drafts to Finance Department

By 2nd Thursday of November of each year

Revised Drafts to Management

By 1st Thursday of December of each year

Final Reports for City Council Presentation

By or before 2nd Thursday of December of each year

Auditor Presentation to the City Council

By or before 2nd Tuesday of January of each year

Recommendations and suggestions for improvement to the City Manager and City Council

By or before December 28th of each year

State Controllers Report

Draft to the City for Review

By or before January 2nd of each year

Final Report Filed with the State

By or before January 16th of each year

Attachment B

AUDIT WORK COST PROPOSAL FORM

Name of Firm: _____

Address: _____

Contact Name: _____

Contact Phone #: _____

Fax #: _____

Contact Email: _____

Year of Audit: _____

Submit a page for each of the five years

	<u>Hours</u>	<u>Standard Hourly Rates</u>	<u>Total</u>
Partners/ Managers	_____	_____	_____
Supervisory Staff	_____	_____	_____
Staff	_____	_____	_____
Other - Specify	_____	_____	_____
Subtotal	_____	_____	_____
Out of Pocket Expenses:			
Meals and Lodging	_____	_____	_____
Transportation	_____	_____	_____
Other - Specify	_____	_____	_____
Total all-inclusive Not-to- Exceed Sum.	_____	_____	_____

Attachment C
SAMPLE AGREEMENT



PROFESSIONAL SERVICES AGREEMENT
(Audit and Financial Statement Preparation)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement” or “Agreement”) is made and entered into this _____ day of September 2016 (hereinafter, the “Effective Date”) by and between the CITY OF EL MONTE, a municipal corporation (“CITY”) and _____ (hereinafter, “CONSULTANT”). For the purposes of this Agreement CITY and CONSULTANT may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to CITY or CONSULTANT interchangeably.

WHEREAS, the CITY requires the services of qualified certified public accountants’ for the purpose of conducting annual audits of CITY’s financial books and records; and

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

WHEREAS, on _____, the City Council approved extending the Prior Agreement with CONSULTANT for the purpose of conducting the _____ annual audit of CITY’s financial books and records for a minimum of three fiscal years beginning with the fiscal year ending June 30, 2017, with the option of auditing its financial statements for each of the two subsequent fiscal years; and

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

I.
ENGAGEMENT TERMS

1.1 SCOPE OF WORK: 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 in that certain proposal dated _____ and entitled “Scope of the Audit of the Financial Statements” which is attached and incorporated hereto as **Exhibit “A”** (hereinafter referred to as the **“Scope of Work”**). CONSULTANT further agrees to furnish to CITY all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term “Work.” CONSULTANT shall not commence with the performance of the Work until such time as CITY issues a written Notice to Proceed. The foregoing notwithstanding, the Parties agree that provisions of the Scope of Work under the heading “Dispute Resolution” beginning at page 8 of the Scope of Work is expressly deleted and repealed and shall be of no force or effect.

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 three (3) calendar days of CITY’s issuance of a Notice to Proceed, and shall be completed on a date not more than one hundred and eighty (**180**) calendar days from the issuance of the Notice to Proceed (the “Completion Date”);

- B. CONSULTANT shall perform the Work continuously and with due diligence so as to complete the Work by the Completion Date. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other consultants, contractors or agents;
- C. CONSULTANT shall not claim or be entitled to receive any compensation or damage because of the failure of CONSULTANT, or its subconsultants, to have related services or tasks completed in a timely manner;
- D. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT's employees; AND
- E. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

1.3 COMPENSATION:

- A. CONSULTANT shall perform the various services and tasks set forth in the Scope of Work in accordance with the following compensation rates (hereinafter, the "Approved Rate Schedule"):

Partner	_____
Director	_____
Manager	_____
Senior	_____

- B. Section 1.3(A) notwithstanding, CONSULTANT's total compensation for the performance and completion of the Work shall not exceed the sum of _____ (\$_____) (hereinafter, the "Not-to-Exceed Sum"). CONSULTANT further agrees that the Not-to-Exceed Sum is inclusive of compensation for all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the Work.

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

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

1.6 ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONSULTANT shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other Work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT's cessation or abandonment.

II.

PERFORMANCE OF AGREEMENT

2.1 CITY'S REPRESENTATIVES: The CITY hereby designates the City Manager and Finance Director, Ernestine Jones (hereinafter, the "CITY Representatives") to act as its representatives for the performance of this Agreement. The CITY Manager 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 _____ to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONSULTANT Representative shall constitute notice to CONSULTANT.

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 reassigned 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.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONSULTANT will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONSULTANT shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement.
 - D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT shall procure and maintain Errors and

Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.

- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers who, according to the latest edition of the Best's Insurance Guide, have an A.M. Best's rating of no less than A:VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the CITY 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. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any Work or any of the Work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

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

into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect CITY as set forth herein.

- 4.2 To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the CITY Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's performance of Work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 CITY shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Article and related to CONSULTANT's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONSULTANT under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.
- 4.6 CITY does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the CITY may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: CITY may terminate this Agreement at any time for convenience and without cause by giving CONSULTANT a minimum of five (5) calendar days' prior written notice of CITY's intent to terminate this Agreement. Upon such termination for convenience, CONSULTANT shall be compensated only for those services and tasks which have been performed by CONSULTANT up to the effective date of the termination. CONSULTANT may not terminate this Agreement except for cause as provided under Section 5.2, below. If this

Agreement is terminated as provided herein, CITY may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in section 6.1 below, and other information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT shall be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

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") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONSULTANT shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) 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 3-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 3-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.i. that exceeds seven (7) calendar days from the end of the initial 3-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 shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

In addition to any other failure on the part of CONSULTANT to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONSULTANT shall include, but shall not be limited to the following: (i) CONSULTANT's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONSULTANT's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONSULTANT's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iv) the initiation of

proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONSULTANT, whether voluntary or involuntary; (v) CONSULTANT's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) CITY's discovery that a statement representation or warranty by CONSULTANT relating to this Agreement is false, misleading or erroneous in any material respect.

- C. CITY shall cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.4, above, shall be cured by CITY within five (5) calendar days from the date of CONSULTANT's Default Notice to CITY.
- D. CITY, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of CITY's intent to suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONSULTANT shall be compensated only for those services and tasks which have been rendered by CONSULTANT to the reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY shall operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
 - i. Upon written notice to CONSULTANT, the CITY may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONSULTANT, the CITY may extend the time of performance;
 - iii. The CITY may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONSULTANT's breach of the Agreement or to terminate the Agreement; or
 - iv. The CITY may exercise any other available and lawful right or remedy.

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

- G. In the event CITY is in breach of this Agreement, CONSULTANT's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONSULTANT under this Agreement for completed services and tasks.
- 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, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 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.

VI.
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 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 of disclosure as legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT shall not use CITY's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.
- 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:

CONSULTANT:

Attn: _____
Phone: _____
Fax: _____

CITY:

City of El Monte
Finance Department
11333 Valley Boulevard
El Monte, CA 91731
Attn: Ernestine Jones, Finance Director
Phone: (626) 580-2023
Fax: (626) 443-2304

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 are 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 laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.
- 6.11 ATTORNEYS' FEES: If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.

- 6.12 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.13 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.14 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.15 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.16 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.17 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 6.18 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.19 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between CITY and CONSULTANT prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which is not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.16, above.
- 6.20 COUNTERPARTS: This Agreement shall be executed in three (3) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart shall be delivered to CONSULTANT and the remaining two original counterparts shall be retained by CITY.

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

By: _____

CONSULTANT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____