

# Request For Proposals

## REQUEST FOR PROPOSALS TO IMPLEMENT THE CITY'S COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM AND EVALUATION SERVICES



**RFP Release Date: March 28, 2024**

**RFP Response Due: 5:00 p.m. April 30, 2024**

# 1. INTRODUCTION AND PROJECT

The City of South El Monte seeks a consultant to implement the City’s Commercial Cannabis operations Regulatory Program, and review, evaluate, and score the Commercial Cannabis Permit application proposals. Specifically, the City seeks a consultant who is well versed in California adult-use cannabis laws, as well as has experience evaluating the following for cannabis or other related businesses:

- Business and operating plans;
- Safety and security protocols;
- Labor and employment practices;
- Community benefit proposals.

Please confirm your intent to bid via email to [gmarquez@soelmonte.org](mailto:gmarquez@soelmonte.org). Respondents will absorb all costs incurred in the preparation and presentation of their proposal.

## Proposer Inquiries

All questions or comments concerning the requirements of the RFP shall be made in writing. Any questions regarding the proposal process and/or City requirements should be emailed to:

Gerardo Marquez, Planning Manager at [gmarquez@soelmonte.org](mailto:gmarquez@soelmonte.org).

Questions must be submitted to the City by April 10, 2024 at 5:00 pm. City responses will be posted by April 15, 2024 at 4:00 p.m. unless indicated otherwise by the City.

## Proposal Due Date

The response to this RFP must be received no later than 5:00 pm on April 30, 2024. Please address and deliver one copy on flash drive and three physical (3) copies of your proposal to:

City of South El Monte  
Community Development Department  
1415 Santa Anita Avenue, CA 91733  
ATTN: Gerardo Marquez, Planning Manager

**\*\* It is the sole responsibility of the proposing firm to ensure that proposals are received prior to the closing time, as late bids will not be accepted.**

# 2. BACKGROUND

The City of South El Monte lies at an important crossroad from both a geographic and historic perspective. Bounded by both the Pomona (HWY-60) and San Gabriel River (I-605) freeways, South El Monte has ready access to important regional travel routes that link the City to centers of commerce in Los Angeles County and beyond. From a historic perspective, the community’s population and business patterns mirror the transition occurring throughout the San Gabriel Valley toward a more diverse ethnic mix and increased presence of business serving Pacific Rim and Asian markets both within the region and abroad.

South El Monte, located approximately 18 miles east of downtown Los Angeles, lies in a geographic region known as the San Gabriel valley. The City is bounded on two sides by the San Gabriel Valley’s two major drainage features: the Rio Hondo River on the west and the San Gabriel River on the east. Both rivers are contained within concrete-lined channels and flow into the Whittier Narrows immediately south of South

El Monte. Whittier Narrows is a regional open space resource and flood control feature formed by a major erosional gap between the Puente and Merced hills.

### **Project Impetus**

At the November 2022 election, the voters of South El Monte approved Ordinance No. 1260, which added Chapter 5.26 of Title 5 of the South El Monte Municipal Code (“SEMMC”). The ordinance authorized the establishment of a limited number of cannabis retailers (medical/adult use) in the City through the “Commercial Cannabis Operations Regulatory Program”, and further, established a tax on retailers. Ordinance No. 1260 also contained provisions permitting the City Council to make amendments without resubmission to the voters provided that the number of permits cannot be changed. This program permits one medical/adult-use cannabis retailer with the option to add another two permits in the second year of the program and, further, provides very detailed requirements on how the program operates and regulates cannabis businesses, including application selection criteria.

A new development occurred after the voters of the City approved the cannabis ordinance in November 2022. There is now a state proposition (entitled as “The Taxpayer Protection and Government Accountability Act”) that if approved by the voters of the State of California in November 2024 could potentially impact the City’s tax revenues that were included in the City’s cannabis measure that the voters approved in November of 2022. If the City brought in a cannabis business this year with the expectation that the tax revenues would be paid to the City every year going forward by that cannabis business to offset costs to the City for impacts to City resources, the City could potentially end up having a cannabis business with no tax revenues to offset adverse impacts from that cannabis business if the above state proposition passes, depending on how that state ballot measure will be interpreted as applying retroactively or not by the courts if it passes.

On September 26, 2023, the City Council amended Chapter 5.26 of Title of the SEMMC to change application selection criteria, make clarification changes, and make such other changes in order to improve the administration of the program.

### **Commercial Cannabis Operations Regulatory Program (CCORP)**

The amended ordinance revises Criteria 7 so that the total points that can be allocated is 300 points. It also adds a sub-criteria in Criteria 7 relating to community benefit proposals. As such, SEMMC Section 5.26.070(D)(7) reads as follows:

“Community Benefits Plan—Three Hundred Fifty Points. The people of the city find that monetary donations to local non-profit organizations, financial support of city sponsored activities or organizations, in kind donations to the city or other charitable organizations, and economic incentives to the city carry out the purpose and intent of the program and are, therefore, critical for an applicant to demonstrate an effective community benefits plan. Accordingly, two hundred of the three hundred fifty points awardable under this subsection shall only be awarded if the applicant pledges to voluntarily provide a public benefit to a public use (or a combination thereof), which is defined as a direct financial contribution equal to two percent of projected gross receipts of the applicant to a public school located within the city, a public park located within the city, and/or a public or nonprofit community organization serving the city or its residents. Beyond the above and as a ministerial duty, no further direct financial contributions shall be considered as part of an applicant’s community benefits plan.

The remaining one hundred fifty of the three hundred fifty points awardable under this subsection shall be awarded, as a ministerial duty, pursuant to the following objective criteria:

a. Up to fifty points—A description of a social responsibility plan to include identification of a community liaison, plans to serve as a social equity business incubator, plans to aide and participate in the work of local non-profits, community-based organizations, civic organizations, or social services organizations.

b. Up to fifty points—A description of a plan to develop a public health outreach and educational program that outlines the risks of youth use of cannabis and that identifies resources available to youth related to drugs and drug addiction.

c. Up to fifty points – A proposal and description of any community benefits agreement proposed by the applicant pursuant to Section 5.26.130.” Furthermore, SEMMC 5.26.070(E), in relevant part, provides as follows:

“... In the event of a tie in the order of ranking under subsection D between one or more applicants up to the maximum number of commercial cannabis operation permits authorized in Section 5.26.060, the city council shall, as a ministerial duty, break the tie and issue commercial cannabis operation permits to the applicants with the highest scoring application component in the following order: **(1) qualifications of the applicant’s owners and managers; (2) labor and employment plan; (3) security plan; (4) safety plan; (5) community benefits plan; (6) neighborhood compatibility plan; (7) business and operations plan; and (8) plans, renderings, and overall location. ...**”

The amended ordinance moves “community benefits plan” to a higher priority by reordering the above bolded text as follows: : “... (1) qualifications of the applicant’s owners and managers; (2) community benefits plan; (3) labor and employment plan; (4) security plan; (5) safety plan; (6) neighborhood compatibility plan; (7) business and operations plan; and (8) plans, renderings, and overall location. ...”

The amended ordinance makes the following changes:

- Amends various deadlines for the adoption of program fees. The current text provides that certain fees must be adopted within a period of time. For example, application fees currently must be established within 45 days of the ordinance’s effective date. The proposed ordinance would remove this time requirement, and other similar time requirements, so that the City has sufficient time to study and adopt the related fees.
- Amends various deadlines for the creation of application forms. The current text also provides that certain applications forms must be created within a specified period of time. For example, the current text provides the application form for change of location must be created within 180 days of the ordinance’s effective date. Similar to the fees, the proposed ordinance removes this deadline, and other similar time requirements so that the City has sufficient time to create the forms.
- Amends deadlines relating to establishing certain regulations. The current ordinance sets specific deadlines for the establishment of certain regulations. For example, the city manager is required to create regulations for transfer of ownership or control within 180 days following the ordinance’s effective date. The proposed ordinance would remove this 180-day deadline.
- Amends various sections for consistency. The proposed ordinance makes other changes to the current text so that it is more consistent. For example, in one part of the ordinance, it references the maximum number of cannabis retailers as being 2, but the intended limit is 1 for the first year

with the option of adding 2 additional permits in subsequent years. This proposed ordinance would make those provisions consistent.

- Clarifies that Council is not required to select an applicant if approval of an application would be detrimental to the public health and safety. The current ordinance is unclear whether Council may, for example, determine that all applicants as not meeting the criteria and, therefore, desires to not issue any permits. The proposed ordinance would give Council the option to not issue any permits, provided that Council finds that issuance of any permits would be detrimental to the health and safety of the City's residents.

Provides other changes relating to efficient administration and enforcement. The ordinance makes changes to the current ordinance so that it can be more efficiently administered. For example:

1. The current ordinance provides that, on the one-year anniversary of the date of issuance of a permit (and every year thereafter), the city manager is required to conduct a performance review of the permittee. If there are any areas in which the permittee is noncompliant, the city manager is required to notify the permittee and the permittee has an automatic 60 days to remedy the noncompliance. The proposed ordinance would revise this so that the City Manager has the flexibility to provide deadlines to remedy noncompliance and is further able to revise the deadlines if additional time is needed.
2. Any adopted administrative regulations will be effective upon the date of publication on the City's website or posting at the location for the city council's meeting agendas.
3. Failure to make corrections required by SEMMC Section 5.26.090 and failure to pay required fees is a basis for suspension/revocation of the permit.

### **Project Overview**

The purpose of this RFP is to identify a consultant who can assist the City of South El Monte in developing and implementing the application procedure, and review, evaluate, and rank the commercial retail cannabis application proposals.

## **3. SCOPE OF WORK**

### **Desired Qualifications**

The consultant for CCORP application evaluation services should possess the following qualifications:

- Experience in consulting with California municipalities on cannabis related policies and initiatives.
- Experience in developing cannabis permit/ license selection processes and regulations.
- Experience in evaluating business and operating plans as well as completing economic viability analysis for private sector and /or cannabis related businesses.
- Demonstrated ability to provide unbiased, meritorious evaluation of retail cannabis applications.

### **Services Requirements:**

1. Develop a cannabis permit application process, to include the development of forms and review process.

2. Simultaneous review and evaluation of multiple retail cannabis permit application proposals by subject matter experts.
3. Development of a scoring rubric based upon the approving Ordinances and best practices.
4. Development of a scoring template which provides for consistent tracking of application scores.
5. Production of final scoring reports that rank applicants and provide recommendations on which applicants should advance to the next round of the application process.
6. Development of application interview protocols including assisting the City in developing standardized interview questions and other insights that may need to be included based on individual proposals.
7. Provision of invoices based on individual applications which track the time and materials your firm spent on the review of an application.

Note: Scope of proposer's services may encompass additional services outside the aforementioned items that similar organizations undergoing this process have involved.

#### **4. PROPOSAL REQUIREMENTS**

At a minimum, the proposal should contain the information outlined herein. Additional information that the applicant deems relevant to the selection process may be included; however, concise and focused submittals are strongly encouraged. By submitting a proposal, and unless otherwise stated, it is understood that the Consultant has reviewed the relevant information, and that based on that review, the Consultant has developed an informed understanding of the projected scope of work and has satisfied itself with the applicable conditions and requirements expressed in those documents.

##### **Submittals**

Interested firms are invited to submit a flash drive and three (3) physical copies of their proposals to the following address:

City of South El Monte  
Community Development Department  
1415 Santa Anita Ave, South El Monte, CA 91733  
ATTN: Gerardo Marquez, Planning Manager

Proposals will be accepted until April 30, 2024 at 5:00 p.m.

##### **Proposal Format:**

To ensure the fair and accurate consideration of all submissions, proposals must contain the following:

##### **Executive Summary**

Provide a brief overview of your firm and your firm's experience providing the services detailed in the previous section of this RFP. This executive summary must include the contact information of the individual authorized to represent your firm and any third parties who will work with you on the delivery

of this project. If you are using a third party, please list the roles each party will play in the overall delivery of the solution. Please limit your Executive Summary to no more than two pages.

### **References**

Provide the names, contact information, and brief project summary for three (3) similar municipal governments for which the firm has executed similar projects. The project summaries should outline scope of service provided, additional custom features or extensive report capabilities, the timeline/process for development, training, implementation, and any issues encountered.

### **Project Team Description**

Provide names and contact information of the Project Team including the project manager and the personnel. Include brief resumes for all team members, as well as their tenure with the firm. Indicate the organizational structure of the team and outline key roles and lines of authority. Identify any and all sub-contractors and their role in the project, including all of the aforementioned information.

### **Description of Services**

Please provide an outline of how your firm will provide the services outlined above. Additionally, explain any anticipated meetings with City staff, logistics of application review, and other services as detailed previously in this RFP. Please limit your description of services to no more than four pages.

### **Cost**

Provide a detailed not-to-exceed cost analysis by task for the entirety of the project, including basic fee structure and break-down of any other charges and hourly compensation rates related to your firm's proposal. Additionally, please outline the anticipated time and material costs for application review on a per application basis. Indicate how costs will be charged if more applications are received than expected. (Submit the cost and budget in a separate envelope and on a separate file on the flash drive)

Any Contract resulting from this solicitation will specify a maximum, not-to-exceed fee amount. Except in the unusual situation wherein the Consultant encounters circumstances that could not be reasonably anticipated, the City will not authorize payment beyond this amount. In consideration of this, any assumptions and/or the need for any contingencies must be clearly spelled out in the Fee Proposal and used as a basis to compute a "not-to-exceed" figure for the project. This figure should be sufficient to provide for any reasonably anticipated circumstances that may be encountered during project execution and completion.

### **Project Timeline**

Provide a project timeline which includes estimated time of completion for the review of a standard application and all phases of the application review process to final recommendation.

## **5. SELECTION CRITERIA AND PROCESS**

The award will be in the best interest of the City and will be to a firm or firms whose overall proposal is rated as being in the City's best interest.

Factors to be considered in the selection process include:

1. Quality and thoroughness of the proposal.
2. Experience and past performance in completing projects of a similar type, size and complexity.
3. References.
4. The quality of example materials and any presentation requested by involved city officials.
5. Cost and budget proposal.
6. A reasonable timeline based on general conditions and project objectives.
7. Any other considerations deemed pertinent by the City.

### **Selection Process**

A review committee will evaluate all responses to the RFP that meet the submittal requirements and deadline. Submittals that do not meet the requirement or deadline will not be considered. The review committee will rank the proposals and then may arrange for on-site interviews with staff if necessary.

The City reserves the right to request additional information or materials from bidding parties if necessary to determine the winning proposal.

Likewise, the City reserves the right to accept or reject any or all proposals, or to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any informality in the proposals. The City of South of El Monte retains the right at its sole discretion to select a contractor.

All proposals submitted in response to this RFP become the property of the City and public records and, as such, may be subject to public review.

The City reserves the right to cancel or revise any section of this RFP prior to the date proposals are due including, but not limited to: selection procedures, submittal date, and submittal requirements. If the City cancels or revises the RFP, all interested firms will be notified. The City also reserves the right to extend the date by which proposals are due.

The City will not pay costs incurred by the Proposer during this process. All costs shall be borne by the Proposer.

### ***Discretion and Liability Waiver***

The City reserves the right to exercise discretion and apply its judgment with respect to any qualifications submitted.

The City reserves the right to reject any or all submittals, either in part or in their entirety, or to request and obtain, from one or more of the businesses submitting, supplementary information as may be necessary for City staff to analyze the qualifications pursuant to the contractor/consultant selection criteria contained herein.

The City may require contractors/consultants to participate in additional rounds of discussions, negotiations, or more refined submittals before the ultimate selection of a contractor/consultant is made. These rounds could encompass revisions of the submittal criteria in response to the nature and scope of the initial qualifications.

## 6. SCHEDULE

The following identifies the proposed schedule for the RFP and consultant selection process:

- **March 28, 2024 RFP Released**
- **April 10, 2024 Inquiry Deadline**
- **April 30, 2024 Submittal Deadline**
- **May 23, 2024 Consultant Selection**
- **June 11, 2024 City Council Contract Approval**

It is anticipated that approval of the formal contract with the City of South El Monte will occur on June 11, 2024. Following a written notice-to-proceed, to be issued by the City, the Consultant's work shall begin no later than seven (7) days after City Council approval and shall be completed in accordance with the agreed upon schedule.

The notice to proceed issued by the City will specify the work including phases to be completed, a schedule for the work, the basis for payment, and the limits of compensation. The Consultant shall not begin work nor incur any costs associated with any task identified herein without an explicit written notice to proceed.

## 7. COMPENSATION

The City will negotiate a contract with the selected Consultant based on the following assumptions and conditions:

- All services rendered as described in the Scope of Work, including all labor, equipment, materials, and expenses, the Consultant shall be compensated on a time and expenses basis by task or phase for work completed.
- The not-to-exceed amount should be broken down by phase.

### **Inquiries:**

All requests for clarifications or interpretations shall be made in writing and shall be emailed to the project manager, Gerardo Marquez, at [gmarquez@southelmonte.org](mailto:gmarquez@southelmonte.org). Inquiries shall contain the firm's name, contact person, and email address and be titled "Cannabis Application Consultant Services – RFP." Deadline for inquiries is **April 10, 2024 at 5:00 pm**. City staff will post responses to all inquiries in the form of an addendum with the RFP documents at <http://www.southelmonte.org> (create page or inbox) on or before **April 15, 2024 by 5:00 pm (PST)**.

## 8. CONTRACT CONDITIONS

The selected Consultant will be required to sign a standard City agreement and maintain required insurance coverage as indicated in Attachment 1. Unless indicated otherwise, submission of a proposal indicates that the proposer accepts the terms of the standard agreement.

## 9. CONTRACT CONDITIONS

The following documents are available for viewing and download at the locations listed below:

- City of South El Monte Municipal Code  
[https://library.qcode.us/lib/south\\_el\\_monte\\_ca/pub/municipal\\_code](https://library.qcode.us/lib/south_el_monte_ca/pub/municipal_code)
- City of South El Monte Cannabis Operations Regulatory Program (Revised)  
<https://portal.laserfiche.com/Portal/DocView.aspx?id=23745&repo=r-fe8f1ab6>
- City of South El Monte Zoning Regulations  
[https://library.qcode.us/lib/south\\_el\\_monte\\_ca/pub/municipal\\_code/item/title\\_17](https://library.qcode.us/lib/south_el_monte_ca/pub/municipal_code/item/title_17)
- City of South El Monte Business License Regulations  
[https://library.qcode.us/lib/south\\_el\\_monte\\_ca/pub/municipal\\_code/item/title\\_5](https://library.qcode.us/lib/south_el_monte_ca/pub/municipal_code/item/title_5)
- City of South El Monte Zoning Map  
<https://www.cityofsouthelmonte.org/DocumentCenter/View/3286/Zoning-Map-PDF?bidId=>

**CONTRACT SERVICES AGREEMENT**

**By and Between**

**CITY OF SOUTH EL MONTE**

**and**

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**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN THE CITY OF SOUTH EL MONTE AND**

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THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between the CITY OF SOUTH EL MONTE, a California, a municipal corporation (“City”) and \_\_\_\_\_, \_\_\_\_\_ (“Consultant”). City and Consultant may be referred to, individually or collectively, as “Party” or “Parties.”

**RECITALS**

City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

Pursuant to the City of South El Monte Municipal Code, City has authority to enter into and execute this Agreement.

The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in

performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

### **1.2 Consultant’s Proposal.**

The Scope of Services shall include the Consultant’s scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

### **1.3 Compliance with Law.**

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

### **1.4 Licenses, Permits, Fees and Assessments.**

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

### **1.5 Familiarity with Work.**

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant’s risk until written instructions are received from the Contract Officer.

### **1.6 Care of Work.**

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City’s own negligence.

### **1.7 Further Responsibilities of Parties.**

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

### **1.8 Additional Services.**

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other Consultants. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### **1.9 Special Requirements.**

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

### **2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant's rates as

specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

### **2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

### **2.4 Invoices.**

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall contain all information specified in Exhibit "C", and shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

### **2.5 Waiver.**

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### **3.1 Time of Essence.**

Time is of the essence in the performance of this Agreement.

### **3.2 Schedule of Performance.**

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

### **3.3 Force Majeure.**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

### **3.4 Term.**

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding \_\_\_\_\_ years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D"). [The City may, in its sole discretion, extend the Term for \_\_\_ additional one-year terms.]

**ARTICLE 4. COORDINATION OF WORK**

**4.1 Representatives and Personnel of Consultant.**

The following principals of Consultant (“Principals”) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant’s staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant’s staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

**4.2 Status of Consultant.**

Consultant shall have no authority to bind City in any manner, or 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 under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant’s officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant’s officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City’s employees. Consultant expressly waives any claim Consultant may have to any such rights.

**4.3 Contract Officer.**

The Contract Officer shall be [\_\_\_\_\_] or such person as may be designated by the City Manager. It shall be the Consultant’s responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless

otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### **4.4 Independent Consultant.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant. Consultant represents and warrants that the personnel used to provide services to the City pursuant to this Agreement are classified by Consultant as employees and that Consultant issues or will issue a W-2 to such personnel.

In the event that Consultant or any employee, agent, subcontractor, or independent contractor of Consultant providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System ("CalPERS") to be classified as other than an independent contractor for the City, then Consultant shall indemnify, defend, and hold harmless the City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to the City as a consequence of, or in any way attributable to, the assertion that Consultant or any of Consultant's personnel used to provide the Services under this Agreement are other than independent contractors of the City.

#### **4.5 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

## **ARTICLE 5. INSURANCE AND INDEMNIFICATION**

### **5.1 Insurance Coverages.**

Without limiting Consultant's indemnification of City, and prior to commencement of any services under this Agreement, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c) Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

(d) Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

(e) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

### **5.2 General Insurance Requirements.**

(a) Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(b) Duration of coverage. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees or subconsultants.

(c) Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(d) City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, 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 Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(e) Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or that is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(f) Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(g) Enforcement of contract provisions (non-estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass through clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(n) Agency's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

(o) Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(p) Timely notice of claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

### **5.3 Indemnification.**

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein “claims or liabilities”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable (“indemnitors”), or arising from Consultant’s or indemnitors’ reckless or willful misconduct, or arising from Consultant’s or indemnitors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City’s sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City’s negligence, except that design professionals’ indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination or expiration of this Agreement.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the “books and records”), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant’s business, custody of the books and records may be given to City, and access shall be provided by Consultant’s successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

### **6.2 Reports.**

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without liability to Consultant, and Consultant’s guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting

therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

#### **6.4 Confidentiality and Release of Information.**

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

### **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

#### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

## **7.2 Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

## **7.3 Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

## **7.4 Waiver.**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

## **7.5 Rights and Remedies are Cumulative.**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### **7.6 Legal Action.**

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

#### **7.7 Liquidated Damages.**

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages. Pursuant to Government Code Section 4215, Contractor shall not be assessed liquidated damages for delay in completion of the project when such delay was caused by the failure of the public agency or owner of the utility to provide for removal or relocation of utility facilities.

#### **7.8 Termination Prior to Expiration of Term.**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

#### **7.9 Termination for Default of Consultant.**

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the

compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

**7.10 Attorneys' Fees.**

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

**8.1 Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

**8.2 Conflict of Interest.**

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

**8.3 Covenant Against Discrimination.**

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and

that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

#### **8.4 Unauthorized Aliens.**

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

### **ARTICLE 9. MISCELLANEOUS PROVISIONS**

#### **9.1 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of South El Monte, 1415 Santa Anita Avenue, South El Monte, California 91733 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

#### **9.2 Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

#### **9.3 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

#### **9.4 Integration; Amendment.**

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**9.5 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

**9.6 Warranty & Representation of Non-Collusion.**

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of “financial interest” shall be consistent with State law and shall not include interests found to be “remote” or “non-interests” pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant’s Authorized Initials \_\_\_\_\_

**9.7 Corporate Authority.**

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF SOUTH EL MONTE, a municipal corporation

\_\_\_\_\_  
Gloria Olmos, Mayor

**ATTEST:**

\_\_\_\_\_  
Donna G. Schwartz, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Anthony R. Taylor, City Attorney

**CONSULTANT:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**If applicable, two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2024 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

<b>CAPACITY CLAIMED BY SIGNER</b>		<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____		_____
	TITLE(S)	NUMBER OF PAGES
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/>	GENERAL	DATE OF DOCUMENT
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	SIGNER(S) OTHER THAN NAMED ABOVE
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER _____	

**SIGNER IS REPRESENTING:**

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
\_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

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<input type="checkbox"/>	ATTORNEY-IN-FACT	DATE OF DOCUMENT
<input type="checkbox"/>	TRUSTEE(S)	_____
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	SIGNER(S) OTHER THAN NAMED ABOVE
<input type="checkbox"/>	OTHER _____	
_____		

**SIGNER IS REPRESENTING:**

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT "A"

**SCOPE OF SERVICES**

- III. Consultant will perform the following Services:**
  - A.
  - B.
  - C.
- IV. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
  - A.
  - B.
  - C.
- V. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:**
  - A.
  - B.
  - C.
- VI. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**
- VII. Consultant will utilize the following personnel to accomplish the Services:**
  - A.
  - B.
  - C.

EXHIBIT "B"

**SPECIAL REQUIREMENTS**

**(Superseding Contract Boilerplate)**

The Agreement is amended as provided herein. Deleted text is indicated in ~~strikerough~~ and added text in ***bold italics***.

EXHIBIT "C"

**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the following tasks at the following rates:**

		RATE	TIME	SUB-BUDGET
A.	_____	_____	_____	_____
B.	_____	_____	_____	_____
C.	_____	_____	_____	_____
D.	_____	_____	_____	_____

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**

**IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

**V. The total compensation for the Services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

**VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.**

EXHIBIT "D"

**SCHEDULE OF PERFORMANCE**

**I. Consultant shall perform all services timely in accordance with the following schedule:**

		<u>Days to Perform</u>	<u>Deadline Date</u>
A.	Task A	_____	_____
B.	Task B	_____	_____
C.	Task C	_____	_____

**II. Consultant shall deliver the following tangible work products to the City by the following dates.**

- A.
- B.
- C.

**III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**