

CITY OF MONTEBELLO



**REQUEST FOR QUALIFICATIONS/ REQUEST FOR PROPOSALS
FOR
APPRAISAL/VALUATION OF WATER SYSTEM
(RFQ/RFP No. 17-7)**

NOTICE IS HERBY GIVEN that the City of Montebello, hereinafter referred to as the “City”, will receive proposals for award of a contract to provide appraisal/valuation services for the City’s Water System.

Proposals will be accepted by the City up to, but not later than, **2:00 p.m. on Monday, the 16th of January, 2017.**

All proposals shall be made in the format specified by the City. Proposals shall be delivered to:

Montebello City Hall
City Clerk’s Office
1600 West Beverly Boulevard
Montebello, CA 90640

Information relating to this Request for Proposals may be obtained by contacting Danilo Batson, Assistant City Manager/Public Works Director, in writing at Dbatson@cityofmontebello.com

CITY OF MONTEBELLO



**Request for Qualifications/Request for Proposals
for
Appraisal/Valuation of Water System
(RFQ/RPF No. 17-7)**

This purpose of this Request for Qualifications/Request for Proposals (“RFP”) is to establish a list of qualified, professional water utility appraisers for the City of Montebello (“City”).

To be considered responsive, interested individuals, contractors, and business entities (“Proposers”) must bid in accordance with the requirements, specifications, commercial terms, and provisions as described and set forth herein.

This RFP is set out in the following format:

- Section I: Introduction and Instructions
- Section II: Proposal Response Requirements
- Section III: Scope of Work
- Section IV: Sample Consulting Services Agreement

CLOSING TIME AND DATE:

PROPOSALS ARE DUE MONDAY, JANUARY 16, 2017, BY 2:00 PM

Proposals received after 2:00 pm, Monday, January 16, 2017, will **NOT** be considered.

SECTION I INRODUCTION AND INSTRUCTIONS

Introduction

The purpose of this RFP is to establish a list of qualified, professional water utility appraisers interested in contracting with the City of Montebello to provide professional consulting, appraisal and valuation services as more particularly set forth herein in Section III of this RFP.

Background

The City of Montebello owns a municipal water system (the "Water System"), which is divided into a "Northern Service Area" and "Southern Service Area" and serves a total of 1,647 users. Other water providers serving the City include San Gabriel Valley Water Company ("SGWC"), California Water Service Company ("CWS"), South Montebello Irrigation District ("SMID"), and the Montebello Land and Water Company ("MLWC"). The Water System is primarily located within the jurisdictional boundaries of the City, with a small portion of the Southern Service Area located in the City of Commerce.

The City has Adjudicated Pumping Rights in the Central Basin of 386.50 Acre Feet/Year ("AFY") of allowed pumping allocation ("APA"). Over the past few years the City has not utilized its full APA, and has transferred or sold the unused portion to third-parties. The City purchases a portion of its water supply under a contract with the Central Basin Municipal Water District ("CBWD"). This agreement inures to the benefit of the City's successors and assigns, and the Purchaser would assume the City's obligations thereunder.

The City's Water System has one (1) groundwater well located its Southern Service Area, with a pumping capacity of 1,000 gallons per minute ("GPM"). The well has a wellhead chlorination treatment system utilizing liquid sodium hypochlorite. The Southern Service Area has a Metropolitan Water District of Southern California ("MWD") service connection ("CenB 22") with a capacity of 7 cubic feet per second ("CFS"). The average annual water usage in the Southern Service Area is 345 AFY.

The Northern Service Area receives its water supply through the MWD imported water system at CenB 24 with a capacity of 3.5 CFS. The average annual water usage in the Northern Service Area is 1,300 AFY.

There are three (3) water storage reservoirs within the Water System: Gage in the Southern Service Area (2.0 Million Gallons ("MG")), and Hillside (2.0MG) and Town Center (4.5MG) in the Northern Service Area. The City has two (2) Booster Pump Stations: Gage in the Southern Service Area and Hillside in the northern Service Area.

The Water System's transmission and distribution pipelines are primarily comprised of asbestos cement pipe ("ACP") and include ductile iron pipe ("DIP"), mortar lined and coated steel pipe ("MLCP"), and polyvinyl chloride ("PVC") pipe. The total length of transmission and distribution pipelines is approximately 9.6 miles in the Southern Service Area and approximately 19.4 miles in the Northern Service Area. Well pump waste and tank overflow are distributed through the storm drain system.

The City recently issued a Request for Proposals soliciting bids to purchase the Water System from the City. The Instant RFP seeks a valuation of the Water System to aid the City in its evaluation of offers to purchase the Water System.

Proposed RFQ/RFP Time Schedule

Issue Date: December 22, 2016
Proposals Due: January 16, 2017, by 2:00 pm
Interview (if necessary): January 23 - 26, 2017
Final Selection: February 2017

Instructions and Procedures for Submittal of Proposals

1. Two (2) originals (marked original) and one electronic copy (in a thumb drive or CD) of each proposal must be submitted to the following address:

Montebello City Hall
City Clerk's Office
1600 West Beverly Boulevard
Montebello, CA 90640

2. All proposals must be submitted on standard 8.5" by 11" paper, printed, and bound.
3. Proposal must be accompanied by a cover letter with an affixed signature of an individual authorized to bind the Proposer.
4. Responses to this RFP must follow the format specified in Section II. Responses should be in printed form (except where noted), concise, straightforward, and must fully address each requirement and question contained in this RFP.
5. Proposal must be valid for a period of 90 days from the due date.
6. The City reserves the right to negotiate with any contractor as necessary to serve the best interests of the City, and negotiate the final contract with the most responsive, responsible contractor. City reserves the right to waive, at its discretion, any irregularity or informality in this RFP or response(s) thereto which the City, in its discretion, deems non-material, correctable or otherwise not warranting rejection of the submittal. City reserves the right to reject any and all proposals and to accept any proposal or portion thereof. No obligation, either expressed or implied, exists on the part of the City, to make an award or to pay any costs incurred in the preparation or submission of a proposal. All costs associated with the preparation or submission of proposals covered by this RFP are solely the responsibility of the contractors.
7. All proposals shall become the property of the City; proposals must not be marked as privileged or confidential, and may be rejected if so marked. Information in proposals will become public information and subject to disclosure laws. The City reserves its right to make use of any information or ideas in the proposal.
8. There will be no public opening of proposals. Prices and other proposal information will not be made public until the proposal is awarded. At that time, the executed contract and all proposals received will become public information.
9. After the proposal due date, evaluation will commence.
10. The City may require Proposers found most responsive and responsible to make demonstrations or provide site visits during the proposal evaluation process. If presentations are required, Proposers shall provide representatives capable of explaining,

in detail, the proposed services and addressing all questions.

11. If the contract is awarded, it will be to the responsible Proposer whose proposal is deemed to be in the best interests of the City, and whose proposal best meets the requirements of the RFP documents and any addenda thereto, except for irregularities waived by the City. Written notification will be made to unsuccessful contractors.
12. All Proposers must submit information that indicates specific qualifications to complete the work to be done as defined herein. Each Proposers shall submit with the proposal, a list of clients for whom similar work has been performed in the past five (5) years. The reference list shall include the names and addresses of the client, the name, title and telephone number of each client's manager, and the dates the work was performed. During the evaluation and selection process, the City may contact each of the referenced clients. Proposers are hereby advised that the City maintains the sole and exclusive right to determine whether or not the contractor can perform the work to be done.

SECTION II PROPOSAL RESPONSE REQUIREMENTS

Each Proposer shall complete this portion of the RFP by discussing each item in the order presented. Responses to this Section will be analyzed by the City to determine the recommendation of the successful Proposer. Responses must be legible, clear, accurate, complete, and must be signed by an authorized representative.

A. Cover Letter

Proposals must be accompanied by a cover letter, signed by an individual authorized to bind the Proposer. An unsigned proposal is grounds for rejection. The cover letter includes an introduction of the firm and statement of professional qualifications.

B. Profile of Firm

Please provide the following information:

- Name, address, and phone number of the Proposer.
- A brief description of the Proposer's experience in appraising water systems, utilities, and associated real and personal property; in particular, experience with the Southern California water utility market.
- A summary of the Proposer's demonstrated capability, including length of time the Proposer has provided the services being requested.
- Professional qualifications; include copies of California state appraiser licenses and certificates.
- Description of experience with public agencies is highly desirable.

C. Qualifications of Personnel and Resumes:

The Proposer shall furnish a personnel staffing plan with sufficient information for evaluating the quality and competence of the personnel dedicated to the account. The City, in its assessment of the proposal, will place considerable emphasis on the commitment by the Proposer to provide qualified personnel for the execution of the contract. The Proposer shall provide resumes for the Project Manager and/or key personnel committed to the account. Proposers shall also include the number and type of additional support personnel who will be assigned to the project.

D. References

Provide at least five (5) references which the Proposer has provided water utility appraisal/valuation services for in the past five (5) years. Indicate the scope of the work performed for each of the referenced clients, the name of the client, address and telephone number, and the name of each client's contact person.

E. Compensation Schedule

Proposer shall provide detailed cost information of services on a monthly and annual, or per file basis, and include all costs associated for the scope of work provided.

F. Validity of Proposal

Proposers shall state the length of time for which the proposal shall remain valid. The City requires a period of at least ninety (90) days.

G. Certificates of Insurance

Proposers shall demonstrate the willingness and ability to submit proof of the required insurance coverage as set forth in the "Sample Consulting Services Agreement (Section IV)" within ten (10) days of award of contract.

H. Evaluation Criteria

The City will evaluate each Proposer's proposal to determine the responsiveness of each proposal to the specified requirements. The evaluation process will address the suitability of the proposal with respect to the elements of the proposal, as well as other elements determined to be in the best interests of the City.

The most qualified Proposer to provide the requested services will be selected based on, but not limited to the following criteria:

1. Experience of the Proposer, particularly of staff assigned to supervise and administer the contract.
2. Demonstrated knowledge of public agencies.
3. Location of firm and availability of staff assigned to the City.
4. Quality of references.
5. Proposed costs.
6. Content and form of written proposal.
7. Interview (if any).
8. Demonstrated ability to complete the Scope of Services within a reasonable period of time.

These criteria are in random sequence and are not considered in any rank order of importance. Based on an evaluation of the proposals using the above criteria, the most qualified Proposer may be scheduled for interview with City staff.

I. Consulting Services Agreement

The selected Proposer will be required to enter into an agreement with the City similar to the “Sample Consulting Services Agreement (Section IV),” to provide the services as proposed.

SECTION III SCOPE OF WORK

The selected Proposer will provide appraisal/valuation of the City's Water System as described below. The Proposer will:

- Provide appraisals of real property based on current fair market value as requested.
- Prepare City of Montebello Water Collection and Distribution System Valuation by (without limitation):
 - Reviewing inventory of existing system from existing Water Wystem maps and master plans.
 - Using photographs, field visits and results of interviews with people familiar with existing equipment, summarize condition of existing system.
 - Seeking access to all facilities as is necessary to determine valuations as well as all recent tank underwater inspection reports.
 - Utilizing available reports, property profiles and property appraiser reports (by others if applicable), inventory of existing system, reports on water rights, and current financial statement (as available), summarize the City's assets and liabilities.
 - Determining current value of the City's Water System. The value will be broken down into several categories such as properties, facilities, water rights, equipment, etc.
 - Assisting City staff in the review of proposals for the purchase of the City's Water System.
 - Prepare letter report containing assumptions, sources of information, work product and summarize current value of the City's Water System. Twelve (12) hard bound copies of the report are to be provided as well as electronic files.
- Adhere to appraisal practices as required to conform to the Uniform Standards of Professional Appraisal Practice (USPAP).
- Review completed appraisal and valuation with assigned City staff.
- Provide appraisal-related consulting services on an as-needed basis to complete appraisal and valuation of City's Water System.
- Maintain timely communication with the assigned City staff.
- Attend staff and/or City Council meetings when requested.

SECTION IV
SAMPLE CONSULTING SERVICES AGREEMENT

[ATTACHED]

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 Qualifications/ Request for Proposals for appraisal and water valuation services (dated December 22, 2016) (“Request for Qualifications/ 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 six (6) 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/ Director of Public Works
Public Works Department
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