



PUBLIC WORKS DEPARTMENT

ENGINEERING DIVISION

REQUEST FOR PROPOSAL (RFP)

FOR PROFESSIONAL CIVIL ENGINEERING DESIGN SERVICES

FOR THE STREET IMPROVEMENT PROJECT AT

EL MONTE AVE FROM RIO HONDO CHANNEL TO LOWER AZUSA RD;

AND BALDWIN AVE FROM LOWER AZUSA RD TO I-10 FWY

SEPTEMBER, 2020

IMPORTANT DATES

RFP ISSUED	SEPTEMBER 22, 2020
REQUEST FOR INFORMATION DEADLINE: 5:00 PM	OCTOBER 6, 2020
RELEASE OF INFORMATION REQUESTED	OCTOBER 8, 2020
PROPOSAL DUE DATE/SUBMISSION DEADLINE: 5:00 PM	OCTOBER 20, 2020
ANTICIPATED AWARD DATE	NOVEMBER 2020
APPROXIMATE START DATE	NOVEMBER 2020

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EXHIBIT 1 – SAMPLE PROFESSIONAL SERVICES AGREEMENT

1.0 Background

The City of El Monte, County of Los Angeles, State of California (hereafter referred to as the “City”) is soliciting proposals from qualified consultant firms for Professional Civil Engineering Design Services for the **STREET IMPROVEMENT PROJECT AT EL MONTE AVE FROM RIO HONDO CHANNEL TO LOWER AZUSA RD; AND BALDWIN AVE FROM LOWER AZUSA RD TO I-10 FWY** (“Project”). Services include, but are not limited to: providing a topographical survey of the project sites;; reviewing existing pavement conditions and treatment recommendations in the *El Monte 2019 Pavement Present Status and Recommended Work Programs*; evaluation of existing improvements for compliance with Americans with Disabilities Act (ADA); potholing existing pavement sections and subgrade to determine recommended pavement section and repair methodologies; evaluating alternative cost-effective pavement repair strategies; preparing street improvement plans, specifications, and engineer’s estimates; implementing City’s Bike Master Plan recommended bike route; and preparing final bid documents.

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

The project is funded with Street Impact Fees Fund and SB1 monies.

2.0 Scope of Services

Prospective firms should have significant experience, expertise, and familiarity in working with public agencies to provide the service(s) submitting their Proposal(s) for. In addition to specific services identified in this RFP, it is the intent of the City that the selected firm(s) will provide additional related support, as needed, based on an approved schedule of hourly rates or prior negotiated project specific fees.

The Scope of Work, as may be modified through negotiation and/or by written addendum issued by the City, will be made a part of the Agreement. The selected firm will be expected to furnish all personnel, materials, equipment and incidentals, to provide the services as generally described below.

The City of El Monte is seeking consultant services to develop a street improvement design for two street segments: El Monte Avenue from Rio Hondo Channel to Lower Azusa Road and Baldwin Avenue from Lower Azusa Road to I-10 Freeway.

El Monte Avenue from Rio Hondo Channel to Lower Azusa Road

El Monte Avenue from Rio Honda Channel to Lower Azusa Road is a two-way street without centerline and with on-street parking permitted on both sides of the street. The stretch is about 0.15 miles in length, and average width of the street is about 56 feet. There are two cul-de-sac streets that branch off of El Monte Avenue: Douglas Street and Ellen Street. These two streets exhibit severe alligator crack and shall be included in the project scope. There is also a short segment (about 300 feet in length) of Lower Azusa Road from the west City limit to the transition line between asphalt concrete pavement and concrete pavement just east of the intersection of El Monte Avenue and Lower Azusa Road that the City is interested in including in the project scope.

It is the intent of the City to provide a continuity of the bike routes that Temple City has installed along the El Monte Avenue to the north of Lower Azusa Road and comply with the Bike Master Plan. El Monte Avenue shall include a Class II Bike Path.

Baldwin Avenue from Lower Azusa Road to I-10 Freeway

Baldwin Avenue is one of the City's major arterial streets with two travel lanes in each direction, which is divided by either a center left turn lane or a raised median. On-street parking is permitted on both sides. Baldwin Avenue from Lower Azusa Road to I-10 Freeway is about 1.35 miles in length, and Lower Azusa Road is the City Limit bordering Temple City. Baldwin Avenue is mostly comprised of concrete pavement except for about 700 feet in the south end of the project area where it is comprised of the asphalt concrete. There are three underpass bridges along Baldwin Avenue: one railroad near Bessie Avenue and two EB and WB of I-10 Freeway in the south of Valley Boulevard. Please be advised that the consultant shall be responsible to coordinate and obtain required permits from the corresponding jurisdictions. It is a City's intent the pavement rehabilitation along concrete paved segments along Baldwin Avenue to be limited to localized concrete repairs only.

As recommended in the City's Bike Master Plan, Baldwin Avenue shall include a Class II Bike Path.

The consultant's scope of work under this item generally includes, but is not limited to the following:

Task 1 – Preliminary Research & Investigation

- **Task 1a – Topographical Survey:** The consultant shall provide a topographical survey of each project site. Cross section elevations to be taken no more than 50 feet apart. Topographic survey shall also note any locations of sags, uplifts, depressions, deficiencies, and other unusual conditions which should be addressed as part of the improvement project. The survey shall also locate all locations of damaged sidewalks, damaged curb and gutters, all roadway concrete pavement failures, drainage infrastructure, tree locations, red curb locations, house numbers, manholes and other utilities, curb ramps, and driveway approaches, etc. Research of as-built drawings, benchmarks, and centerline ties shall also be included.
- **Task 1b – Utility Research:** The consultant shall research all existing utility infrastructure including franchise utilities. The consultant shall provide the City with verification of utility company review of design plans and/or verification of utility research.
- **Task 1c – Existing Pavement Sections:** The consultant shall pothole existing pavement sections and subgrade to determine the recommended pavement section and repair methodologies. Pavement sections shall be designed based on a 10-year life expectancy. Potholes shall also be taken to verify compaction of soil conditions for dig-out repairs and shall be taken no more than 250 feet apart. The consultant shall be responsible for pothole restoration and its associated cost(s), preparation of traffic control plans, and coordination and procuring any permits necessary from Caltrans to perform this task. Pothole restoration shall be done in accordance with City standards and requirements. No additional compensation will be provided.
- **Task 1d – Implement Bike Master Plan Recommendations:** The consultant shall research the City's Bike Master Plan and implement its recommended bike route striping and wayfinding signs within the project area into all pertinent plans.

Task 2 – Preliminary Design (30% and 60% PS&E)

- **Task 2a – Preliminary Street Improvement Plans:** The consultant shall prepare preliminary street improvement plans based on preliminary findings, including proposed pavement treatments approved by City's Project Manager.; repairs and improvements to sidewalk, curb & gutter, curb ramps; root pruning of street trees; repair of localized pavement failures; resetting of survey monuments; adjustment of manholes and utility covers; and related appurtenances. The consultant shall be mindful of constructability for all improvement recommendations. Plans shall be prepared on the City's standard title block and shall include a cover sheet, plan views, topographic elevations, public right-of-way lines, and house numbers for each parcel, typical sections, and construction details.
- **Task 2b – Permitting Services:** The consultant shall be responsible for securing permit(s), to include, preparation of applications and all submittals. Plan check fee(s) and permit

application(s) shall be included as part of the proposal fee in the amount \$10,000. All plan check fee(s) and permit fee(s) to be reimbursed by the City.

- **Task 2c – Right of Entry:** The consultant shall be responsible for researching, coordinating, and preparing all required easement(s) and/or right of entry document(s) necessary for the project. Proposed task shall be included in the proposal fee as an allowance on in the amount of \$20,000.
- **Task 2d – Preliminary Striping Plans:** The consultant shall prepare preliminary striping & signing plans. Preliminary striping & signing plans shall match existing conditions and be replaced in-kind, with the addition of bike route striping and wayfinding signs. Plans shall include striping details, painted curb length, and placement of traffic signs.
- **Task 2e – Preliminary Project Specifications:** The consultant shall prepare the Special and Technical Provisions which shall be incorporated into the City’s standard boilerplate. Special and Technical Provisions shall be in accordance with the latest editions of the Greenbook, Caltrans Standard Plans and Specifications, and California Manual on Uniform Traffic Control Devices (CA MUTCD). Front end boilerplate shall be reviewed and revised to provide project specific information.
- **Task 2f – Preliminary Engineer’s Estimate:** The consultant shall prepare an engineer’s estimate at each submittal milestone for the City’s review. The estimated construction budget is \$1,000,000, so the consultant shall prioritize and recommend the most critical improvements to be included in this Project, if the estimated construction costs exceed the City’s budget.
- **Task 2g – Meetings with City Staff:** The consultant shall meet with City staff for an initial kick off meeting and during the 30% and 60% submittals to discuss areas of concern, proposed recommendations, establishing general guidelines, and for overall coordination. Two (2) sets of hard copies of the PS&E shall be provided at each meeting as well as electronic files.

Task 3 – Final Design (95% and 100% PS&E)

- **Task 3a – 95% PS&E:** The consultant shall incorporate all City comments and concerns from the Preliminary Design phase and meet with City staff to review the final design. Two (2) sets of hard copies of the PS&E shall be provided at this meeting as well as electronic files.
- **Task 3b – 100% PS&E:** Once the consultant has addressed all final review comments, the following deliverables shall be provided to the City:
 1. Final drawings
 - a. 1 set of mylars stamped and signed by the Engineer of Record
 - b. Electronic files in AutoCAD format
 - c. Copies of all plans in PDF format

- d. Copy of surveyor’s digital control points
- 2. Project specifications on City’s standard boilerplate
 - a. 1 hard copy set stamped and signed by the Engineer of Record
 - b. Electronic files in Word and PDF format
- 3. Engineer’s estimate
 - a. 1 hard copy set
 - b. Electronic files in Excel and PDF format
- 4. Copy of utility research documents (as-built plans and request letters)
- 5. Geotechnical report of potholing results
- 6. Memorandum of Pavement Rehabilitation Recommendations

Task 4 – Construction Engineering Support Services (Contingent Item): The consultant shall provide a cost proposal for construction engineering support services during the construction phase to address any design concerns on an as-needed basis. The cost proposal shall be based on 80 hours and is a contingent, deletable item.

Project Schedule

The following is a list of tentative project milestones that the consultant will be expected to meet:

Milestone	Date
Award of Contract	November 17, 2020
Kickoff Meeting	November 19, 2020
30% Submittal and Meeting	January 8, 2021
60% Submittal and Meeting	February 26, 2021
95% Submittal and Meeting	April 23, 2021
100% Submittal	April 30, 2021

3.0 Proposal Format

All firms shall include the following information and comply with the associated page limit restrictions and one limited to 25 pages or less. Note that one (1) page includes the front side of an 8.5”x11” sheet of paper and the front cover and back cover does NOT constitute a page. ***However, Table of Content, Appendices, Exhibits, Resumes, Title pages and blank pages will ALL COUNT toward your 25 page limit. If you exceed the specified page limit points will be taken away from your proposals accordingly.***

- 1) **Cover Letter. Maximum 1-page cover letter** signed by an officer of the firm, binding the firm to all of the commitments made in the submittal. The letter shall include name, address and phone number of the person authorized to represent the firm and shall include the following Statement:
 - a. I HAVE READ UNDERSTOOD, AND AGREED TO ALL STATEMENTS IN THIS REQUEST FOR PROPOSALS AND ACKNOWLEDGE RECEIPT OF ALL ADDENDUMS/AMENDMENTS AS WELL AS TO THE TERMS, CONDITIONS, AND ATTACHMENTS REFERENCED.

- 2) **Proposer's Background.** *Maximum 2-page background* on the proposer and its area(s) of professional expertise relevant to this RFP. An additional one (1) page may be included to highlight the background of each proposed sub-consultant to be used by the firm and the specific task(s) or functions the sub-consultant will perform.
- 3) **Qualifications and Experience of Proposer's Personnel.** Summary of the relevant experience, work history, training, education and special certifications of the proposer's personnel who will be performing the professional services contemplated under this RFP on the proposer's behalf. Briefly discuss the Consultant team's proposals and experience with street design and similar project(s) in magnitude and nature. Proposers shall provide identical information for all sub-consultants' performing any of the tasks or services contemplated under this RFP on the proposer's behalf. The summary shall also include the office location of key personnel proposed to work on this contract. Relevant experience can include your company's overall experience, experience with similar programs and the experience of individuals on your proposed team. Show how your experience relates to the demands of the services to be provided. Professional licenses in the consultant's specific discipline relative to the discipline the Proposal(s) being submitted is required.
- 4) **Project Approach.** Summary of the proposed approach to providing professional civil engineering design services for this improvement project. The firm shall explain the way in which the firm will timely complete all of the tasks called for under the RFP. Include a brief overview of the Consultant's understanding of the program. The content will reflect the particular viewpoint of the Consultant.
- 5) **Proposed Personnel.** Resumes for the project manager and for each of the other key personnel *shall not exceed one page*, including sub-consultants, which will be performing the majority of the work on this contract. Resumes for corporate leadership should not be included unless said individuals will be performing substantial work on this program. The designated Project Manager (where occurs) shall be the primary contact with the City during the contract period and shall function in that capacity while employed by the firm. In addition, the City must approve changes of personnel.
- 6) **Quality Assurance/Quality Control Procedures.** Brief description of the consultant's approach to implementing a Program-specific Quality Control approach. The Proposer shall describe the firm's policies and procedures for assuring high quality work, including monitoring of any proposed sub-contracts. Identify the QA/QC manager and his proposals.
- 7) **References.** Each firm must include at least three (3) public agency references going back no more than five (5) years from the issuance of this RFP in which the firm was engaged to perform tasks similar to those requested under this RFP. References should place an emphasis on past programs in which the personnel to be used by proposer for this project were deployed. The references should include the name, title and contact information of the public agency officer or employee responsible for overseeing the proposer's work with contact information.

8) Schedule Control. Time is of the essence. It is critical the proposer describe methods that can be used to keep the concept design and detailed design efforts on schedule. The proposer shall illustrate methods they have used to assist other agencies to meet their proposed schedule. Discuss previous projects where the consultant was able to avert a potential delay by implementing project management techniques.

9) Fee Proposal/Rate Schedule. A detailed all-inclusive schedule of rates for each proposed personnel that may be tasked to complete the Project. The Task-specific cost shall clearly identify an hourly rate schedule for the proposed staff. The rate schedule shall also include costs and expenses related to photocopying, postage, travel, etc. (i.e. Reimbursement expenses). To the extent that a prime consultant contemplates the use of sub-consultants to perform any one or more of the above described tasks on the proposer's behalf, the firm shall include a List of Sub-consultants identifying all sub-consultants and state the fee for each sub-consultant in the Fee Schedule.

- a. The Fee Proposal/Rate Schedule shall be delivered as a separate file to the recipient as described in section 6.0, with clear and concise file name.

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

4.0 Evaluation Criteria

Each firm shall be evaluated on the basis of the proposer's expertise, experience and training and the expertise of its key personnel along with prior contracting history, approach to the program, Fee Proposal/Rate Schedule and compliance with the RFP requirements including the terms of the attached PSA. Each such factor shall be weighted by the City as follows:

- 1) Expertise, Experience & Training Plus Prior Contracting History (40%)** – The expertise, experience and training of the proposer and its key personnel and previous experience with similar work in similar fields and proposals and depth of the staff that will perform the work on this project. This factor includes evaluation of the proposer's prior contracting history, including the review of the proposer's certifications relating to false claims, debarment and civil litigation.
- 2) Project Approach (35%)** – The proposer's responsiveness in addressing the City's specific needs.
- 3) Schedule Control (10%)** - The proposed schedule and methods to meet schedule deadlines.
- 4) Fee Proposal/Rate Schedule (10%)** – The proposed compensation structure (inclusive of hourly rates of compensation, pass through costs and sub-consultant costs) for the performance of the Scope of Service as outlined in Section 2.

- 5) **Compliance with RFP (5%)** – The ability of the proposer to comply with all instructions set forth under this RFP as well as the proposer’s ability to agree to all of the terms and conditions of the attached PSA without modification, particularly as relates to indemnification, insurance requirements and standards of care.

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

5.0 Selection Process

A selection committee, comprised of City staff will review the proposals. Firms will be ranked on qualifications and the selection committee may choose to interview several of the top ranked firms. However, at its sole discretion the selection committee may dispense with interviews and select proposer/multiple proposers to provide the required services.

6.0 Proposal Requirements

Proposal must be submitted using the following methods: Uploaded to PlanetBids or emailed to the Project Manager listed in section 6.11 below.

Subject: REQUEST FOR PROPOSALS: FOR EL MONTE AVE FROM RIO HONDO CHANNEL TO LOWER AZUSA RD; AND BALDWIN AVE FROM LOWER AZUSA RD TO I-10 FWY

Proposal must be received by or before the Submission Deadline. Proposals that are submitted/uploaded/emailed after the Submission Deadline will not be considered by the City. Submitted Proposals shall be maintained as confidential records of the City up to the Submission Deadline. Firms may withdraw, modify and/or resubmit a Proposal prior to the Submission Deadline but not after. Firms shall be bound to the terms of their Proposal following the Submission Deadline, however, the City, in its sole and absolute discretion, reserves the right to accept post deadline modifications if it is determined that such modifications are in the best interests of the City. The City also reserves the right to waive minor non-substantive informalities or allow the firms to correct them.

- 1) Proposers shall be solely and exclusively responsible for all costs incurred in connection with the preparation and submission of the Proposal; demonstrations; interviews; preparation of responses to questions and requests for additional information; for contract discussions; or for anything in any way related to this RFP. The City is not liable for any costs incurred by firms submitting their Proposal in response to this RFP. Whether or not a firm is awarded a contract pursuant to this RFP, no firm shall be entitled to reimbursement for any costs or expenses associated with the firm’s participation in this RFP process.
- 2) Late Proposals will not be considered.

- 3) The City reserves the right to reject any and all Proposals received as a result of this RFP. The City's potential award of a contract will not be based on any single factor nor will it be based solely or exclusively on the Fee/Rate Schedule. If a contract is awarded, it will be awarded to the proposer who in the judgment of the City has presented an optimal balance of relevant experience, technical expertise, quality of service, work history and other factors which the City may consider relevant and important in determining which firm(s) are best for the City.
- 4) The City reserves the right to cancel or modify this RFP. There is no guarantee that the City will award contract.
- 5) The City reserves the right to investigate the qualifications of any proposer under consideration including proposed subcontractors and parties otherwise related to the proposer and require confirmation of information furnished by a proposer, or require additional evidence of experience and qualifications to provide the services or otherwise discharge the obligations required by this RFP.
- 6) Following the Submission Deadline, the City, pursuant to the California Public Records Act (Govt. Code Section 6250 et seq.) reserves the right to make copies of all submitted Proposals available for inspection and copying by any interested member of the public, except to the limited extent the City determines that any information contained in a Proposal is legally privileged under the California Public Records Act. By submission of a Proposal, proposers acknowledge and agree that their Proposal and any information contained therein may be disclosed by the City to interested members of the public, including other proposers.
- 7) The City reserves the right to approve or disapprove of particular subcontractors, joint venture partners, or other proposed team members.
- 8) The City reserves the right to evaluate responses in terms of the best interests of the City, applying criteria provided in this RFP and any other criteria the City, in its sole discretion, deems pertinent.
- 9) By the submission of a Proposal, each proposer accepts and agrees to execute a written Professional Services Agreement (PSA) in the form attached hereto as Exhibit A, inclusive of all stated terms and conditions relating to indemnification, required insurance and standard of care requirements. If a proposer is unable to agree to any of the terms or conditions of the PSA in the form attached hereto, the proposer must identify the provision(s) in question and provide an explanation as to why the proposer cannot comply with such provisions. If a proposer's objection to a certain provision of the PSA is merely a question of added cost, the proposer shall indicate in the Proposal the difference in cost associated with complying with the provision(s) versus the cost associated with the City's waiver or modification of the provision(s). The City shall be under no obligation to make modifications to the PSA after a contract has been awarded and proposers shall be deemed to have incorporated all costs associated with compliance with the PSA into their RFP. A firm's inability to comply with one or more provisions of the PSA shall be a factor that will be considered by the City in

determining which firms will serve the best interest of the City when all other factors are taken into account.

- 10) All Proposals must remain valid for a minimum period of ninety (90) calendar days after the Submission Deadline. Responses may not be modified or withdrawn by the proposer during this period of time except in accordance with this RFP and with written permission granted by the City.
- 11) All questions or requests for clarification shall be submitted via email to Yurhi Choi, Project Manager at ychoi@elmonteca.gov by the REQUEST FOR INFORMATION DEADLINE. All questions received by this deadline will be addressed and posted on the City's website (www.ci.el-monte.ca.us) and uploaded to PlanetBids by the RELEASE OF INFORMATION REQUESTED DATE.
- 12) If it becomes necessary to revise any part of this RFP, an addendum will be posted on the City's website and/or PlanetBids. It shall be the sole responsibility of the proposer to check for any addendums to the RFP that may be issued by the City.
- 13) It is the responsibility of potential firm to be thoroughly familiar with the scope of services to be performed under this RFP.
- 14) The proposer agrees that, if a contract is awarded to a proposer, the proposer shall make no claim against the City or any of the funding agencies because of any estimate or statement made by any employees, agents, or consultants of the City which may prove to be erroneous in any respect.
- 15) Proposers may withdraw their Proposal prior to the Submission Deadline.

7.0 Insurance Requirements

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

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

ATTACHMENT A

FORMS

INSURANCE: CG2010

POLICY NUMBER:
GENERAL LIABILITY

COMMERCIAL

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT
CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

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

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

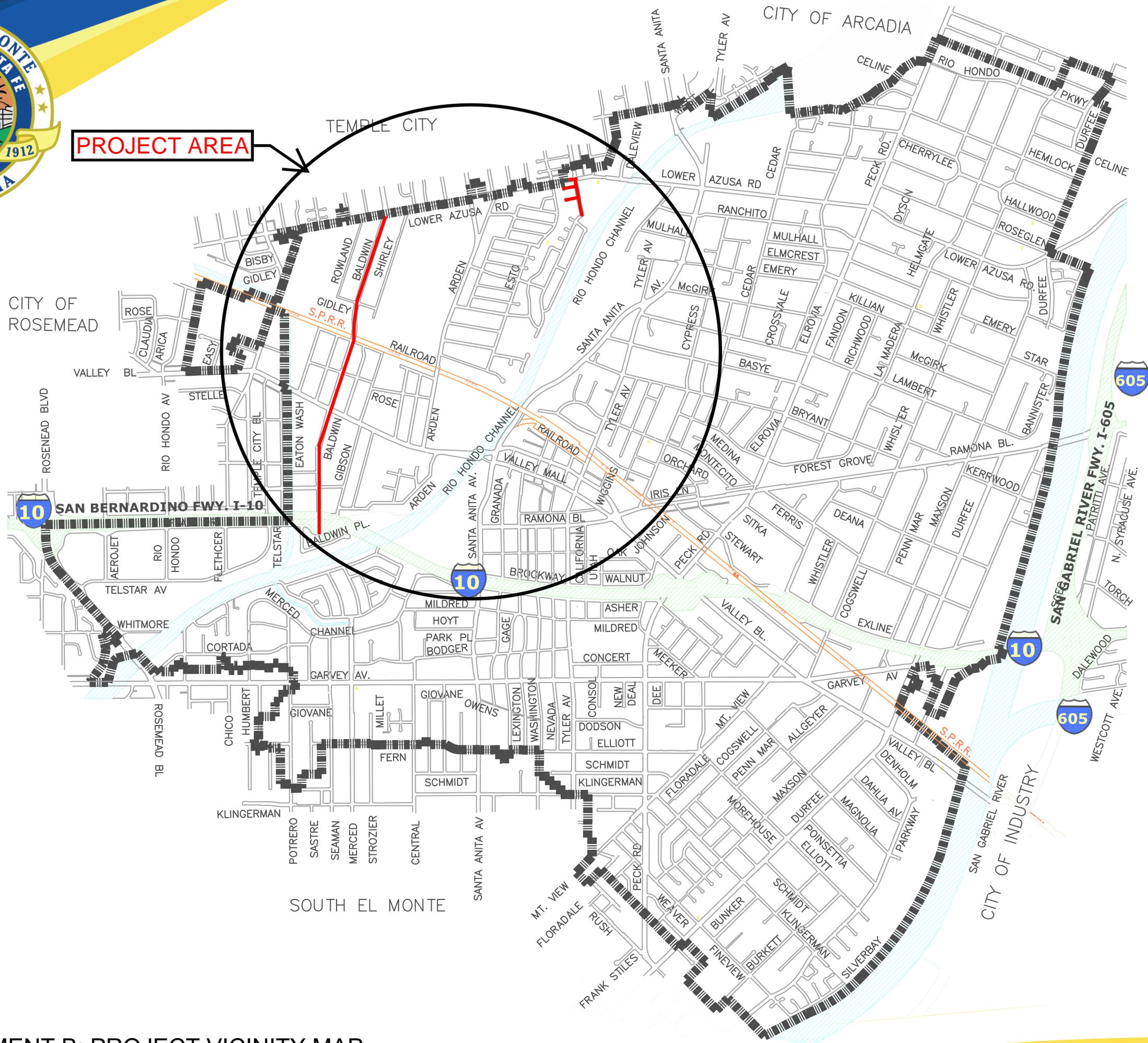
WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

SAMPLE

ATTACHMENT B
PROJECT VICINITY MAP



PROJECT AREA



ATTACHMENT B: PROJECT VICINITY MAP

EXHIBIT 1

SAMPLE PROFESSIONAL SERVICES AGREEMENT



20 _____
PROFESSIONAL SERVICES AGREEMENT

(Engagement: INSERT ENGAGEMENT)
(Parties: INSERT CONSULTANT NAME and City of El Monte)

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this _____ day of _____ 20____ (hereinafter, the "Effective Date") by and between the CITY OF EL MONTE, a municipal corporation (hereinafter, "CITY") and INSERT CONSULTANT NAME, (hereinafter, "CONSULTANT"). For the purposes of this Agreement, CITY and CONSULTANT may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to CITY or CONSULTANT interchangeably, as appropriate.

RECITALS

WHEREAS, CITY requires professional consulting services INSERT THE KIND OF SERVICES REQUIRED;

WHEREAS, CITY staff has determined that CONSULTANT possesses the experience, skills and training necessary to competently provide such services to CITY;

WHEREAS, this Agreement was approved by the City Manager pursuant to his 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 _____, 20____ under Agenda Item No. _____.

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

I.
ENGAGEMENT TERMS

1.1 SCOPE OF WORK:

- A. Subject to the terms and conditions of this Agreement, CONSULTANT agrees to provide the services and tasks described in that certain proposal of CONSULTANT entitled "INSERT TITLE OF PROPOSAL" dated INSERT DATE OF PROPOSAL (hereinafter, the "Scope of Work") which is attached and incorporated hereto as **Exhibit "A"**. 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."

1.2 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 Notice to Proceed. CONSULTANT shall complete the various tasks identified in the Scope of Work within the timeframes set forth in the Scope of Work and shall complete all of the Work by or before INSERT COMPLETION DATE (the "Completion Date");
- B. CONSULTANT shall perform the Work continuously and with due diligence so as to complete the Work by the completion date indicated in each Work Order. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other consultants, contractors or agents;
- 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: CONSULTANT shall perform the Work in accordance with _____ "INSERT TITLE OF COMPENSATION DOCUMENT" (hereinafter, the "COMPENSATION RATE"). The foregoing notwithstanding, CONSULTANT's total compensation for the performance of all Work contemplated under this Agreement, will not exceed the total budgeted aggregate sum of **INSERT WRITTEN AMOUNT (\$ INSERT NUMBER)** (hereinafter, the "Not-to-Exceed Sum") during the Term of this Agreement, unless such added expenditure is first approved by the City Council. In the event CONSULTANT's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of this Agreement, CITY may suspend CONSULTANT's performance pending CITY approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other CITY approved amendment to the compensation terms of this Agreement.

1.4 PAYMENT OF COMPENSATION: The Not-to-Exceed Sum will be paid to CONSULTANT in monthly increments as the Work is completed. Following the conclusion of each calendar month, CONSULTANT will submit to CITY an

itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and 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 should 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 will notify CONSULTANT in writing of any disputed amounts included in the invoice. Within forty-five (45) calendar days of receipt of each invoice, CITY will pay all undisputed amounts included on the invoice. CITY will not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.

- 1.5 ACCOUNTING RECORDS: CONSULTANT will maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY will have the right to access and examine such records, without charge, during normal business hours. CITY will further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 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 will deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT will only be compensated for the reasonable value of the services, 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 REPRESENTATIVE: The CITY hereby designates INSERT CITY REPRESENTATIVE (hereinafter, the "CITY Representative") to act as its representative for the performance of this Agreement. The CITY Representative or his designee will act on behalf of the CITY for all purposes under this Agreement. CONSULTANT will not accept directions or orders from any person other than the CITY Representative or her designee.
- 2.2 CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates INSERT CONSULTANT REPRESENTATIVE, to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative will have full authority to represent and act on

behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee will supervise and direct the performance of the Work, using his best skill and attention, and will 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 will constitute notice to CONSULTANT.

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

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

- A. CONSULTANT will perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession;
- B. CONSULTANT shall at all times employ such force, plant, materials, and tools as will be sufficient in the opinion of the CITY to perform the Services within the time limits established, and as provided herein. It is understood and agreed that said tools, equipment, apparatus, facilities, labor, and material shall be furnished and said Services performed and completed as required by the Agreement, and subject to the approval of the CITY's authorized representative;
- C. CONSULTANT will perform all Work in a manner reasonably satisfactory to the CITY;
- D. CONSULTANT will comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.) CONSULTANT shall be liable for all violations of such laws and regulations in connection with Services. If CONSULTANT performs any work knowing it to be contrary to such laws, rules and regulations, CONSULTANT shall be solely responsible for all costs arising therefrom;
- E. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- F. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and

- G. All of CONSULTANT's employees and agents (including, but not limited to, subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals will be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONSULTANT will perform, at CONSULTANT's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONSULTANT's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONSULTANT's employees, agents, contractors, subcontractors and subconsultants. Such effort by CONSULTANT to correct any errors or omissions will be commenced immediately upon their discovery by either Party and will be completed within seven (7) calendars days from the date of discovery or such other extended period of time authorized by the CITY Representative in writing and in her sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work performed by CONSULTANT or on CONSULTANT's behalf will not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of CONSULTANT, including but not limited to the representation that CONSULTANT possesses the skills, training, knowledge and experience necessary to perform the 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 will not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior written consent, any attempted assignment or transfer will be ineffective, null and void and will constitute a material breach of this Agreement.
- 2.6 SUBSTITUTION OF KEY PERSONNEL: Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be

promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: [INSERT NAME AND TITLE].

- 2.7 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work will 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 will at all times be under CONSULTANT's exclusive direction and control. CONSULTANT will pay all wages, salaries and other amounts due such personnel and will assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT will be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.8 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the CITY Representative to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, subcontractor or subconsultant will be promptly removed by CONSULTANT and will not be reassigned to perform any of the Work.
- 2.9 COMPLIANCE WITH LAWS: CONSULTANT will keep itself informed of and in compliance with all applicable federal, state or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT'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.
- 2.10 NON-DISCRIMINATION: CONSULTANT represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

CONSULTANT shall also comply with all relevant provisions of CITY'S Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

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

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 will procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONSULTANT will procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage will have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONSULTANT will procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than Two Million Dollars (\$2,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which will indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or

occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the 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 will procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage will have minimum limits of no less than Two Million Dollars (\$2,000,000.00) per occurrence and will be endorsed to include contractual liability.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance will contain an endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement will be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance will be procured from insurers who, according to the latest edition of the Best's Insurance Guide, have an A.M. Best's rating of no less than A:VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the CITY Representative is authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT will be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers will be in excess of CONSULTANT's insurance and will not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement will not prohibit CONSULTANT or CONSULTANT's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY, its officials, officers, employees, agents and volunteers.
- 3.6 VERIFICATION OF COVERAGE: CONSULTANT acknowledges, understands and agrees, that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is 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 will 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 will be signed by a person authorized by that insurer to bind coverage on its behalf, and will be on forms provided by the CITY if requested.** All certificates of insurance and endorsements will 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 will also provide CITY with certified copies of all required insurance policies and endorsements.

- 3.7 The insurance coverage requirements set forth under this Article 3 are in addition to any coverage requirements set forth under Section VII (Insurance Coverages) of the Scope of Work and in the event of any conflict or inconsistency between the provisions of this Article 3 and the provisions of Section VII of the Scope of Work the provisions of this Article 3 shall govern and control.
- 3.8 FAILURE TO MAINTAIN COVERAGE: In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONTRACTOR or CITY will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, CITY may cancel this Agreement effective upon notice.
- 3.9 ENFORCEMENT OF AGREEMENT PROVISIONS: In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONTRACTOR or CITY will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, CITY may cancel this Agreement effective upon notice.
- 3.10 SPECIAL RISKS OR CIRCUMSTANCES. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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. Notwithstanding the foregoing, to the extent CONSULTANT's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the CITY, its officials, officers, employees, agents or volunteers.

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

any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend, and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the CITY may have at law or in equity.
- 4.8 WORK OF CONSULTANT'S DESIGN PROFESSIONALS SERVICES [ONLY USE IF FOR DESIGN PROFESSIONALS]: The duty to indemnify, defend and hold harmless as set forth under this subsection shall apply to the negligence, recklessness or willful misconduct of any individual who qualifies as a "design professional" within the meaning of subsection (c)(2) of Section 2782.8 of the California Civil Code in so far as such negligence, recklessness or willful misconduct occurs in the performance, work or activities that must be performed by a "design professional." Subject to the limitation of the preceding sentence, to the fullest extent permitted by law, CONSULTANT shall immediately defend and indemnify and hold harmless the City Indemnities, defined above, from and against any and 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 the negligence, recklessness, or willful misconduct of CONSULTANT or any of CONSULTANT's officers, employees, servants, agents, contractors, subcontractors or authorized volunteers or any other person or entity involved by, for, or with or on behalf of CONSULTANT in the performance of design professional services under this Agreement. The Parties understand and agree that the duty of CONSULTANT to indemnify, defend and hold harmless pursuant to this subsection includes the duty to defend as set forth in Section 2778 of the California Civil Code. CONTRACTOR's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then CONSULTANT's indemnification obligation shall be reduced in proportion to the established comparative liability.
- 4.9 WORK OF ALL OTHER PERSONS/NON-DESIGN PROFESSIONALS: Except as otherwise provided under Section 4.2 of this Article, above, to the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless 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 to the extent caused by CONSULTANT's negligent performance under this Agreement, including but not limited to the negligent acts, errors or omissions of CONSULTANT or CONSULTANT's officers, employees, agents, servants, contractors, subcontractors or subconsultants or the failure of the same to comply with any of the duties, obligations or standards of care set forth herein. The duty to indemnify, defend and hold harmless under this subsection shall not encompass

a duty to indemnify, defend or hold harmless for liability, loss, suit, damage, expense, or cost caused by the negligence or willful misconduct of any or all of the City Indemnitees. The duty to indemnify, defend and hold harmless as set forth under this subsection is intended to encompass liabilities, losses, damages, expense and costs not otherwise subject to subsection 4.2, above.

- 4.10 As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, 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.
- 4.11 As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, 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 authorized volunteers.
- 4.12 As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, 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 authorized volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.
- 4.13 As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, CITY does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 4.14 As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, the duties to indemnify, defend and hold harmless as set forth under this Section, shall survive the early termination or normal expiration of this Agreement and shall be in addition to any other rights or remedies which the CITY may have at

law or in equity.

V. TERMINATION

5.1 TERMINATION WITHOUT CAUSE: CITY may immediately terminate this Agreement at any time for convenience and without cause by giving prior written notice of CITY's intent to terminate this Agreement which notice shall specify the effective date of such termination. Upon such termination for convenience, CONSULTANT will be compensated only for those services and tasks which have been performed by CONSULTANT up to the effective date of the termination. CONSULTANT may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, CITY may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in section 6.1 below, and other information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT will be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, will operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") will occur. For all Events of Default, the Party alleging an Event of Default will give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which will specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default will be cured, which will not be less than the applicable cure period set forth under Sections 5.2B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default will constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONSULTANT will cure the following Events of Defaults within the following time periods:
- i. Within ten (10) business days of CITY's issuance of a Default Notice for any failure of CONSULTANT to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONSULTANT is obligated to provide to CITY or CITY's employees or agents under this Agreement. Prior to the expiration of the 10-day cure period, CONSULTANT may

submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 10-day cure period. The foregoing notwithstanding, CITY will be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.i. that exceeds seven (7) calendar days from the end of the initial 10-day cure period; or

- ii. Within fourteen (14) calendar days of CITY's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, CITY will be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

In addition to any other failure on the part of CONSULTANT to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONSULTANT will include, but will not be limited to the following: (i) CONSULTANT's refusal or failure to perform any of the services or tasks called for under the Scope of 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 will cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.3, above, will be cured by CITY within five (5) calendar days from the date of CONSULTANT's Default Notice to CITY.

- D. CITY, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of CITY's intent to suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONSULTANT will be compensated only for those services and tasks which have been rendered by CONSULTANT to the reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY will operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement will constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party will give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder will be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
- i. Upon written notice to CONSULTANT, the CITY may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONSULTANT, the CITY may extend the time of performance;
 - iii. The CITY may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONSULTANT's breach of the Agreement or to terminate the Agreement; or
 - iv. The CITY may exercise any other available and lawful right or remedy.
- CONSULTANT will be liable for all legal fees plus other costs and expenses that CITY incurs upon a breach of this Agreement or in the CITY's exercise of its remedies under this Agreement.
- G. In the event CITY is in breach of this Agreement, CONSULTANT's sole remedy will be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONSULTANT under this Agreement for completed services and tasks.

- 5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement will constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party will give the other Party any contractual rights by custom, estoppel, or otherwise.
- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto will not operate to terminate any Article, Section or provision contained herein which provides that it will survive the termination or normal expiration of this Agreement.

VI.
MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data will be and remain the property of CITY without restriction or limitation upon their use or dissemination by CITY. For purposes of this Agreement, the term “Documents and Data” means and includes all reports, analyses, correspondence, plans, designs, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONSULTANT in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to CITY, a perpetual license for CITY to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONSULTANT will require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY will be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONSULTANT in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and will not be disclosed by CONSULTANT without prior written consent by CITY. CITY will grant such consent of disclosure as legally required. Upon request, all CITY data will be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT will not use CITY’s name or insignia, photographs, or any publicity pertaining to the 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 will be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:

INSERT CONSULTANT NAME
INSERT ADDRESS

Attn: INSERT PERSON OF CONTACT
NAME

Phone: INSERT PHONE NUMBER

CITY:

City of El Monte

CITY DEPARTMENT

Attn: DEPARTMENT DIRECTOR

Phone: CITY PHONE NUMBER

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

- 6.5 **COOPERATION; FURTHER ACTS:** The Parties will fully cooperate with one another, and will take any additional acts or sign any additional documents as are reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.6 **SUBCONTRACTING:** CONSULTANT will not subcontract any 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, will contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.7 **CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS:** CITY reserves the right to employ other 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 will have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, will have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

- 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 will be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, will be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, will be in the Central District of California located in the City of Los Angeles, California.
- 6.11 ATTORNEYS' FEES: If either Party commences an action against the other Party, legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation will be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.
- 6.12 SUCCESSORS AND ASSIGNS: This Agreement will be binding on the successors and assigns of the Parties.
- 6.13 NO THIRD-PARTY BENEFIT: There are no intended third-party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.14 CONSTRUCTION OF AGREEMENT: This Agreement will not be construed in favor of, or against, either Party but will be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.15 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions will continue in full force and effect.
- 6.16 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement will be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver will be void and invalid.
- 6.17 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 6.18 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or

inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement will control.

- 6.19 ENTIRE AGREEMENT: This Agreement, including all attached exhibits, constitutes the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, which may have been entered into between CITY and CONSULTANT prior to the execution of this Agreement. Any statements, representations, or other agreements, whether oral or written, made by either Party that is not embodied herein will not be valid or binding on the Parties. No amendment, modification or supplement to this Agreement will be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.16, above.
- 6.20 COUNTERPARTS: This Agreement will be executed in three (3) original counterparts each of which will be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts will be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart will be delivered to CONSULTANT and the remaining two original counterparts will be retained by CITY.

(SIGNATURES ON NEXT PAGE)

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

CITY OF EL MONTE:

CONSULTANT NAME

By: _____
Alma Martinez, City Manager

By: _____

Name: _____

Date: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

Date: _____

EXHIBIT "A"
SCOPE OF SERVICES