

AGREEMENT FOR
CITY ATTORNEY SERVICES

THIS 2011 AGREEMENT (hereinafter, the "Agreement") is made and entered into this 10/1/11 day of JANUARY 2011 (hereinafter, the "Effective Date") by and between the CITY OF EL MONTE (hereinafter, "CITY") and OLIVAREZ, GALLAGHER & PADILLA, P.C. (hereinafter, "FIRM"). For purposes of this Agreement, the capitalized term "Parties" shall be a collective reference to both CITY and FIRM. The capitalized term "Party" may refer to either CITY or FIRM interchangeably as reasonably appropriate.

NOW, THEREFORE, the Parties hereto agree as follows:

1. SERVICES. CITY does hereby retain FIRM and FIRM does hereby accept CITY as a client for the purpose of representing the CITY as City Attorney and providing CITY with general legal counsel services. Rick R. Olivarez shall be designated as the City Attorney. Richard E. Padilla and Terrence J. Gallagher shall be designated as the Assistant City Attorneys. FIRM agrees to provide all such legal services to CITY as herein below described.

2. TERM. The term of this Agreement (hereinafter, the "Term") shall commence upon the Effective Date, as indicated above, and shall continue through to 11:59 p.m. on June 30, 2012. Thereafter, this Agreement shall renew automatically for successive extension terms of one (1) year each unless and until terminated by the Parties as provided under this Agreement.

3. SCOPE OF SERVICES.

A. By execution of this Agreement and in accordance with the compensation terms set forth under Section 4 and Exhibit "A" of this Agreement, FIRM agrees to discharge the duties of the office of City Attorney of the City of El Monte and provide general legal services to CITY on all legal matters, except as otherwise provided under this Agreement or mutually agreed to by the Parties. FIRM's services shall consist of both "Basic Retainer Services" and "Special Matters" as both terms are defined under **Exhibit "B"** (Description of Services) of this Agreement (hereinafter, "Description of Services") which is attached and incorporated hereto by this reference.

B. Rick R. Olivarez shall be designated as City Attorney and Richard E. Padilla and Terence J. Gallagher shall each be given the designation of Assistant City Attorney. All members of FIRM shall have the authority to serve on behalf of CITY as needed and directed by Rick R. Olivarez. Rick R. Olivarez, Richard E. Padilla and/or Terence J. Gallagher shall be present at City Council meetings, Planning Commission meetings and at such other meetings as CITY deems necessary or appropriate. Rick R. Olivarez, Richard E. Padilla and/or Terence J. Gallagher shall be present at such meetings except for reasonable vacations, illness or emergency absences at which time any other member attorney of FIRM shall be assigned to represent CITY.

4. COMPENSATION. FIRM shall be compensated in accordance with the compensation terms set forth under **Exhibit "A"** of this Agreement.

5. INDEMNIFICATION AS CITY OFFICERS. Members of FIRM engaged in services under this Agreement are deemed officers of the CITY. In the event of any third party claims brought against FIRM members for actions taken in the course and scope of their official duties, upon such a determination, CITY agrees to indemnify and defend them against such third party claims.

6. USE OF OTHER FIRMS. In order to properly and effectively protect the best interests of CITY in specialized areas of the law, FIRM shall have the right to assign legal matters to special counsel (law firms or attorneys), subject to the City Manager's approval.

7. INDEPENDENT CONTRACTOR AND HOLD HARMLESS. It is agreed that FIRM shall serve as an independent contractor and not as employee of CITY. FIRM agrees to hold harmless and indemnify CITY for any claims, losses, liens, demands and causes of action for FIRM's negligent or tortuous conduct while serving as CITY ATTORNEY. It is further agreed that CITY is not the exclusive client of FIRM, and FIRM shall have the right to serve as the attorneys for other clients, including, but not limited to, other public agency clients.

8. INSURANCE. FIRM warrants and represents that FIRM is covered by a policy of professional liability insurance, insuring CITY as a client, in an amount not less than ONE

MILLION AND 00/100 DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00) aggregate liability.

9. EVALUATION OF PERFORMANCE. Performance evaluations shall be conducted on an annual basis at the end of the first quarter of each CITY Fiscal Year, commencing with the first quarter of the CITY Fiscal Year 2012-2013. For purposes of this Agreement, the words "CITY Fiscal Year" mean the period of time commencing on July 1st of each calendar year and ending on June 30th of the following calendar year. CITY and FIRM may establish a system to monitor and evaluate the performance, timeliness of services, and other issues relative to the terms of this Agreement.

10. CONFLICTS. FIRM shall execute any and all necessary conflict waivers should a conflict arise on any matter handled by the FIRM on CITY's behalf during the Term of this Agreement or any subsequent extension term. In the event any such conflicts do arise during the Term of this Agreement or any extension term, FIRM will notify CITY within fourteen (14) calendar days from the date FIRM receives actual notice of such conflict. FIRM and each of its members shall at all times comply with the statutes, rules and regulations governing the conduct of attorneys.

11. TERMINATION OF SERVICES. CITY may terminate FIRM's services at any time by written notice. After receiving such notice, FIRM will cease providing services. FIRM will cooperate with CITY in the orderly transfer of all related files and records to CITY's new legal counsel. FIRM may terminate its services at any time with CITY's consent or for good cause. Good cause exists if (a) any statement is not paid within SIXTY (60) calendar days of its date; (b) CITY fails to meet any other obligation under this Agreement and continues in that failure for a period in excess of FIFTEEN (15) calendar days after written notice to the CITY; (c) CITY has misrepresented or failed to disclose material facts to FIRM, refused to cooperate with FIRM, refused to follow FIRM's advice on a material matter, or otherwise made FIRM representation unreasonably difficult; or (d) any other circumstance exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If FIRM terminates its services, CITY agrees to execute a substitution of attorney promptly and otherwise cooperate in effecting that termination. Termination of our services,

whether by CITY or by FIRM, will not relieve CITY of the obligation to pay for services rendered and costs incurred before FIRM's services formally ceased

12. NO GUARANTEE OF OUTCOME. Any comments made by FIRM regarding the potential outcome of general matters are expressions of opinion only and are not guarantees or promises about any outcome or results.

13. AMENDMENTS. 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 Council approval. The foregoing notwithstanding, any written amendment limited only to a change in the business name of FIRM or any change in FIRM's business structure may be approved and executed administratively by the City Manager, provided Rick R. Olivarez, Richard E. Padilla and Terence J. Gallagher remain as principals, partners, shareholders and/or employees of FIRM.

14. SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15. ENTIRE AGREEMENT. This Agreement, together with all exhibits attached and incorporated hereto, shall constitute the full and complete agreement and understanding of the Parties and shall be deemed to supersede all other written or oral statements of any Party hereto relating to the subject matter hereof.

16. NOTICES. All notices pertaining to this Agreement shall be in writing and addressed as follows:

If to Firm: Rick R. Olivarez

Olivarez, Gallagher & Padilla, P.C.
424 N. Lake Avenue, Suite 300
Pasadena, CA 91101

If to City: City of El Monte
11333 Valley Boulevard,
El Monte, California 91731
Attention: City Manager

The parties may designate an alternative mailing address by providing the other party with written notice of the alternate address.

[End of Text. Signature Page to Follow.]

IN WITNESS WHEREOF, this Agreement is signed and entered into by the parties hereto on this 18 day of January, 2011.

CITY OF EL MONTE,

a municipal corporation

By: 
Rene Bobadilla,
City Manager

OLIVAREZ, GALLAGHER &
PADILLA, P.C.

By: 
Rick R. Olivarez,
Managing Partner

APPROVED AS TO FORM:

By: 
David Gondek, Senior Deputy City Attorney

EXHIBIT "A"

[COMPENSATION TERMS]

1. BASIC RETAINER SERVICES:

- A. In consideration of FIRM's performance of the Basic Retainer Services, FIRM shall receive the sum of SEVEN HUNDRED AND EIGHTY THOUSAND DOLLARS (\$780,000.00) per each CITY Fiscal Year (hereinafter, the "Base Retainer"). The Base Retainer shall be paid to FIRM in monthly installments equal to one-twelfth (1/12) of the amount of the Base Retainer (i.e., SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00) per month) with each such installment due and payable to firm within fourteen (14) calendar days from the conclusion of each calendar month. This first such monthly installment of the Base Retainer shall be due and payable to FIRM within FOURTEEN (14) calendar days from the conclusion of the month of January 2011. For purposes of this **Exhibit "A"** the term CITY Fiscal Year shall have the same meaning as set forth under Section 9 of the Agreement.
- B. To the extent FIRM seeks reimbursement for Out-of-Pocket costs as defined under Section 3, below, FIRM shall submit a detailed invoice to CITY delineating each such Out-of-Pocket cost and the Basic Retainer Service matter for which the cost was incurred. CITY shall pay all undisputed sums within fourteen (14) calendar days of FIRM's submission of its invoice.
- C. FIRM will track attorney hours devoted to the performance of Basic Retainer Services and shall make such information available to CITY upon request. Coinciding with the annual performance review contemplated under Section 9 of the Agreement, the Parties will also review FIRM's tracked hours and based upon such review shall adjust the amount of the Base Retainer in a manner mutually acceptable to the Parties, commencing with 2012-2013 CITY Fiscal Year. The Parties shall conduct similar reviews at the end of the first quarter of each subsequent CITY Fiscal Year and make any additional adjustments to the Base Retainer as the Parties find mutually acceptable.

2. SPECIAL MATTERS:

- A. FIRM shall be compensated for the performance of Special Matters at a rate of ONE HUNDRED AND NINETY DOLLARS (\$190.00) per hour for Partner/Senior Attorneys and ONE HUNDRED AND SIXTY DOLLARS (\$160.00) for Associate Attorneys, provided that FIRMS total compensation for the performance of Special Matters shall not exceed the sum of ONE HUNDRED AND TEN THOUSAND DOLLARS (\$110,000.00) for the period commencing January 1, 2011 and ending June 30, 2011 or the sum of TWO HUNDRED AND TWENTY THOUSAND DOLLARS (\$220,000.00) for each CITY Fiscal Year thereafter. If CITY disputes or otherwise disagrees with the charge of any matter as a Special Matter, the Parties shall adhere to the fee dispute resolution provisions of Section 3 of this Exhibit "A", below.

B. FIRM shall prepare an itemized monthly billing invoice following the conclusion of each calendar month for all Special Matters worked on by FIRM during the recently concluded calendar month. The invoice shall reasonably describe the work, services and tasks performed, the attorney performing such work services and tasks, the attorney's corresponding hourly rate, the number of hours (or fraction thereof) devoted to performing the work, services or task and all related subtotals and grand totals. FIRM will keep time records in increments of one-tenth (1/10) of an hour. CITY shall pay all undisputed sums within fourteen (14) calendar days of FIRM's submission of its monthly billing invoice.

C. OUT-OF-POCKET EXPENSES: Independent of and above any compensation due FIRM pursuant to Sections 1 and 2 of this Exhibit "A". CITY shall also reimburse FIRM for actual, out-of-pocket expenses such as, but not limited to, long-distance telephone calls (other than calls between CITY and FIRM), court filing fees (including filing fees for administrative proceedings), deposition fees, witness fees, costs for investigation services, service of process fees, courier costs, and other related courts costs, authorized air travel and costs of travel accommodations for matters litigation matters handled on behalf of CITY, parking fees, copy fees, facsimile costs and other related travel costs. All such costs shall be submitted to CITY for approval as part of the monthly billing statement. No individual cost in excess of \$500 shall be incurred without the approval of the City Manager or his/her designee. Out-of-Pocket expenses shall be charged in accordance with the following schedule:

Facsimiles	\$00.50 per page
Copies	\$00.20 per page
Air Travel	At cost
Postage, long distance telephone and other Out-of-Pocket Expenses	At cost

3. FEE DISPUTES. In the event CITY disputes any Out-of-Pocket expense charged to City or any charge associated with FIRM's performance of any Special Matter(s), CITY shall have fourteen (14) days from the date FIRM issues its invoice containing the disputed charge within which to issue written notice to FIRM of the dispute charge. The Parties shall have fifteen (15) days from the date of CITY's written notice to FIRM to resolve the matter in on their own, acting in good faith. If the Parties are unable to resolve the matter on their own within the 15-day resolution period, the Parties shall refer the matter to a neutral third party who is a licensed mediator with experience in resolving legal fee disputes. The Parties shall split the cost of any such neutral third party mediator. The failure of CITY to timely issue notice of dispute to FIRM shall be

interpreted to mean that CITY does not dispute any fee or charge contained in FIRM's invoice and shall operate as a waiver of CITY's right to later dispute the subject fee(s) or charge(s).

EXHIBIT "B"
[DESCRIPTION OF SERVICES]

- A. For purpose of the Agreement, the capitalized term "Basic Retainer Services" means and includes the following:
1. Provide routine legal assistance, advice and consultation to the City Council and to City staff relating to general public law issues, potential tort liability and risk management;
 2. Prepare and review legal opinions, ordinances, resolutions, agreements and related documents;
 3. Except as otherwise provided under Section B, below, the legal analysis and review of requests for public records under the California Public Records Act ("Govt. Code Section 6250 et seq.);
 4. Attend all meetings of the City Council, and such meetings of the Planning Commission and other Boards and Commissions of the City as may from time to time be specified by the City;
 5. Monitor pending state and federal legislation and regulations, and new case law, as appropriate;
 6. Administer contracts that the City may have with other legal counsel. Such administration shall include oversight services such as review of attorney invoices, coordination of special legal counsel's activities, direction to special legal counsel with regard to legal strategies and communication of City Council and City staff direction to special legal counsel;
 7. Provide a minimum of THREE (3) attorneys for on-site for regular office hours for a minimum of SEVEN (7) hours per day for each City business week (Monday through Thursday) excluding City-observed holidays;
 8. Perform all duties of the office of City Attorney as provided under Chapter 2.16 of the El Monte Municipal Code, except to the extent such duties are provided are included within the definition of "Special Matters" under Section B of this Exhibit "B", below.
- B. For purposes of the Agreement, the term "Special Matters" means and includes the following:
1. Drafting of legal documents and provision legal analysis in anticipation of litigation under those circumstances where the City and/or the El Monte Community Redevelopment Agency ("CRA") has received at least one (1) oral or written communication that a party intends to initiate or is ready to initiate litigation or an administrative or regulatory enforcement action against the City and/or the CRA;

2. The defense of civil actions and/or administrative or regulatory enforcement actions brought against the City and/or the CRA (e.g., review of opposition pleadings and discovery, drafting of pleadings, discovery and other legal documents and correspondence in connection with litigation and/or administrative or regulatory enforcement proceedings and conducting legal analysis in connection with the same);
3. The prosecution of civil actions and/or the prosecution of regulatory or administrative actions in favor of the City and/or the El Monte Community Redevelopment Agency;
4. The defense and/or representation of the City and/or El Monte in handling specific workers compensation claim matters;
5. The defense and/or representation of the City and/or El Monte in the conduct of employee disciplinary and/or grievance proceedings;
6. The criminal or administrative prosecution of violations of the El Monte Municipal Code;
7. The review of California Public Records Act requests (Govt. Code Section 6250 et seq.) (hereinafter, "Records Requests") seeking the inspection and/or copying of an unusually large number of documents (e.g., in excess of 100 pages); or the review of three or more Records Requests submitted within any one calendar month or within any thirty-day timeframe by the same requestor in connection with the same general subject matter. Such review shall encompass all coordination efforts undertaken by FIRM's attorneys to locate and gather potentially responsive records produced by various CITY departments and divisions; all document review and legal analysis required to determine what, if any, materials and/or information is responsive to the request or may be withheld; all document production preparation (c.g., information redaction, document sorting and arranging and/or number stamping); and the drafting of all statutorily required correspondence to the requestor or in response to follow-up queries submitted by the requestor; and
8. All other matters other than those covered under the definition for Basic Retainer Services.