



2022
CONTRACT SERVICES AGREEMENT

(Contractor: **INSERT NAME**)

(Nature of Engagement: **INSERT DESCRIPTION OF ENGAGEMENT**)

THIS CONTRACT SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this _____ day of _____ 2022 by and between the CITY OF EL MONTE, a municipal corporation (hereinafter, "CITY") and **INSERT CONTRACTOR NAME** (hereinafter, "CONTRACTOR"). For the purposes of this Agreement, CITY and CONTRACTOR may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to CITY or CONTRACTOR interchangeably.

RECITALS

WHEREAS, CITY is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose; and

WHEREAS, CITY requires **INSERT THE KIND OF SERVICES REQUIRED**; and

WHEREAS, CITY staff has determined that CONTRACTOR possess the skills, experience and expertise required to competently provide the services and tasks contemplated under this Agreement; and

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

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

Section 1. Scope of Work.

- A. Subject to the terms and conditions of this Agreement, CONTRACTOR agrees to provide CITY **INSERT SERVICES REQUIRED**. The various tasks and related services to be performed by CONTRACTOR are more specifically described in the CITY's "**INSERT NAME OF CITY REQUIREMENTS**" (hereinafter the "CITY REQUIREMENTS") and the written proposal of CONTRACTOR entitled "**INSERT TITLE OF PROPOSAL**" (hereinafter, the "CONTRACTOR PROPOSAL") dated **INSERT DATE OF PROPOSAL**. The CITY REQUIREMENTS and the CONTRACTOR PROPOSAL are attached and incorporated hereto as **Exhibits**

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

- B. CONTRACTOR shall provide all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the Work. CONTRACTOR shall perform the Work in accordance with the terms and conditions of this Agreement and in accordance with such other written or verbal directives as may be issued by CITY.
- C. By executing this Agreement, CONTRACTOR warrants that CONTRACTOR: (i) has thoroughly investigated and considered the nature of the work, services and tasks to be performed under this Agreement; (ii) has carefully considered how the Work should be performed; and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement. CONTRACTOR warrants that CONTRACTOR has or will investigate any location where the Work is to be performed and is or will be fully acquainted with the conditions there existing, prior to undertaking any service or task requested by CITY in the manner described under Section 3, below. Should the CONTRACTOR discover any latent or unknown conditions which will materially affect the performance of the services hereunder, CONTRACTOR shall immediately inform the CITY of such fact and shall not proceed except at CONTRACTOR’s risk until written instructions are received from the City Representative as defined herein.
- D. In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons any undertaking contemplated herein prior to completion and acceptance of the Work, CONTRACTOR shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR 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 CONTRACTOR’s cessation or abandonment.

Section 2. Term of Agreement

[Reserved – No Text]

Section 3. Prosecution of Work.

- 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 written notice to proceed (“Notice to Proceed”). The Work shall be completed by [INSERT TIME TO BE COMPLETED BY OR INSERT DATE TO BE COMPLETED BY OF CITY’S ISSUANCE OF THE NOTICE TO PROCEED] (hereinafter, the “Completion Date”).

- B. CONTRACTOR shall perform the Work continuously and with due diligence so as to complete the Work by the Completion Date. CONTRACTOR shall cooperate with CITY and in no manner interfere with the Work of CITY, its employees or other consultants, contractors or agents.
- C. CONTRACTOR may submit a written request for additional time to complete the Work, which request must be submitted to the CITY no later than fifteen (15) calendar days prior to the Completion Date or any extended Completion Date granted by CITY. The written request for additional time must identify (i) what specific tasks or services remain to be completed by CONTRACTOR in order to complete the Work; (ii) how much additional time CONTRACTOR requires; (iii) identification of the circumstances that have caused the need for additional time, according to CONTRACTOR, including, if applicable, identification of any tasks that must be completed by CITY as prerequisite to CONTRACTOR being able to complete any other service or task; and (iv) what proactive steps CONTRACTOR has taken up to the date of the request to mitigate the need for additional time, including, if applicable, any effort on the part of CONTRACTOR to alert CITY of the need to provide information or complete certain tasks to be performed by CITY. CITY in its sole and absolute discretion may grant, deny or conditionally grant a request for additional time, provided that no individual grant of additional time may exceed a maximum of fifteen (15) calendar days.
- D. CONTRACTOR shall not claim or be entitled to receive any compensation or damage because of the failure of CONTRACTOR, or its subcontractors, to have related services or tasks completed in a timely manner.
- E. CONTRACTOR shall at all times enforce strict discipline and good order among CONTRACTOR’s employees.
- F. CONTRACTOR, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

Section 4. Compensation.

- A. CONTRACTOR shall perform all the Work in accordance with the rates set forth in CONTRACTOR’s [INSERT DATE] quote (hereinafter “CONTRACTOR QUOTE”), which is attached and incorporated hereto as **Exhibit “C”**.
- B. CONTRACTOR’s total compensation during the Term of this Agreement shall not exceed the sum of [INSERT WRITTEN AMOUNT (\$INSERT NUMBER)] (hereinafter, the “Not-to-Exceed Sum”). CONTRACTOR 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. CONTRACTOR shall have no right or entitlement to any overage contingency sums authorized by the City

Council as part of the approval of this Agreement, unless the City Representative authorizes the expenditure of such overage contingency funds in writing in the City Representative's sole and absolute discretion.

- C. Following the conclusion of Work requested pursuant to Section 1 above, CONTRACTOR shall submit to CITY an itemized invoice indicating the services and tasks performed. If the amount of CONTRACTOR's compensation includes hours worked by CONTRACTOR's personnel, the invoice shall indicate the number of hours worked in connection with the specific service or task requested, 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 CONTRACTOR 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 CONTRACTOR.

Section 5. Standard of Care. CONTRACTOR represents, acknowledges and agrees as follows:

- A. CONTRACTOR shall perform all work skillfully, competently and to the highest standards applicable to the CONTRACTOR's field;
- B. CONTRACTOR represents and maintains that it is skilled in the professional calling necessary to perform the Services;
- C. CONTRACTOR shall perform all work in a manner reasonably satisfactory to the CITY;
- D. CONTRACTOR 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.*). CONTRACTOR's compliance with applicable laws will include, without limitation, compliance with all applicable Cal/OSHA requirements and applicable regulations of the Federal Department of Housing and Urbanization;
- E. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- F. All of CONTRACTOR's employees and agents (including but not limited to CONTRACTOR's subcontractors and subconsultants) possess sufficient skill, knowledge, training and experience to perform those services and tasks contemplated under this Agreement;
- G. All of CONTRACTOR's employees and agents (including but not limited to CONTRACTOR's 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

- H. CONTRACTOR shall at all times employ such force, plant, materials, and tools as will be sufficient in the opinion of the CITY to perform the Services within the time limits established, and as provided herein. It is understood and agreed that said tools, equipment, apparatus, facilities, labor, and material shall be furnished and said Services performed and completed as required by the Agreement, and subject to the approval of the CITY's authorized representative. The quality of Services shall meet or exceed those standards established by the CITY or County of jurisdiction.

The Parties acknowledge and agree that CONTRACTOR shall perform, at CONTRACTOR's own cost and expense and without any reimbursement from CITY, any services or tasks necessary to correct any errors or omissions caused by CONTRACTOR's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONTRACTOR's employees, agents, contractors, subcontractors and subconsultants. Such effort by CONTRACTOR 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 Representative in writing and absolute discretion. The Parties acknowledge and agree that CONTRACTOR's acceptance of any work performed by CONTRACTOR or on CONTRACTOR's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CONTRACTOR has relied upon the foregoing representations of CONTRACTOR, including but not limited to the representation that CONTRACTOR possesses the skills, training, knowledge and experience necessary to perform the Work in a skillful and competent manner equivalent to, the standard of performance generally recognized as being employed by professionals performing the same type of work and services in the State of California.

Section 6. Representatives.

- A. City Representative. For the purposes of this Agreement, the contract administrator and CITY's representative shall be **INSERT CITY REPRESENTATIVE** (hereinafter, the "City Representative"). It shall be CONTRACTOR's responsibility to assure that the City Representative is kept informed of the progress of the performance of the services, and CONTRACTOR shall refer any decisions which must be made by CITY to the City Representative. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the City Representative.
- B. Contractor Representative. For the purposes of this Agreement, **INSERT CONTRACTOR REPRESENTATIVE**, is hereby designated as the principal and representative of CONTRACTOR authorized to act on its behalf with respect to CONTRACTOR's performance under this Agreement and to make all decisions in connection therewith (hereinafter, the "Contractor Representative"). Notice to the Contractor Representative whether written or verbal shall constitute notice to CONTRACTOR. The Contractor's Representative shall supervise and direct the Services, using their 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 Services under this Agreement.

Section 7. Contractor's Personnel

- A. CONTRACTOR represents that it has, or will secure at its own expense, all personnel required to perform the Work and all other services and tasks necessary for CONTRACTOR to competently and timely complete the improvements contemplated under this Agreement. All work, services and tasks will be performed under CONTRACTOR's supervision, and CONTRACTOR's personnel engaged in the performance of the Work, services and tasks contemplated under this Agreement shall possess the qualifications, permits and licenses required by applicable law to perform such work, services and tasks.
- B. CONTRACTOR shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the Work. CONTRACTOR shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the CONTRACTOR's performance of the Work, and shall indemnify, defend and hold harmless CITY against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against CITY hereunder.
- C. CONTRACTOR shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the Work.
- D. In the event that CITY, in its sole reasonable discretion, at any time during the duration of the Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.
- E. CONTRACTOR shall be responsible for payment of all employees' and subconsultants' wages and benefits and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.
- F. CONTRACTOR shall obtain and maintain during the duration of the Agreement, all necessary licenses, permits and certificates required by law for the performance of the Work contemplated under this Agreement.

Section 8. Substitution of Key Personnel. CONTRACTOR has represented to CITY that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, CONTRACTOR may substitute other personnel of at least equal competence upon written approval of CITY. In the event that CITY and CONTRACTOR cannot agree as to the substitution of key personnel, CITY shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the CITY, or who are determined by the CITY to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the CONTRACTOR

at the request of the CITY. The key personnel for performance of this Agreement are as follows: [INSERT NAME AND TITLE].

Section 9. Prevailing Wages and General Labor Compliance and Reporting.

CONTRACTOR and any subcontractor performing or contracting any portion of the Work are aware of and shall comply with all applicable provisions of the California Labor Code for all workers, laborers and mechanics of all crafts, classification or types, including but not limited to:

- A. Requirements of California Labor Code Section 1810, requiring CONTRACTOR to comply with hours of labor, overtime and other related provisions.
- B. Requirements of California Labor Code Section 1720, et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance.”
- C. CONTRACTOR shall defend, indemnify, and hold the CITY, its elected officials, officers, employees, and agents harmless from any claim or liability arising out of any failure or alleged failure of CONTRACTOR to comply with the California Labor Code, including its Prevailing Wage Laws.

Section 10. Prohibited Interests. CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR 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 CONTRACTOR, 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 absolute and unfettered right to rescind this Agreement without liability or penalty. For the duration 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.

Section 11. Independent Contractor.

- A. All acts of CONTRACTOR, its agents, officers, subcontractors and employees and all others acting on behalf of CONTRACTOR relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers, or employees of CITY. CONTRACTOR, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of CITY. CONTRACTOR has no authority or responsibility to exercise any rights or power vested in CITY. No agent, officer, or employee of CITY is to be considered an employee of CONTRACTOR. It is understood by both CONTRACTOR and CITY that this Agreement shall not, under any circumstances, be construed or considered to create an employer-employee relationship or a joint venture.
- B. CONTRACTOR, its agents, officers, subcontractors and employees are and, at all

times during the duration of this Agreement, shall represent and conduct themselves as independent contractors and not as employees of CITY.

- C. CONTRACTOR shall determine the method, details and means of performing the Work. CONTRACTOR shall be responsible to CITY only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to CITY's control with respect to the physical action or activities of the CONTRACTOR in fulfillment of this Agreement. CONTRACTOR has control over the manner and means of performing the services under this Agreement. CONTRACTOR is permitted to provide services to others during the same period as it provides services to CITY under this Agreement. If necessary, CONTRACTOR has the responsibility for employing other persons or firms to assist CONTRACTOR in fulfilling the terms and obligations under this Agreement.
- D. If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by the CONTRACTOR.
- E. It is understood and agreed that as an independent contractor and not an employee of CITY neither the CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any entitlement as a CITY employee, right to act on behalf of CITY in any capacity whatsoever as an agent, or to bind CITY to any obligation whatsoever.
- F. As an independent contractor, CONTRACTOR hereby indemnifies and holds CITY harmless from any and all claims that may be made against CITY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

Section 12. Conflicts of Interest. CONTRACTOR hereby warrants for itself, its employees, and subcontractors that those persons presently have no interest and shall not obtain any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having such conflicting interest shall be employed by or associated with CONTRACTOR in connection with this project. CONTRACTOR hereby warrants for itself, its employees, and subcontractors that no such person shall engage in any conduct which would constitute a conflict of interest under any CITY ordinance, state law or federal statute. CONTRACTOR agrees that a clause substantially similar to this Section shall be incorporated into any sub-contract that CONTRACTOR executes in connection with the performance of this Agreement.

Section 13. Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. CONTRACTOR and subcontractors shall ensure that the evaluation and treatment of their

employees and applicants for employment are free of such discrimination. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) and the applicable regulations promulgated hereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform the Work under this Agreement.

Section. 14. Indemnification.

- A. To the fullest extent permitted by law, CONTRACTOR hereby agrees, at its sole cost and expense, to defend, indemnify, and hold harmless CITY and CITY's elected and appointed officials, officers, attorneys, agents, employees, volunteers, successors, and assigns and those CITY agents serving as independent contractors in the role of CITY officials (collectively "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith (collectively "Claims"), in law or equity, whether actual, alleged or threatened, which arise or claim to arise, directly or indirectly, out of, in connection with, resulting from, or related to any act, failure to act, error, or omission of CONTRACTOR or any of CONTRACTOR's officers, agents, servants, employees, subcontractors, materialmen, suppliers or their officers, agents, servants or employees, in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision of by the agreement of the Parties. CONTRACTOR shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. CONTRACTOR shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.
- B. CONTRACTOR shall pay all required taxes on amounts paid to CONTRACTOR under this Agreement and indemnify and hold CITY harmless from any and all taxes, assessments, penalties, and interest asserted against CITY by reason of the independent contractor relationship created by this Agreement. CONTRACTOR shall fully comply with the workers' compensation law regarding CONTRACTOR and CONTRACTOR's employees. CONTRACTOR shall indemnify and hold CITY harmless from any failure of CONTRACTOR to comply with applicable workers' compensation laws. CITY may offset against the amount of any fees due to CONTRACTOR under this Agreement any amount due to CITY from CONTRACTOR as a result of CONTRACTOR's failure to promptly pay to CITY any reimbursement or indemnification arising under this subparagraph B.

- C. CONTRACTOR shall obtain executed indemnity agreements with provisions identical to those in this Section 14 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. If CONTRACTOR fails to obtain such indemnities, CONTRACTOR shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of CONTRACTOR's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that CONTRACTOR's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.
- D. Workers' Compensation Acts Not Limiting. CONTRACTOR's obligations under this Section 14, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to CITY, its officers, agents, employees, and volunteers.
- E. Insurance Requirements Not Limiting. CITY does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions in this Section 14 shall apply regardless of whether or not any insurance policies are determined to be applicable to the liabilities, claims, tax, assessment, penalty or interest asserted against CITY.
- F. Survival of Terms. The indemnification provisions in Section 9 and in this Section 14 shall survive the expiration or termination of this Agreement.

Section 15. Insurance.

- A. CONTRACTOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:
1. Commercial General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000) for each occurrence and in the aggregate for any personal injury, death, loss or damage.
 2. Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
 3. Worker's Compensation insurance as required by the State of California.

- B. CONTRACTOR shall require each of its sub-consultants or sub-contractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- C. The policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- D. CONTRACTOR agrees that if it does not keep the insurance required in this Agreement in full force and effect, CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONTRACTOR'S expense, the premium thereon.
- E. Prior to commencement of Work under this Agreement, CONTRACTOR shall file with CITY's Risk Manager a certificate or certificates of insurance showing that the insurance policies are in effect and satisfy the required amounts and specifications required pursuant to this Agreement.
- F. CONTRACTOR shall provide proof that policies of insurance expiring during the duration of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- G. The general liability and automobile policies of insurance shall contain an endorsement naming CITY, its elected officials, officers, agents, employees, attorneys, servants, volunteers, successors and assigns as additional insureds. All of the policies shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days' prior written notice to CITY. CONTRACTOR agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- H. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the CITY, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.
- I. All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR, and CONTRACTOR's employees, agents, subcontractors, or volunteers from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against CITY, its officials, officers, employees, agents and volunteers.
- J. Any deductibles or self-insured retentions must be approved by CITY. At the option of CITY, CONTRACTOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONTRACTOR shall procure a bond guaranteeing payment of losses and expenses.

- K. If CONTRACTOR is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its managers, affiliates, employees, agents, and other persons necessary or incidental to its operation are insureds.
- L. Procurement of insurance by CONTRACTOR shall not be construed as a limitation of CONTRACTOR's liability or as full performance of CONTRACTOR's duties to indemnify, hold harmless and defend under Section 14 of this Agreement.
- M. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONTRACTOR or CITY will withhold amounts sufficient to pay premium from CONTRACTOR payments. In the alternative, CITY may cancel this Agreement effective upon notice.
- N. CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Section 16. Records and Inspection. CONTRACTOR shall keep, and require subcontractors to keep, such books and records as shall be necessary to document the performance of the Work and enable the CITY to evaluate the performance the Work. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of CITY, including the right to inspect, copy, audit, and make records and transcripts from such records. Such records shall be maintained for a period of four (4) years following completion of the services hereunder, and the CITY shall have access to such records in the event any audit is required.

Section 17. Termination.

- A. Termination for Convenience. CITY may immediately terminate this Agreement for convenience, without cause and without penalty or liability at any time upon the issuance of written notice to CONTRACTOR specifying the effective date of such termination. Such termination for convenience shall be made in writing signed by either the City Representative, the City Manager or the Assistant City Manager. CONTRACTOR may only terminate this Agreement for cause.
- B. Termination for Cause. 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 in this Section 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. An Event of Default shall include, but shall not be limited to the following: (i) CONTRACTOR'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; (ii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iii) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (iv) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (v) CITY's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false or erroneous in any material respect, including any statement, representation or warranty set forth in the Equipment Specifications.

1. CONTRACTOR shall cure the following Event of Default within the following time periods:
 - i. Within three (3) business days of CITY's issuance of a Default Notice for any failure of CONTRACTOR to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR 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, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR 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 subsection that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within thirty (30) 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 30-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 30-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 subsection that exceeds thirty (30) calendar days from the end of the initial 30-day cure period.

If an Event of Default relates to a material falsehood or misrepresentation set forth in Exhibit “[INSERT LETTER OF EXHIBIT RELEVANT TO PROPOSAL]” that is not susceptible to a cure, CITY in its sole and absolute discretion may elect to treat the falsehood or misrepresentation as a breach of this Agreement or waive the falsehood or misrepresentation. The foregoing notwithstanding, the prior waiver of a falsehood or misrepresentation as an Event of Default shall not operate as a waiver or any other falsehood or

misrepresentation later discovered by CITY.

2. Except as otherwise specified in this Agreement, CITY shall cure any Event of Default asserted by CONTRACTOR within thirty (30) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 30-day cure period. Prior to the expiration of the 30-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 30-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONTRACTOR shall be cured by CITY within five (5) calendar days from the date of CONTRACTOR's Default Notice to CITY.
3. CITY, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement (or the performance of any specific task or function performed by CONTRACTOR under this Agreement) pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of CITY's intent to suspend CONTRACTOR'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, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR 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.
4. 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.
5. 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 CONTRACTOR, the CITY may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, 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 CONTRACTOR's breach of

the Agreement or to terminate the Agreement; or

- iv. The CITY may exercise any other available and lawful right or remedy.

CONTRACTOR 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.

- 6. In the event CITY is in breach of this Agreement, CONTRACTOR’s sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks. In no event shall CONTRACTOR be entitled to receive more than the amount that would be paid to CONTRACTOR for the full performance of the services required by this Agreement.
- 7. 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.

Section 18. Force Majeure. The Completion Date shall be extended in the event of any delays due to unforeseeable causes beyond the control of CONTRACTOR and without the fault or negligence of CONTRACTOR, including but not limited to severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the CITY, if the CONTRACTOR shall within three (3) calendar days of the commencement of such delay notify the City Representative in writing of the causes of the delay. The City Representative shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the City Representative such delay is justified. The City Representative’s determination shall be final and conclusive upon the parties to this Agreement. In no event shall CONTRACTOR be entitled to recover damages against the CITY for any delay in the performance of this Agreement, however caused, CONTRACTOR’S sole remedy being extension of the Agreement pursuant to this Section.

Section 19. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during CONTRACTOR’s and CITY’s regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing.

If to CITY:

City of El Monte
City Hall – West, 2nd Floor
11333 Valley Boulevard

If to CONTRACTOR:

INSERT CONTRACTOR NAME
INSERT ADDRESS

El Monte, CA 91731
Phone: 626-580-2058
Attn: **INSERT DEPARTMENT**

**Attn: INSERT PERSON OF CONTACT
NAME**
Phone: INSERT PHONE NUMBER

Section 20. Prohibition. CONTRACTOR shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without CITY's prior written consent, and any attempt to do so shall be void and of no effect. CITY shall not be obligated or liable under this Agreement to any party other than CONTRACTOR.

Section 21. Attorney Fees. In the event that CITY or CONTRACTOR commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees.

Section 22. Entire Agreement. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. Except as expressly provided in this Agreement or its Exhibits, in the event of any conflict or inconsistency between the express provisions of this Agreement and provisions of any document incorporated by reference, the provisions of this Agreement shall prevail and control. This instrument contains the entire Agreement between CITY and CONTRACTOR with respect to the subject matter herein. No other prior oral or written agreements are binding on the parties. Any modification of this Agreement will be effective only if it is in writing and executed by both CITY and CONTRACTOR.

Section 23. Governing Law; Jurisdiction. 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.

Section 24. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

Section 25. Captions. The captions used in this Agreement are solely for reference and the convenience of the Parties. The captions are not a part of the Agreement, in no way bind, limit, or describe the scope or intent of any provision, and shall have no effect upon the construction or interpretation of any provision herein.

Section 26. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

CITY OF EL MONTE, a municipal corporation

CONTRACTOR NAME

By: _____
Alma K. Martinez
City Manager

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Richard Padilla
Assistant City Attorney

Date: _____

EXHIBIT "A"
CITY REQUIREMENTS

EXHIBIT "B"
CONTRACTOR PROPOSAL

EXHIBIT "C"
CONTRACTOR QUOTE