



REQUEST FOR PROPOSAL

FOR

CITYWIDE TOTAL COMPENSATION STUDY

RFP No. 17-10

**City of Montebello
Administration
1600 W. Beverly Boulevard
Montebello, CA 90640
(323) 887-1200 ext. 437**

**Issued Date: March 17, 2017
Due Date: April 17, 2017 by 5:00 PM**

I. INTRODUCTION

The City of Montebello is soliciting proposals from qualified consulting firms, experienced in the development of a job evaluation and compensation system. Our desire is to obtain a consultant who will assist the City in reviewing the existing job descriptions and compensation system including all benefits, analyze the current jobs performed by employees, determine the correct market pay for each position, establish the market value of the employee benefits package and provide a market analysis of the total compensation including salary and benefits. We expect the consultant to make recommendations for adjustments to pay and benefits that may be needed.

All prospective consultants will be afforded full opportunity to submit statements of qualifications in response to this request and will not be discriminated against on the grounds of age, ancestry, color, race, gender, gender identity, gender expression, genetic information, marital status, medical condition, military and veteran status, religion, national origin, sex, sexual orientation, religious creed, transgender status or disability in consideration for an award of any contract entered into pursuant to this notice.

This Request for Proposals (RFP) is an invitation by the City of Montebello for consultants to submit an offer, which may be subject to subsequent discussion. Submittal of a proposal does not create any right or expectation to a Contract with the City of Montebello. The City of Montebello reserves the right to reject any or all proposals and the City further declares that it will incur no financial obligations for any costs by any firm in preparation of their proposal.

Qualified firms may submit their sealed proposal responses on or before **April 17, 2017 by 5:00 p.m.** to:

City Clerk's Office
City of Montebello
1600 W. Beverly Boulevard
Montebello, CA 90640

II. Statement of Qualifications and Approach

To be considered, a vendor must be a consulting firm with expertise in evaluating pay scales, benefits, job descriptions and market pay/benefit analyses. The consultant should be able to provide references from other municipalities or government agencies where similar work was performed.

III. Criteria for Selection

The City will evaluate each proposal and select a firm.

All proposals submitted will be evaluated using the following criteria:

- Compliance with the RFP
- Understanding of the project
- Services to be provided

- Ability to complete the work within the time specified
- Qualifications of the firm, including but not limited to its experience and personnel assigned to the project and any subcontractors, if any.
- Cost

IV. Cost and Fee Arrangements

The consultant must provide a proposal with maximum cost for the project based on the project as described herein. To the extent desired, additional recommendations and services or options may be included as additions to the project on an optional basis. These optional items shall be priced separately from this Request for Proposal.

V. City of Montebello Background Information

The City of Montebello is a full-service, general law city, governed by a council – Administrator form of government and provides a full range of municipal services. The City employs approximately 567 full-time employees. Montebello was incorporated in 1920 and has a population of about 64,500. Encompassing approximately 8.25 square miles, Montebello is situated 10 miles east of Los Angeles, in Los Angeles County. The City is noted for its excellent residential areas and shopping facilities, such as Montebello Town Center and Montebello Town Square.

The City of Montebello employs approximately 406 full-time employees and 161 part-time employees.

VI. Scope of Work

The City expects ongoing and open communications between designated City representatives and the consultant over the course of each phase. All products and recommendations must comply with applicable State and Federal laws and enhance the City’s ability to recruit and retain qualified personnel.

Proposed Timeline	DATE
Request for Proposals Issued	March 17, 2017
Due Date for Proposals	April 17, 2017 by 5:00 p.m.
Evaluation of Proposals Period	April 18 – May 4, 2017
Selected Firm Notified	May 8, 2017
Contract Award	TBD
Contract Date	TBD
Completion Date	TBD

The City of Montebello will provide the following information to the successful consultant:

- Copies of all wage and salary schedules
- Copies of all employee benefit schedules
- Copy of City of Montebello’s Organizational Chart

VII. Specifications for Job Evaluation/Compensation

The following are the consulting services related to the classification and compensation study:

- Conduct a comprehensive survey of external regional labor market cities. This shall include public sector jobs within the same essential duties and functions. This will include a review and market analysis of salary and benefits including but not limited to: base salary, employer paid retirement contributions, longevity pay, certification pay, educational incentive and specialty pay, standby pay, employer paid insurance contributions for health, dental, vision insurance, life insurance including accidental death and dismemberment, long term disability, leave benefits including holiday, sick leave, and vacation.
- Make recommendations for changes to current salary schedule system which assures internal equality and external competitiveness. The method in which to perform this analysis is to be determined by the consultant. The data will be based on wages and benefits established for Fiscal Year 2016-2017. The City of Montebello's Fiscal Year begins July 1st and ends June 30th.
- The consultant will provide City staff with 5 copies of the final compensation study.
- The Consultant will present the results of survey to the Assistant City Manager and members of the management team.
- If required, the Consultant will meet with City Council to review results.

VIII. Specification for Proposals

All proposals submitted in response to this request for proposals must contain the following information in the stated order:

1. Name, address, telephone number of the Consulting firm.
2. Description of the firm (corporation, partnership, etc.) and year established.
3. State of incorporation, if any, and type of ownership.
4. Name and biography of all proposed consultant(s)/facilitator(s).
5. Name, title and business address of person responsible for submitting the proposal.
6. Listing of any subcontractors, if any, and the scope of work they will perform.
7. Description of the scope of involvement of city staff.
8. Narrative proposal on what approach and techniques the consultant will use in identifying and evaluating information provided.
9. Describe the process used and submit the forms, questionnaires and instruments used or proposed for use in this study.
10. Narrative proposal on scope of work as identified above.
11. An estimate of time to complete the project and a proposed timeline of work tasks, with the date of final completion of the project.
12. A breakdown of the firm's rates, fees and charges for services, by phase and for total project, and a proposed payment schedule.
13. At least three references, including individual contact name, name of company and phone from other municipalities or government agencies where similar work was performed.

IX. Timetable for Submission

For consideration to be given to any proposal submitted pursuant to this RFP, 5 copies of the submittal materials must be received on **April 17, 2017 by 5:00 p.m.**, at the address listed on page 1 of this Request for Proposal.

Late proposals are not accepted regardless of postmark and will be returned unopened to the sender. No oral, telephone, fax or e-mail proposals will be considered. The City reserves the right to reject any or all proposals submitted.

X. Contact with City Personnel

At no time shall the consultant, its agents, representatives or contracted personnel contact or otherwise communicate with City department personnel without prior arrangement with the Assistant City Manager Danilo Batson or her designee, for the purposes of negotiating, modifying, changing or interpreting the proposal or specifications. Any changes, modifications, or interpretations must be handled by one source uniformly for all consultants. All questions relating to the statements contained in the RFP are to be addressed in writing to Assistant City Manager Danilo Batson at 1600 W. Beverly Blvd., Montebello, CA 90640 or via e-mail at dbatson@cityofmontebello.com.

XI. Addenda to RFP

If it becomes necessary to revise any part of this RFP, addenda will be supplied to all firms receiving this Request for Proposal.

The selected provider will enter into a contract with the City of Montebello for consulting services for a term to be mutually agreed upon by the City and selected firm. For informational purposes, the City of Montebello's *Professional Services Agreement* is attached to this RFP as **Attachment A**.

XII. Evaluation Procedures

The proposal review process shall include, but not be limited to, the following activities:

A. Proposed Evaluation Criteria

All proposals will be reviewed by the Assistant City Manager to determine responsiveness. Unresponsive proposals will be removed from consideration and notified in writing.

Responsive proposals will be reviewed and evaluated by the Assistant City Manager with input from members of the Management Team. Staff will screen and select a smaller group of finalists for an in-depth oral interview.

Proposals will be evaluated using some or all of the following criteria in its evaluation and comparison of submitted proposals. The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance.

- Bidder's compliance with specifications as set forth in the RFP.
- Experience, training, credentials, and experience.
- The firm's past experience and performance on comparable studies.
- Cost and fees.
- Proposed project timeline & completion.
- Recent references from comparable clients.

The City shall have absolute discretion in determining the applicability and weight or relative weight of some or all of the criteria listed above and is not required to select the lowest monetary proposer.

B. Right to Reject Proposals

The City of Montebello reserves the right to reject any or all proposals should be deemed in its best interest to do so. Any award made for this engagement will be made to the bidder which, in the opinion of the City, is best qualified to conduct the classification and compensation study. The selection of the proposal will be made at the sole discretion of the City.

XIII. Disclosure of Proposals/Public Records Act

Proposals will be kept confidential until such time as the City has completed its evaluation. Proposers are cautioned that the agreement and proposals submitted are public records in accordance with the California Public Records Act (Govt. Code Section 6250 et seq.).

All proposals submitted in response to this RFP will become the property of the City of Montebello and a matter of public record. The vendor must identify, in writing, all copyrighted material, trade secrets, or other proprietary information that it claims is exempt from disclosure. Any firm claiming such an exemption must also state in its proposal that the firm agrees to hold harmless, indemnify and defend the City and its agents, officials and employees in any action or claim brought against the City for its refusal to disclose such materials, trade secrets or other proprietary information to any party making a request therefore. Any firm failing to include such a statement shall be deemed to have waived its right to an exemption from disclosure.

XIV. Pre-Contractual Expenses

Any cost incurred by the proposer in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the proposer. The City of Montebello shall not, in any event, be liable for any pre-contractual expenses incurred by any bidder. In addition, no bidder shall include any such expenses as part of the price proposed.

XV. Authority to Withdraw Request for Proposal and/or Not Award Contract

The City of Montebello reserves the right to withdraw this RFP at any time without prior notice. Further, the City expressly reserves the right to postpone the opening of proposal for its own convenience and to reject any and all proposals in response to this RFP without indicating any reasons for such rejection(s).

XVI. Consultant's Independence

Consultant is an independent contractor with respect to all services performed under this Contract. Consultant accepts full and exclusive liability for the payment of any and all premiums, contributions, or taxes for worker's compensation, Social Security, unemployment benefits, health benefits, sick leave or other employee benefits now and hereinafter imposed under any state or federal law which are measured as wages, salaries or other remuneration paid to persons employed by Consultant on work performed under the terms of this Contract. Consultant shall defend, indemnify and hold harmless the City from any claims or liability for such contributions or taxes. Nothing contained in this Contract nor any act of the City, or consultant, shall be deemed or construed to create any third party beneficiary or principal and agent association or relationship involving the City. Consultant is not the City's agent and Consultant has no authority to take any action or execute any documents on behalf of the City.

XVII. Sub-Contractor

The use of any sub-contractor must be approved in advance in writing by the City and must meet the requirements of this RFP. Use of sub-contractors must be clearly explained in the proposal, and major sub-consultants must be identified by name. Prime consultants shall be wholly responsible for the entire performance whether or not sub-consultants are used.

XVIII. Price Changes

All prices shall be firm and not subject to increase during the period of the Contract.

XIX. Laws of Governance

The selected firm will be required to comply with all existing State and Federal laws including applicable equal opportunity employment provisions. The Contract shall also be construed and governed in accordance with the law of the State of California and the City of Montebello. Consultant shall comply with all federal, state and local laws, ordinances and regulations applicable to the work. Consultant, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Contract.

XX. Modification, Mistakes or Withdrawal of Proposals

Responses to this RFP may be modified or withdrawn by written, e-mail or facsimile notice prior to the date specified for receipt of proposals. A proposal may be withdrawn by the vendor or its authorized representative prior to 5:00 p.m. on April 17, 2017. Telephone withdrawals are not permitted. If the apparent best qualified firm discovers a mistake, of a serious and significant nature, in its proposal which is unfavorable prior to the issuance of a Contract, it may request consideration to modify or withdraw the proposal. The City reserves the right to reject any and all requests for correction or withdrawal of proposal received after the date shown in the specifications. In all cases, the decision of the City Council is final. A mistake in proposal will not be considered once a contract is issued.

XXI. Reservation of Rights

The City of Montebello reserves the right to:

- Accept or reject any and all proposals received in response to this RFP, and to re-advertise for new submittals.
- Waive or modify any irregularities in proposals received after prior notification to the vendor.
- Request the submission of proposal modifications at any time before the award is made, if such is in the best interest of the City.
- Consider proposals or modifications received at any time before the award is made, if such is in the best interest of the City.
- Request clarification and/or additional information from the vendor during the evaluation process.
- In the event of Contract termination, enter into Contract negotiations with other qualified firms that submitted acceptable proposals, rather than redoing the proposal process for the project.
- Negotiate with the selected consultant to include further services not identified in this RFP.

XXII. Expiration of the Proposal

By submitting a proposal, and if awarded the RFP, the firm agrees to enter into a *Professional Services Agreement, Attachment A*, in which the content shall be agreed upon by both parties. The firm's proposal shall not be revocable for 90 days following the response deadline indicated in the RFP. The City of Montebello reserves the right to waive any defects in the offer of any vendor, to reject any or all offers and to request additional information from any or all vendors.

XXIII. Work Results

The work results and the reports may not be released by the Consultant without prior written consent of the City of Montebello.

Thank you in advance for your interest in the City of Montebello, California.

City of Montebello
Administration
1600 W. Beverly Boulevard
Montebello, CA 90640

**ATTACHMENT A
CITY OF MONTEBELLO**

PROFESSIONAL SERVICES AGREEMENT NO.

BY AND BETWEEN

CITY OF MONTEBELLO AND [CONTRACTOR]

THIS AGREEMENT (“Agreement”) is made and entered into on _____, 2017, by and between the CITY OF MONTEBELLO, a municipal corporation (hereinafter referred to as “CITY”), and _____ (hereinafter referred to as “CONSULTANT”). CITY and CONSULTANT are sometimes referred to herein individual as the “Party,” and jointly as the “Parties.”

RECITALS

WHEREAS, the CITY desires to retain a qualified professional CONSULTANT to provide appraisal and valuation services of the CITY’s municipal water system;

WHEREAS, the CONSULTANT represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW THEREFORE, in consideration of performance by the Parties of the covenants and conditions herein contained, the Parties hereto agree as follows:

SECTION 1. SERVICES / COMPENSATION.

A. All terms, conditions, requirements, and provisions of the Request for Proposals for Citywide Total Compensation Study (dated April 17, 2017) (“Request for Proposals”), as such is set forth fully in **Exhibit “A”** hereto, are hereby incorporated fully herein by this reference and shall be binding on the Parties. To the extent of a conflict between the terms of this Agreement and those set forth in any exhibits or attachments hereto, the terms of this Agreement shall govern.

B. CONSULTANT shall provide to CITY those services that are set forth fully in the Request for Qualifications/ Request for Proposals incorporated fully herein by this reference (hereinafter “Professional Services”).

C. CONSULTANT shall be compensated for performance of the Professional Services as set forth in the Schedule of Compensation attached hereto as **Exhibit “B”** and incorporated fully herein by this reference (“Compensation”). CONSULTANT shall provide an itemized billing statement to the CITY each month for Professional Services performed. CONSULTANT shall no incur fees or costs which exceed the Compensation without the prior written consent of the CITY.

SECTION 2. TERM.

This Agreement shall commence upon issuance of the Notice to Proceed by the City (“Effective Date”), and shall expire three (3) months from the Effective Date, unless terminated earlier as

hereinafter provided. This Agreement may be extended for up to one (1) additional year upon such terms and conditions mutually agreed upon by the Parties in writing.

SECTION 3. PERFORMANCE.

- a. CONSULTANT shall, at all times, faithfully, competently, and to the best of its ability, experience and talent, perform all Professional Services and other tasks described herein.
- b. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by companies and individuals engaged in providing similar services as are required of CONSULTANT hereunder, in meeting its obligations under this Agreement.
- c. CONSULTANT shall be knowledgeable of and subject to all CITY ordinances, rules and regulations, standard operating procedures, and the supervisory chain of command.
- d. CONSULTANT shall have the right to retain, subject to CITY's advance written approval, additional individuals, consultants or sub-consultants to assist in the completion of the Professional Services. Compensation for additional individuals, consultants or sub-consultants shall be the sole and exclusive responsibility of CONSULTANT.
- e. CONSULTANT shall retain all original reports, field and office notes, correspondence, calculations, maps, and other documents specifically related to the services provided by CONSULTANT pursuant to this Agreement, other than documents which are exempt from disclosure pursuant to the attorney-client privilege or any other applicable law. Said documents shall be made available for inspection by the CITY upon request.

SECTION 4. WORK PRODUCT.

- a. CONSULTANT hereby agrees that all work product produced pursuant to or in the performance of this Agreement shall be the property of and shall be provided to the CITY, and ownership of said work product shall be retained by the CITY. CONSULTANT may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by CONSULTANT.
- b. All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed to any third-party by CONSULTANT without prior written consent by the CITY. The CITY shall grant such consent if disclosure is legally required. All such written work product shall be returned to the CITY upon the termination or expiration of this Agreement. CONSULTANT agrees that the covenants contained in this Article shall survive the expiration or termination of this Agreement.

SECTION 5. EXTRA SERVICES.

No extra services over and above the Compensation shall be rendered by CONSULTANT under this Agreement unless such extra services first shall have been duly authorized in writing by the City Manager.

SECTION 6. CITY SUPERVISION.

The City Manager shall have the right of general supervision of all work performed by CONSULTANT and shall be the CITY agent with respect to obtaining CONSULTANT's

compliance hereunder. No payment for services rendered under this Agreement shall be made without the prior approval of the City Manager.

SECTION 7. TERMINATION.

In the event that either Party hereto fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, the non-defaulting Party shall give the defaulting Party written notice of the default, the nature of the default, and of the steps necessary to cure the default.

a. Termination for Cause. In the event that any of the provisions of the Agreement are violated by either Party, the non-defaulting Party may terminate the Agreement by serving written notice upon the other Party, listing the violation(s) and its intent to terminate such Agreement unless within ten (10) days after the serving of such notice, such violation shall cease or be rectified, the contract shall upon the expiration of an additional thirty (30) days cease and terminate. Violations by CONSULTANT which cannot be corrected within ten (10) days, said Agreement shall at the option of the City cease and terminate upon the giving of like notice. In the event of any such termination for default by CONSULTANT, the City may take over the work and prosecute the same to completion by contract or otherwise for the account and at the expense of the CONSULTANT. The CONSULTANT and his sureties shall be liable to the City for any excess cost occasioned in the event of any such termination. This change shall not be construed to prevent the termination, for other causes authorized by law or other provisions of this contract. In the event of a termination for cause, CONSULTANT shall only be entitled to the Compensation for those Professional Services satisfactory performed on or before the effective date of termination.

b. Termination For Convenience. The CITY shall have the option, at its sole discretion and without cause, to terminate this Agreement in whole or in part by giving thirty (30) business days' written notice to CONSULTANT. Upon the termination of this Agreement as provided herein, the CITY shall provide to CONSULTANT the part of Compensation which would otherwise be payable to CONSULTANT for services CONSULTANT had completed as of the date of termination, less the amount of all previous payment with respect to the Compensation. Further, upon such a termination for convenience by CITY, the Parties agree that CONSULTANT shall be reimbursed for any "non-refundable" costs that CONSULTANT has incurred for its services under this Agreement, provided that: (1) such "non-refundable" costs were incurred by the CONSULTANT prior to the date of termination, and (2) that CONSULTANT provides the CITY with adequate proof that CONSULTANT incurred the costs, and is unable to be seek a refund for such costs. Such "non-refundable" costs may include, but are not limited to, travel reservations incurred by CONSULTANT for its performance of services under this Agreement. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination.

SECTION 8. EMPLOYMENT OF CITY EMPLOYEES.

No regular employee of the CITY shall be employed by CONSULTANT during the term of this Agreement.

SECTION 9. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES.

No official or employee of the CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount which may become due to CONSULTANT.

SECTION 10. INDEPENDENT CONSULTANT.

a. The CONSULTANT is and shall, at all times, remain as to the CITY a wholly independent CONSULTANT. Neither the CITY nor any of its elected officials, officers, employees or agents shall have control over the conduct of the CONSULTANT except as expressly set forth in this Agreement. The CONSULTANT shall not at any time or in any manner represent that he is in any manner an elected official, officer, employee or agent of the CITY. No employee benefits shall be available to CONSULTANT in connection with the performance of this Agreement. Except as provided in this Agreement, CITY shall not pay salary, wages, or other compensation to CONSULTANT for performance hereunder for CITY, CITY shall not be liable for compensation to CONSULTANT, CONSULTANT's employees or CONSULTANT'S sub-CONSULTANTS for injury or sickness arising out of performing services hereunder.

b. The Parties further acknowledge and agree that nothing in this Agreement shall create or be construed to create a partnership, joint venture, employment relationship or any other relationship except as set forth in this Agreement.

c. CITY shall not deduct from the Compensation paid to CONSULTANT any sums required for Social Security, withholding taxes, FICA, state disability insurance or any other federal, state or local tax or charge which may or may not be in effect or hereinafter enacted or required as a charge or withholding on the compensation paid to CONSULTANT. CITY shall have no responsibility to provide CONSULTANT, its employees or sub-consultants with workers' compensation insurance or any other insurance.

SECTION 11. PERS ELIGIBILITY INDEMNITY.

a. In the event that CONSULTANT or any employee, agent, or sub-CONSULTANT of CONSULTANT providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or sub-consultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

b. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONSULTANT and any of its employees, agents, and sub-consultants providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits.

SECTION 12. LEGAL RESPONSIBILITIES.

CONSULTANT shall at all times observe and comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments including, but not limited to the Montebello Municipal Code. The CITY, and its appointed or elected officers, employees, or agents, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this section.

SECTION 13. INDEMNIFICATION.

The CONSULTANT agrees to, and shall defend, indemnify, protect and hold harmless, the CITY, its elected and appointed boards, officers, officials, employees, agents and volunteers from and against any and all claims, demands, lawsuits, defense costs, civil, penalties, expenses, causes of action, and judgments at law or in equity, or liability of any kind or nature which the CITY, its elected and appointed boards, officers, officials, employees, agents and volunteers may sustain or incur or which may be imposed upon them for injuries or deaths of persons, or damage to property arising out of CONSULTANT'S negligent or wrongful act, or omission under the terms of this Agreement, except only liability arising out of the sole negligence of the CITY.

SECTION 14. INSURANCE COVERAGE.

During the term of this Agreement, CONSULTANT shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with CONSULTANT'S performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

- **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the limit shall be twice the required occurrence limit.
- **Automobile Liability Insurance:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- **Worker's Compensation** insurance as required by the laws of the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- **Professional Liability** insurance appropriate to the CONSULTANT'S profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

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.

CONTACTOR shall require each of its sub-consultants, if any, to maintain insurance coverage that meets all of the requirements of this Agreement.

The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a current rating of at least A:VII in the latest edition of Best's Insurance Guide.

Each insurance policy required above shall state that coverage shall not be canceled, except after thirty (30) days' prior written notice (ten (10) days for non-payment) has been given to the City. CONSULTANT agrees that if it does not keep the aforesaid insurance in full

force and effect CITY may either (i) immediately terminate this Agreement for Cause; or (ii) take out the necessary insurance and pay, at CONSULTANT'S expense, the premium thereon.

At all times during the term of this Agreement, CONSULTANT shall maintain on file with CITY's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the CITY as an additional insured. CONSULTANT shall, prior to commencement of work under this Agreement, file with CITY's Risk Manager such certificate(s).

CONSULTANT shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming CITY, its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to CITY. CONSULTANT agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or volunteers, shall be in excess of CONSULTANT'S insurance and shall not contribute with it.

All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT, and CONSULTANT'S employees, agents or sub-CONSULTANTS, from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against the CITY.

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

Procurement of insurance by CONSULTANT shall not be construed as a limitation of CONSULTANT'S liability or as fall performance of CONSULTANT'S duties to indemnify, hold harmless and defend under Section 9 of this Agreement.

SECTION 15. SUBCONTRACT, ASSIGNMENT OR DELEGATION.

CONSULTANT shall not subcontract, delegate or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of CITY. Any proposed subcontract, delegation, or assignment shall provide a description of the services to be covered, identification of the proposed sub-consultant, delegee, or assignee, and an explanation of why and how the same was selected, including the degree of competition involved.

Any subcontract, delegation or assignment shall be made in the name of CONSULTANT and shall not bind or purport to bind CITY and shall not release CONSULTANT from any

obligations under this Agreement including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegees or sub-consultants. No such subcontract, delegation or assignment shall result in any increase in the amount of total compensation payable to CONSULTANT under the Agreement.

SECTION 16. NO WAIVER.

Waiver by any Party hereto of any term, condition or covenant of this Agreement shall not constitute the waiver of any other term, condition or covenant hereof.

SECTION 17. DISPUTE RESOLUTION; GOVERNING LAW.

Disputes regarding the interpretation or application of any provision(s) of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties. The venue for any litigation shall be County of Los Angeles, California. The Parties agree that the covenants contained in this Article shall survive the expiration or termination of this Agreement.

SECTION 18. ATTORNEY'S FEES AND COSTS.

If any action is brought at law or in equity by a Party to enforce or interpret the provisions of this Agreement, the prevailing Party in such litigation shall be entitled to an award of reasonable attorney's fees, expert fees, and costs, in addition to any other relief to which it may be entitled or is awarded.

SECTION 19. WARRANTIES.

Each of the Parties represents and warrants to one another as follows:

- a. It has received independent legal advice from its attorneys with respect to the advisability of entering into and executing this Agreement;
- b. In executing this Agreement, it has carefully read this Agreement, knows the contents thereof, and has relied solely on the statements expressly set forth herein and has placed no reliance whatsoever on any statement, representation, or promise of any other party, or any other person or entity, not expressly set forth herein, nor upon the failure of any other party or any other person or entity to make any statement, representation or disclosure of *any* matter whatsoever; and
- c. It is agreed that each Party has the full right and authority to enter into this Agreement, and that the person executing this Agreement on behalf of either Party has the full right and authority to fully commit and bind such Party to the provisions of this Agreement.

SECTION 20. MISCELLANEOUS.

- a. The descriptive paragraph headings of this Agreement are included for purposes of convenience only and shall not control or affect the construction of interpretation of any of its provisions.
- b. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender, and the neuter and vice versa.

c. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

d. The representations and warranties made by the parties to this Agreement shall survive the consummation of the transaction herein described.

e. This Agreement may be signed in any one or more counterparts all of which taken together shall be but one and the same Agreement. Any signed copy of this Agreement or of any other document or agreement referred to herein, or copy or counterpart thereof, delivered by facsimile transmission, shall for all purposes be treated as if it were delivered containing an original manual signature of the Party whose signature appears in the facsimile and shall be binding upon such Party in the same manner as though an originally signed copy had been delivered.

f. Each of the Parties acknowledges that it has been represented by independent counsel of its own choosing, or if it has not been so represented, it has been admonished to obtain independent counsel and has freely and voluntarily waived and relinquished the right to counsel. Each Party who has not obtained independent counsel acknowledges that the failure to have independent legal counsel will not excuse such Party's failure to perform under this Agreement or any agreement referred to in this Agreement.

SECTION 21. NOTICE.

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, or approvals hereunder shall be given to the following addresses or such other addresses as the Parties may designate by written notice:

Danilo Batson, Assistant City Manager
Administration
City of Montebello
1600 West Beverly Boulevard
Montebello, California 90640
E-mail: dbatson@cityofmontebello.com

CONSULTANT

SECTION 22. NON-DISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYER.

In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, sub-CONSULTANT, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap,

mental condition or sexual orientation. CONSULTANT will take affirmative action to ensure that sub-consultant and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

SECTION 23. CONFLICT OF INTEREST.

CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by CONSULTANT under this Agreement, or which would conflict in any manner with the performance of its services hereunder. CONSULTANT further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, CONSULTANT shall avoid the appearance of having any interest that would conflict in any manner with the performance of its services pursuant to this Agreement.

CONSULTANT covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to CITY as a result of the performance of this Agreement, or the services that may be procured by the CITY as a result of the recommendations made by CONSULTANT. CONSULTANT's covenant under this section shall survive the termination of this Agreement.

SECTION 24. ENTIRE AGREEMENT.

This Agreement contains the entire understanding between the CITY and CONSULTANT. Any prior agreements, promises, negotiations or representations not expressly set forth herein are of no force or effect. Subsequent modifications to this Agreement shall be effective only if in writing and signed by each Party. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding.

CITY OF MONTEBELLO

CONSULTANT

Francesca Tucker-Schuyler
City Manager

Dated: _____

Dated: _____

ATTEST:

Irma Barajas
City Clerk

APPROVED AS TO FORM:

Arnold Alvarez-Glasman
City Attorney