

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and City Council

FROM: René Bobadilla, City Manager

BY: Nicholas Razo, Director of Human Resources and IT

SUBJECT: Selection for Award of Contract for The City of Montebello's Classification and Total Compensation Study

DATE: August 12, 2020

RECOMMENDATION

It is recommended that the City Council:

- 1) Authorize the City Manager to execute an agreement with an approval by the City Council to award a contract to Public Sector Personnel Consultants for the City's Classification and Total Compensation Study.

BACKGROUND

The City of Montebello's current classification and compensation system has not been evaluated since 2008. It is best practice for organizations to routinely conduct these studies every five (5) years to ensure that classification methods continue to meet the organizations needs and pay practices and strategies remain competitive, sustainable, and equitable.

In addition, during the 2019 contract negotiations, each of the City's eight (8) bargaining units requested a classification and total compensation study.

The overall goals of a classification and total compensation study include:

- Ensure market/internal structure alignment
- Ensure accuracy of classification/job description structure
- Identify paths for career progression
- Modernize position titles
- Address recruitment and retention needs to ensure the City is both competitive and consistent with comparable employers
- Update Americans Disability Act and Fair Labor Standards Act compliance requirements

CITY COUNCIL AGENDA STAFF REPORT – MEETING OF AUGUST 12, 2020
**SELECTION FOR AWARD OF CONTRACT FOR THE CITY OF MONTEBELLO'S
CLASSIFICATION AND TOTAL COMPENSATION STUDY**

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ANALYSIS

Staff prepared and posted a Request for Proposal that detailed the City's requirements for the project. The City received a total of thirteen (13) proposals for the Classification and Total Compensation Study. Of the number of proposals submitted, four (4) were deemed responsive and qualified proposals as well as within the allotted budgeted amount for Fiscal Year 2020-2021 for this project. The four (4) firms are as follows:

Public Sector Personnel Consultants
HR Compensation Consultants, LLC
Ralph Andersen & Associates
Logic Compensation Group

The proposals were reviewed using the following criteria:

- Compliance with the Request for Proposal
- 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 public service experience and personnel assigned to the project and any subcontractors, if any
- Cost

On July 15, 2020, City Staff to include Director of Human Resources/IT, and the Senior Human Resources Analysts met and interviewed each of the firms via video-conferencing. Based on their interview, Public Sector Personnel Consultants surpassed all required qualifications. In addition to the required qualifications they work exclusively with public sector agencies and have successfully completed over 1000 comparable studies. Public Sector Personnel Consultants was unanimously, amongst the rating panel, determined to be the most qualified to perform the Study for the City of Montebello.

The final report will be brought to the City Council for approval as the City's Classification and Total Compensation Plan.

FISCAL IMPACT

Public Sector Personnel Consultants' fee proposal is outlined below:

Major Project Components – Classification Study*

- Planning Meetings, Kick Off, Communication	\$ 5,000
- Job Information Interviews / Desk Audits (100 included)	\$ 10,000
- Position Classification, Job Titling, FLSA	\$ 5,000
- Updated Job Descriptions/Class Specifications (100 included)	\$ 10,000

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Classification Study: **\$ 30,000**

Major Project Components – Compensation Study

- Total Compensation Survey	\$ 30,000
- Pay Plan Modeling, Implementation Options and Costing	\$ 7,500
- Reporting and Presentations	\$ 2,500
Compensation Study:	\$ 40,000
Total Not-To-Exceed:	\$70,000

The proposed fee is within the budgeted amount set forth in the FY 2020-2021 budget for this project.

SUMMARY

Staff is recommending that the City Council award a Professional Services Agreement to Public Sector Personnel Consultants for City's Classification and Total Compensation Study and authorize the City Manager to execute the Professional Services Agreement on behalf of the City.

ATTACHMENTS

- 1) Request for Proposal No. 20-12
- 2) Draft Professional Services Agreement
- 3) Public Sector Personnel Consultants Proposal



**REQUEST FOR PROPOSAL FOR
CITYWIDE CLASSIFICATION
AND
TOTAL COMPENSATION STUDY
RFP No. 20-12**

Nicole Mooshagian, Senior Human Resources
Analyst
City of Montebello
1600 W. Beverly Boulevard
Montebello, CA 90640
(323) 887-1200 *419

Issued Date: April 23, 2020

Due Date: May 24, 2020

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.

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 526 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 382 full-time employees and 144 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	April 23, 2020
Due Date for Proposals	May 24, 2020
Evaluation of Proposals Period	Week of May 25, 2020
Interview(s)	Week of June 15, 2020
Recommendation to City Council	July 08, 2020

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

The City anticipates that the study will involve two broad phases of work comprised of the following key tasks:

A. The Classification Study (Non-Sworn Only)

1. Review current classification specifications and analyze knowledge, skill, ability, education and experience relevance and hierarchical consistency, conformity with ADA language relative to essential job functions (including physical requirements);

position definitions, distinguishing characteristics, supervision received and exercised, position duties and special requirements including license and certification requirements;

2. Conduct orientation and briefing sessions to explain the scope of the study to affected employees and association representatives;
3. Develop and distribute job analysis questionnaires;
4. Review and analyze completed job-related questionnaires;
5. Conduct interviews with a representative sample of covered employees;
6. Review various job series in terms of appropriateness;
7. As appropriate, recommend new classes and/or recommend deletion of outdated or unnecessary classes;
8. Draft up-to-date, accurate class specifications in a format approved by Human Resources;
9. Provide periodic status reports as requested.

B. The Compensation Study (Non-Sworn and Sworn, Excluding Executive Management)

1. Review of current compensation practices and related issues;
2. Complete internal salary relationship analysis including the development of appropriate internal relationship guidelines (internal equity);
3. Recommend salary relationship/differentials between classes in each class series;
4. Recommend logical and defensible comparable agencies (external equity);
5. Make recommendations, if needed, to compensation plan based on Fair Labor Standards Act (FLSA) exempt or non-exempt designation;
6. Recommend salary survey benchmarks in conjunction with relevant benchmark classifications;
7. Develop externally competitive and internally equitable salary recommendations for each job class included in the study;
8. Present and explain proposed comparable agency list to employee associations and Council (if requested);
9. Provide written documentation of assessment methodology;

10. Train City staff in the methodology used to systematically assess job classifications in order to maintain internal compensation equity in the future when adding, changing, or deleting classifications.

VII. RFP Requirements

Responses to this request should include the following information:

1. Consultant name and/or business name, DBA (if applicable) and principal contact person, including office location, address, telephone number, fax number, and e-mail address.
2. Qualifications information, which demonstrates the knowledge, experience, and capability that will enable the respondent to provide the services outlined in the Scope of Services, including a brief description and history of the firm and/or individual including the number of years in business, number of classification and compensation studies completed and the range of services offered. Where relevant, key individuals who may be involved in providing or developing the services should be identified and listed. Please provide resumes for all proposed key personnel.
3. A description of the proposed study components. Identify the key steps. Describe how you plan to interface with employees and managers to validate job descriptions. Describe the scope of involvement of city staff.
4. Describe what factors you recommend be considered to assess comparable agencies.
5. Provide a timeline for this process
6. Provide at least three references that can be contacted for verification of the respondents experience and qualifications. The references will be public agencies, for which you and/or your firm have provided classification and compensation services within the past three years. Identify similar process on which the respondent has worked, and contact information.
7. Indicate the proposed compensation rate and fee structure for the described services and provide the price of each component including optional services.

VIII. FORMAT AND DELIVERY OF RESPONSE

Proposals will be received through 5:00 p.m. on May 24, 2020. Only one (1) electronic copy is required to be submitted via Planet Bids:

- A. **Proposal Submittals:** All proposals must be electronically submitted through PlanetBids' Bidder Portal, accessed through the City of Montebello's official website at <http://www.cityofmontebello.com/rfp-bids/bid-opportunities.html>. All Prospective Proposers must register to bid through the PlanetBids Vendor Portal found on the

City of Montebello's website at the link provided above.

There is no fee to register and bid on this Request for Proposals.

Questions during the solicitation period shall be submitted through Planet Bids or by email, and may be addressed to:

City of Montebello
Human Resources
Nicole Mooshagian, Senior Human Resources Analyst
nmooshagian@cityofmontebello.com

IX. 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 Senior HR Analyst, Nicole Mooshagian, 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 Senior Human Resources Analyst, Nicole Mooshagian at 1600 W. Beverly Blvd., Montebello, CA 90640 or via e-mail at nmooshagian@cityofmontebello.com.

X. 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**.

XI. Review and Selection Criteria

City staff will evaluate the materials provided in response to the Request for Proposal, which shall be evaluated on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance. Therefore, the contract for professional services need not be awarded to the lowest responsible bidder; however, cost may be considered as one factor. Specifically proposals will be evaluated utilizing the following criteria:

1. Understanding of the scope of work and the overall classification and compensation study goals including Consultant's strategy for carrying out the needed work tasks to meet the goals.
2. Skills and experience of assigned personnel, availability of staff; experience and performance of Consultant on similar studies.

3. Consultant's expertise and ability to successfully handle communication with City staff relative to all phases of the process.
4. The present workload of the consultant and their ability to meet the proposed schedule.
5. Clarity of presentation and content of the responses to this request. Elaborate or costly submissions are not required.
6. Record of performance, including results of reference checks.
7. Proposed plan for completing the work in a timely and professional manner.
8. Cost of proposal.
9. Oral presentation, if applicable. An oral presentation by the proposers in final contention for award of a Professional Services Agreement may be required as a regular part of the bid process. The purpose of the oral presentation would be twofold: First, to allow the proposer to demonstrate capabilities of the firm and to clarify proposer's responses to the RFP; and second, to allow City staff to meet the proposer's key personnel who would be assigned to the project. Attendance at such a presentation shall be at the proposer's expense.

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.

XII. 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.

XIII. 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.

XIV. 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).

XV. 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.

XVI. 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.

XVII. Price Changes

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

XVIII. 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.

XIX. 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 May 24, 2020. 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.

XX. 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.

XXI. 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.

XXII. 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
Human Resources Department
1600 W. Beverly Boulevard
Montebello, CA 90640

**EXHIBIT A
AFFIDAVIT OF NON-COLLUSION**

AFFIDAVIT OF NON-COLLUSION BY CONTRACTOR

STATE OF CALIFORNIA)

)

ss COUNTY OF LOS ANGELES)

, being first duly sworn deposes and says that he/she is

(Insert "Sole Owner", "Partner", "President", "Secretary", or other proper title)

of _____

(Insert name of bidder)

who submits herewith to the City of Montebello a proposal;

That all statements of fact in such proposal are true;

That such proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;

That such proposal is genuine and not collusive or sham;

That said bidder has not, directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the City of Montebello, or of any other bidder or anyone else interested in the proposed contract; and further

That prior to the public opening and reading of proposals, said bidder:

- a. Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal;

- b. Did not directly or indirectly, collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw his proposal;
- c. Did not, in any manner, directly or indirectly seek by agreement, communication or conference with anyone to raise or fix the proposal price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of his proposal price, or of that of anyone else;
- d. Did not, directly or indirectly, submit his proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of individuals, except the City of Montebello, or to any person or persons who have a partnership or other financial interest with said bidder in his business.

I certify under penalty of perjury under the laws of the State of California that the above information is correct

By: _____ Title: _____
_____ Date: _____

**EXHIBIT B
PROFESSIONAL SERVICES AGREEMENT**

CITY OF MONTEBELLO

PROFESSIONAL SERVICES AGREEMENT NO.

BY AND BETWEEN

CITY OF MONTEBELLO

AND

[CONSULTANT NAME]

CONSULTANTS

THIS AGREEMENT (“Agreement”) is made and entered into on _____, 20__, by the CITY OF MONTEBELLO, a municipal corporation (hereinafter referred to as “CITY”) and [NAME OF CONSULTANT] (hereinafter referred to as “CONSULTANT”). CITY and CONSULTANT are sometimes referred to herein individual as a “Party,” and jointly as the “Parties.”

RECITALS

WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to City to _____, as more fully described herein; and

WHEREAS, CONSULTANT represents the degree of specialized expertise contemplated within California Government Code, Section 37103, and is qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees; and

WHEREAS, no official or employee of CITY has a financial interest, within the provisions of Sections 1090 – 1092 of the California Government Code, in the subject matter of this Agreement; and

DELETE THE FOLLOWING “WHEREAS” PARAGRAPH IF PSA AWARDED WITHOUT RFP PROCESS

WHEREAS, CONSULTANT responded to CITY’s Request for Proposals dated [DATE] (RFP No. [X]), as such is set forth fully in **Exhibit “A”** hereto and incorporated fully herein by this reference (hereinafter “Consultant Proposal”).

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. CONSULTANT shall provide to CITY those services that are set forth fully in the Scope of Services, as such is set forth fully in **Exhibit "A"** hereto and incorporated fully herein by this reference (hereinafter "Professional Services").

B. CONSULTANT shall complete the Scope of Services within the time set forth in the Schedule of Performance, as such is set forth in **Exhibit "B"** hereto and incorporated fully herein by this reference.

B. CONSULTANT shall be compensated a sum not-to-exceed (the "Maximum Compensation") for performance of the Professional Services as set forth in the Schedule of Compensation attached hereto as **Exhibit "C"** and incorporated fully herein by this reference ("Compensation"). CONSULTANT shall provide an itemized billing statement to CITY each month for Professional Services performed. CONSULTANT shall not incur fees or costs which exceed the Maximum Compensation without the prior written consent of CITY.

C. CITY will be invoiced at the end of the first billing period following commencement of work and at the end of each billing period thereafter. Payment in full of an invoice must be received by CONSULTANT within thirty (30) days of the date of such invoice.

D. Work performed shall be deemed approved and accepted by CITY as and when invoiced unless CITY objects within fifteen (15) days of invoice date by written notice specifically stating the details in which CITY believes such work is incomplete or defective, and the invoice amount(s) in dispute. CITY shall pay undisputed amounts as provided for in the preceding paragraph.

E. Failure of CITY to submit full payment of an invoice within thirty (30) days of the date thereof subjects this agreement and the work herein contemplated to suspension or termination at CONSULTANT's discretion.

SECTION 2. TERM.

This Agreement shall commence upon the date the last of the Parties executes this Agreement herein below ("Effective Date"), and shall terminate upon completion of the Scope of Services set forth herein, unless terminated sooner as provided in Section 7 herein.

[OPTIONAL LANGUAGE IF EXTENSIONS PERMITTED]: Thereafter, this Agreement may be extended for a maximum of [SPELL OUT NUMBER] (#) successive one (1) year periods. Such extensions, if any, will be evidenced by a written amendment to this Agreement].

The Parties agree that Sections 4(B), 9, 10, 11, 13, 16, 17, 18, and 19 shall survive for three (3) years following the expiration or termination of this Agreement.

SECTION 3. PERFORMANCE.

A. CONSULTANT shall at all times, faithfully, competently, and to the best of its ability, experience and talent, perform all tasks described herein.

B. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by companies 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 written approval, additional individuals, consultants or subcontractors to assist in the completion of services as herein defined. Compensation for additional individuals, consultants or subcontractors shall be the sole and exclusive responsibility of CONSULTANT.

E. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three (3) years, unless otherwise provided for in **Exhibit "A."** Upon CITY providing twenty-four (24) hours advanced prior notice, CONSULTANT shall make all records, invoices, time cards, cost control sheets and other records maintained by CONSULTANT in connection with this Agreement available during CONSULTANT's regular working hours to CITY for review and audit by CITY.

F. All reports, documents or other written material developed by CONSULTANT in the performance of this Agreement shall be and remain the property of CITY without restriction or limitation upon its use or dissemination by CITY. Such material shall not be the subject of a copyright application by CONSULTANT. Any alteration or reuse by CITY of any such materials on any project other than the Project shall be at CITY's sole risk, unless CITY compensates CONSULTANT for such reuse.

SECTION 4. WORK PRODUCT.

A. CONSULTANT hereby agrees that all work produced pursuant to this Agreement, and provided to CITY during and upon completion of this Agreement, shall be the property of CITY, and ownership of said work product shall be retained by CITY. CONSULTANT may take and retain copies of such written products as desired.

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 by CONSULTANT without prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. All such written products shall be returned to 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.

C. Documents are provided in CONSULTANT's standard software formats. CITY recognizes that electronic or magnetic data and its transmission can be easily damaged, may not be compatible with CITY's software formats and systems, may develop inaccuracies during conversion or use, and may contain viruses or other destructive programs, and that software and hardware operating systems may become obsolete. As a condition of delivery of electronic or magnetic data, CITY agrees to defend indemnify and hold CONSULTANT, its sub-contractors, agents and employees harmless from and against all claims, loss, damages, expense and liability arising from or connected with its use, reuse, misuse, modification or misinterpretation. In no event shall CONSULTANT be liable for any loss of use, profit or any other damage.

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 CITY's City Administrator ("City Administrator").

SECTION 6. CITY SUPERVISION.

The City Administrator shall have the right of general supervision of all work performed by CONSULTANT and shall be CITY's 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 Administrator.

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 contract shall at the option of CITY cease and terminate upon the giving of like notice. In the event of any such termination for default by CONSULTANT, CITY may take over the work and prosecute the same to completion by contract or otherwise for the account and at the expense of CONSULTANT. CONSULTANT and his sureties shall be liable to 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. CITY shall have the option, at its sole discretion and without cause, to terminate this Agreement in whole, or in part, after giving written notice to CONSULTANT at least five (5) business days before the termination is to be effective. Upon the termination of this Agreement as provided herein, 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 CONSULTANT prior to the date of termination; (2) that CONSULTANT provides CITY with adequate proof that CONSULTANT incurred the costs, and is unable to be seek a refund for such costs; and (3) such costs were within the scope of work or services to be performed under this Agreement. 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 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 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 CONTRACTOR.

A. CONSULTANT is and shall, at all times, remain as to CITY a wholly independent contractor. Neither CITY nor any of its elected officials, officers, employees or agents shall have control over the conduct of CONSULTANT except as expressly set forth in this Agreement. 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 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 subcontractors 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 subcontractors with workers' compensation insurance or any other insurance.

SECTION 11. PERS ELIGIBILITY INDEMNITY.

A. In the event that CONSULTANT or any employee, agent, or subcontractor 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 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 subcontractors, 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 subcontractors 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. CITY, and its appointed or elected officers, employees, or agents, shall not be liable at law or in equity occasioned by failure of CONSULTANT to comply with this section.

SECTION 13. INDEMNIFICATION.

CONSULTANT agrees to, and shall defend, indemnify, protect and hold harmless, 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 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 CITY.

SECTION 14. INSURANCE COVERAGE.

During the Term of this Agreement, CONSULTANT shall carry, maintain, and keep in full force and effect all of the following minimum scope of 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):** Broad-form, Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including premise-operations, products-completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury, and advertising injury, with limits no less than **Two Million Dollars and Zero Cents** (\$2,000,000), combined single limits, per occurrence. If a general aggregate limit applies, the limit shall be twice the required occurrence limit.

- **Business Automobile Liability Insurance:** For owned vehicles, hired, and non-owned vehicles, 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 **One Million Dollars and Zero Cents** (\$1,000,000.00) 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 **One Million Dollars and Zero Cents** (\$1,000,000.00) per accident for bodily injury or disease. CONSULTANT agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against CITY, its elected and appointed boards, officers, officials, employees, agents and volunteers for losses arising from work performed by CONSULTANT for CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

By executing this Agreement, CONSULTANT further certifies as follows:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work contemplated herein.

- **Professional Errors and Omissions (E&O) Liability** insurance appropriate to the CONSULTANT's profession, with limit no less than **Two Million Dollars and Zero Cents** (\$2,000,000.00) per occurrence or claim, **Two Million Dollars and Zero Cents** (\$2,000,000.00) aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retroactivity date shall be prior to the start of work set forth herein, CONSULTANT shall obtain and maintain said E&O liability insurance during the Term of this Agreement and for five (5) years after completion of work hereunder. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement, CONSULTANT shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the work.

If CONSULTANT maintains higher limits than the minimums shown above, CITY requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CITY.

CONTACTOR shall require each of its subcontractors, 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, with a current rating of at least A:VII in the latest edition of Best's Insurance Guide, and approved by CITY.

Each insurance policy required herein shall state that coverage shall not be canceled, except after providing CITY thirty (30) days' (or ten [10] calendar days' for non-payment) prior written notice. 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 CITY, its officers, agents, employees and volunteers 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 (2) 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 elected and appointed boards, officers, officials, 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 (30) 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.

Except for professional liability and workers' compensation policies, the policies herein are primary and non-contributing with any insurance that may be carried by 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 subcontractors, from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not CITY has received a waiver if subrogation endorsement from the insurer.

Coverage not affected. Any failure to comply with the reporting provisions of the policies contemplated herein, shall not affect coverage provided to CITY, its elected and appointed boards, officers, officials, employees, agents and volunteers.

Coverage applies separately. CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by 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.

CITY, its officers and employees shall not be responsible for any claims in law or in equity occasioned by failure of CONSULTANT to comply with this section.

CITY reserves the right to modify these requirements, including limits, based on the nature of risk, prior experience, insurer, coverage, or other special circumstances.

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-contractor, 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-contractors. 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. If any action at law or in equity is brought to enforce this Agreement or because of alleged dispute, breach, default or misrepresentation in connection with the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, expert fees, costs and necessary disbursements incurred in that action or proceeding, in addition to such other relief as may be sought and awarded. 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 litigation is reasonably required 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 and costs in addition to any other relief to which it may be entitled.

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.

G. 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.

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:

CITY ADMINISTRATOR
City of Montebello
1600 West Beverly Boulevard
Montebello, California 90640

CONSULTANT

SECTION 22. NON-DISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYER.

In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, sub-contractor, 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-contractor 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 and its officers, employees, associates and subconsultants, if any, shall comply with all California conflict of interest statutes applicable to Consultant's Services under this Agreement, including, but not limited to, the Political Reform Act (Gov. Code, § 81000 et seq.) and Government Code Section 1090. CONSULTANT further 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 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 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

René Bobadilla
City Manager

Name and Title

Dated: _____

Dated: _____

ATTEST:

Irma Barajas
City Clerk

APPROVED AS TO FORM

Arnold M. Alvarez-Glasman
City Attorney

Exhibit "A"
Scope of Services

Exhibit "B"
Schedule of Performance

Exhibit "C"
Schedule of Compensation

EXHIBIT D TO CONTRACT

EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS

- A. Contractor certifies and represents that, during the performance of this Agreement, the contractor and each subcontractor shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religious creed, color, national origin, ancestry, handicap, sex, or age. Contractor further certifies that it will not maintain any segregated facilities.
- B. Contractor agrees that it shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of Contractor, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, handicap, sex or age.
- C. Contractor agrees that it shall, if requested to do so by the City, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their membership in a protected class.
- D. Contractor agrees to provide the City with access to, and, if requested to do so by City, through its awarding authority, provide copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- E. Nothing contained in this Agreement shall be construed in any manner as to require or permit any act which is prohibited by law.

PROFESSIONAL SERVICES AGREEMENT

**CITY OF MONTEBELLO PROFESSIONAL SERVICES
AGREEMENT NO.
BY AND BETWEEN CITY OF MONTEBELLO
AND
PUBLIC SECTOR PERSONNEL CONSULTANTS**

THIS AGREEMENT ("Agreement") is made and entered into on _____, 20__, by the CITY OF MONTEBELLO, a municipal corporation (hereinafter referred to as "CITY") and [NAME OF CONSULTANT] (hereinafter referred to as "CONSULTANT"). CITY and CONSULTANT are sometimes referred to herein individual as a "Party," and jointly as the "Parties."

RECITALS

WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to City to _____, as more fully described herein; and

WHEREAS, CONSULTANT represents the degree of specialized expertise contemplated within California Government Code, Section 37103, and is qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees; and

WHEREAS, no official or employee of CITY has a financial interest, within the provisions of Sections 1090 – 1092 of the California Government Code, in the subject matter of this Agreement; and

DELETE THE FOLLOWING "WHEREAS" PARAGRAPH IF PSA AWARDED WITHOUT RFP PROCESS

WHEREAS, CONSULTANT responded to CITY's Request for Proposals dated [DATE] (RFP No. [X]), as such is set forth fully in **Exhibit "A"** hereto and incorporated fully herein by this reference (hereinafter "Consultant Proposal").

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. CONSULTANT shall provide to CITY those services that are set forth fully in the Scope of Services, as such is set forth fully in **Exhibit "A"** hereto and incorporated fully herein by this reference (hereinafter "Professional Services").

B. CONSULTANT shall complete the Scope of Services within the time set forth in the Schedule of Performance, as such is set forth in **Exhibit "B"** hereto and incorporated fully herein by this reference.

B. CONSULTANT shall be compensated a sum not-to-exceed (the "Maximum Compensation") for performance of the Professional Services as set forth in the Schedule of Compensation attached hereto as **Exhibit "C"** and incorporated fully herein by this reference ("Compensation"). CONSULTANT shall provide an itemized billing statement to CITY each month for Professional Services performed. CONSULTANT shall not incur fees or costs which exceed the Maximum Compensation without the prior written consent of CITY.

C. CITY will be invoiced at the end of the first billing period following commencement of work and at the end of each billing period thereafter. Payment in full of an invoice must be received by CONSULTANT within thirty (30) days of the date of such invoice.

D. Work performed shall be deemed approved and accepted by CITY as and when invoiced unless CITY objects within fifteen (15) days of invoice date by written notice specifically stating the details in which CITY believes such work is incomplete or defective, and the invoice amount(s) in dispute. CITY shall pay undisputed amounts as provided for in the preceding paragraph.

E. Failure of CITY to submit full payment of an invoice within thirty (30) days of the date thereof subjects this agreement and the work herein contemplated to suspension or termination at CONSULTANT's discretion.

SECTION 2. TERM.

This Agreement shall commence upon the date the last of the Parties executes this Agreement herein below ("Effective Date"), and shall terminate upon completion of the Scope of Services set forth herein, unless terminated sooner as provided in Section 7 herein.

[OPTIONAL LANGUAGE IF EXTENSIONS PERMITTED]: Thereafter, this Agreement may be extended for a maximum of [SPELL OUT NUMBER] (#) successive one (1) year periods. Such extensions, if any, will be evidenced by a written amendment to this Agreement].

The Parties agree that Sections 4(B), 9, 10, 11, 13, 16, 17, 18, and 19 shall survive for three (3) years following the expiration or termination of this Agreement.

SECTION 3. PERFORMANCE.

A. CONSULTANT shall at all times, faithfully, competently, and to the best of its ability, experience and talent, perform all tasks described herein.

B. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by companies 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 written approval, additional individuals, consultants or subcontractors to assist in the completion of services as herein defined. Compensation for additional individuals, consultants or subcontractors shall be the sole and exclusive responsibility of CONSULTANT.

E. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three (3) years, unless otherwise provided for in **Exhibit "A."** Upon CITY providing twenty-four (24) hours advanced prior notice, CONSULTANT shall make all records, invoices, time cards, cost control sheets and other records maintained by CONSULTANT in connection with this Agreement available during CONSULTANT's regular working hours to CITY for review and audit by CITY.

F. All reports, documents or other written material developed by CONSULTANT in the performance of this Agreement shall be and remain the property of CITY without restriction or limitation upon its use or dissemination by CITY. Such material shall not be the subject of a copyright application by CONSULTANT. Any alteration or reuse by CITY of any such materials on any project other than the Project shall be at CITY's sole risk, unless CITY compensates CONSULTANT for such reuse.

SECTION 4. WORK PRODUCT.

A. CONSULTANT hereby agrees that all work produced pursuant to this Agreement, and provided to CITY during and upon completion of this Agreement, shall be the property of CITY, and ownership of said work product shall be retained by CITY. CONSULTANT may take and retain copies of such written products as desired.

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 by CONSULTANT without prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. All such written products shall be returned to 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.

C. Documents are provided in CONSULTANT's standard software formats. CITY recognizes that electronic or magnetic data and its transmission can be easily damaged, may not be compatible with CITY's software formats and systems, may develop inaccuracies during conversion or use, and may contain viruses or other destructive programs, and that software and hardware operating systems may become obsolete. As a condition of delivery of electronic or magnetic data, CITY agrees to defend indemnify and hold CONSULTANT, its sub-contractors, agents and employees harmless from and against all claims, loss, damages, expense and liability arising from or connected with its use, reuse, misuse, modification or misinterpretation. In no event shall CONSULTANT be liable for any loss of use, profit or any other damage.

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 CITY's City Administrator ("City Administrator").

SECTION 6. CITY SUPERVISION.

The City Administrator shall have the right of general supervision of all work performed by CONSULTANT and shall be CITY's 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 Administrator.

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 contract shall at the option of CITY cease and terminate upon the giving of like notice. In the event of any such termination for default by CONSULTANT, CITY may take over the work and prosecute the same to completion by contract or otherwise for the account and at the expense of CONSULTANT. CONSULTANT and his sureties shall be liable to 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. CITY shall have the option, at its sole discretion and without cause, to terminate this Agreement in whole, or in part, after giving written notice to CONSULTANT at least five (5) business days before the termination is to be effective. Upon the termination of this Agreement as provided herein, 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 CONSULTANT prior to the date of termination; (2) that CONSULTANT provides CITY with adequate proof that CONSULTANT incurred the costs, and is unable to be seek a refund for such costs; and (3) such costs were within the scope of work or services to be performed under this Agreement. 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 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 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 CONTRACTOR.

A. CONSULTANT is and shall, at all times, remain as to CITY a wholly independent contractor. Neither CITY nor any of its elected officials, officers, employees or agents shall have control over the conduct of CONSULTANT except as expressly set forth in this Agreement. 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 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 subcontractors 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 subcontractors with workers' compensation insurance or any other insurance.

SECTION 11. PERS ELIGIBILITY INDEMNITY.

A. In the event that CONSULTANT or any employee, agent, or subcontractor 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 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 subcontractors, 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 subcontractors 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. CITY, and its appointed or elected officers, employees, or agents, shall not be liable at law or in equity occasioned by failure of CONSULTANT to comply with this section.

SECTION 13. INDEMNIFICATION.

CONSULTANT agrees to, and shall defend, indemnify, protect and hold harmless, 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 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 CITY.

SECTION 14. INSURANCE COVERAGE.

During the Term of this Agreement, CONSULTANT shall carry, maintain, and keep in full force and effect all of the following minimum scope of 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):** Broad-form, Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including premise-operations, products-completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury, and advertising injury, with limits no less than **Two Million Dollars and Zero Cents** (\$2,000,000), combined single limits, per occurrence. If a general aggregate limit applies, the limit shall be twice the required occurrence limit.

- **Business Automobile Liability Insurance:** For owned vehicles, hired, and non-owned vehicles, 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 **One Million Dollars and Zero Cents** (\$1,000,000.00) 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 **One Million Dollars and Zero Cents** (\$1,000,000.00) per accident for bodily injury or disease. CONSULTANT agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against CITY, its elected and appointed boards, officers, officials, employees, agents and volunteers for losses arising from work performed by CONSULTANT for CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

By executing this Agreement, CONSULTANT further certifies as follows:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work contemplated herein.

- **Professional Errors and Omissions (E&O) Liability** insurance appropriate to the CONSULTANT's profession, with limit no less than **Two Million Dollars and Zero Cents** (\$2,000,000.00) per occurrence or claim, **Two Million Dollars and Zero Cents** (\$2,000,000.00) aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retroactivity date shall be prior to the start of work set forth herein, CONSULTANT shall obtain and maintain said E&O liability insurance during the Term of this Agreement and for five (5) years after completion of work hereunder. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement, CONSULTANT shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the work.

If CONSULTANT maintains higher limits than the minimums shown above, CITY requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CITY.

CONTACTOR shall require each of its subcontractors, 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, with a current rating of at least A:VII in the latest edition of Best's Insurance Guide, and approved by CITY.

Each insurance policy required herein shall state that coverage shall not be canceled, except after providing CITY thirty (30) days' (or ten [10] calendar days' for non-payment) prior written notice. 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 CITY, its officers, agents, employees and volunteers 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 (2) 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 elected and appointed boards, officers, officials, 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 (30) 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.

Except for professional liability and workers' compensation policies, the policies herein are primary and non-contributing with any insurance that may be carried by 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 subcontractors, from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not CITY has received a waiver if subrogation endorsement from the insurer.

Coverage not affected. Any failure to comply with the reporting provisions of the policies contemplated herein, shall not affect coverage provided to CITY, its elected and appointed boards, officers, officials, employees, agents and volunteers.

Coverage applies separately. CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by 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.

CITY, its officers and employees shall not be responsible for any claims in law or in equity occasioned by failure of CONSULTANT to comply with this section.

CITY reserves the right to modify these requirements, including limits, based on the nature of risk, prior experience, insurer, coverage, or other special circumstances.

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-contractor, 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-contractors. 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. If any action at law or in equity is brought to enforce this Agreement or because of alleged dispute, breach, default or misrepresentation in connection with the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, expert fees, costs and necessary disbursements incurred in that action or proceeding, in addition to such other relief as may be sought and awarded. 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 litigation is reasonably required 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 and costs in addition to any other relief to which it may be entitled.

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.

G. 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.

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:

CITY ADMINISTRATOR
City of Montebello
1600 West Beverly Boulevard
Montebello, California 90640

CONSULTANT

SECTION 22. NON-DISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYER.

In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, sub-contractor, 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-contractor 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 and its officers, employees, associates and subconsultants, if any, shall comply with all California conflict of interest statutes applicable to Consultant's Services under this Agreement, including, but not limited to, the Political Reform Act (Gov. Code, § 81000 et seq.) and Government Code Section 1090. CONSULTANT further 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 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 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

René Bobadilla
City Manager

Name and Title

Dated: _____

Dated: _____

ATTEST:

Irma Barajas
City Clerk

APPROVED AS TO FORM

Arnold M. Alvarez-Glasman
City Attorney

Exhibit "A"
Scope of Services

DRAFT

Exhibit "B"
Schedule of Performance

DRAFT

Exhibit "C"
Schedule of Compensation

DRAFT

EXHIBIT D TO CONTRACT

EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS

- A. Contractor certifies and represents that, during the performance of this Agreement, the contractor and each subcontractor shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religious creed, color, national origin, ancestry, handicap, sex, or age. Contractor further certifies that it will not maintain any segregated facilities.
- B. Contractor agrees that it shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of Contractor, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, handicap, sex or age.
- C. Contractor agrees that it shall, if requested to do so by the City, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their membership in a protected class.
- D. Contractor agrees to provide the City with access to, and, if requested to do so by City, through its awarding authority, provide copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- E. Nothing contained in this Agreement shall be construed in any manner as to require or permit any act which is prohibited by law.

PROPOSAL TO CONDUCT A CITYWIDE CLASSIFICATION AND TOTAL COMPENSATION STUDY

FOR THE

CITY OF MONTEBELLO

JUNE 2020

PREPARED BY

Matthew Weatherly, President
matt@pspc.us / 888.522.7772



**PROPOSAL TO CONDUCT A CITYWIDE
CLASSIFICATION AND TOTAL COMPENSATION STUDY
FOR THE CITY OF MONTEBELLO**

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Please visit www.pspc.us for work samples and additional resources

PUBLIC SECTOR PERSONNEL CONSULTANTS

**PROPOSAL TO CONDUCT A CITYWIDE
CLASSIFICATION AND TOTAL COMPENSATION STUDY
FOR THE CITY OF MONTEBELLO**

COVER LETTER

INCLUDING AFFIDAVIT OF NON-COLLUSION

PUBLIC SECTOR PERSONNEL CONSULTANTS



June 12, 2020

Ms. Nicole Mooshagian
Senior HR Analyst
City of Montebello
1600 W. Beverly Boulevard
Montebello, CA 90640

Dear Selection Team,

Pursuant to your request, we are pleased to provide you with a proposal and qualifications to assist the City with a classification and compensation study. We specialize in these services, and have implemented classification and compensation plans for more than 1,100 public employers nationwide, including more than 400 municipal employers and over 100 public employers in California.

Current and recently completed projects include the Cities of Riverside (SEIU), Colton, San Bernardino, Santa Ana (SEIU), Bell Gardens, Southgate, Salinas, Monterey, Upland, Azusa, San Juan Capistrano, and Aliso Viejo.

We believe our firm is uniquely qualified for this study. We will utilize only full-time, certified Human Resources professionals for the study, with combined greater than 100 years of experience in the fields of human resources, compensation, and labor relations.

Our proposed approach will be customized to meet the City's needs. We are confident that our extensive public employers classification and compensation experience, knowledge of public employers in California, large specialized and highly qualified full time staff, proven methods, unique **EZ COMP™** application to ensure your self-sufficiency, and one year of implementation support and assistance at no cost, will achieve all of the City's objectives for an important project of this nature.

In light of COVID-19 restrictions, we have several flexible, online and virtual options to ensure high quality results, employee participation, and overall communication without sacrificing quality or consistency.

Our proposal remains valid for no less than 180 days, and we take no exceptions to any conditions or requirements stated in the RFP.

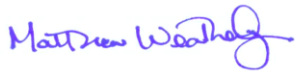
Thank you for your interest in our firm's services. If we can provide any additional information, such as samples of recent similar studies, or if you would like to visit further or in person about the City's project needs, please contact me at any time.

Sincerely,

Matthew Weatherly, President
(888) 522-7772
matt@pspc.us

- a. profit or cost element of his proposal price, or of that of anyone else;
- b. Did not, directly or indirectly, submit his proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of individuals, except the City of Montebello, or to any person or persons who have a partnership or other financial interest with said bidder in his business.

I certify under penalty of perjury under the laws of the State of California that the above information is correct



By: _____ Title: President

Date: June 12, 2020

**PROPOSAL TO CONDUCT A CITYWIDE
CLASSIFICATION AND TOTAL COMPENSATION STUDY
FOR THE CITY OF MONTEBELLO**

QUALIFICATIONS OF OUR FIRM AND STAFF

*HISTORY AND FACTS ABOUT OUR FIRM
RECENT EMPLOYERS SERVED
TEAM ORG CHART AND RESUMES*

PUBLIC SECTOR PERSONNEL CONSULTANTS

HISTORY AND FACTS ABOUT OUR FIRM

- **HISTORY OF OUR FIRM**

Public Sector Personnel Consultants (PSPC) originated in 1972 with the Public Sector Group of the international human resources consulting firm of Hay Associates. **PSPC** was established as an independent firm in 1982. We are a single-owner, debt-free subchapter-S corporation.

- **REGIONAL STAFF**

We have regional offices or affiliates in Los Angeles, CA, San Diego, CA, Austin, TX, Dallas, TX, Santa Fe, NM, Chicago, IL, Denver, CO, Kansas City, MO, St. Paul, MN, Seattle, WA, and Tempe, AZ.

- **SPECIALIZED IN COMPENSATION SERVICES**

We are "super-specialists" in compensation, providing services in job analysis, position classification, job content evaluation, compensation, and directly related services. **Over 98% of our classification and compensation studies have been successfully implemented by our clients.**

- **SPECIALIZED IN PUBLIC SECTOR CLIENTS**

We provide services exclusively to public sector employers including municipalities, counties, utility districts, library districts, special districts, state governments, housing and redevelopment agencies, airport authorities, school districts, higher education, and tribal governments.

- **SPECIALIZED COMPENSATION STAFF**

Our staff is comprised of eight (8) full time and an additional five (5) part time senior human resources professionals with very extensive experience as compensation managers and consultants for public employers. Our staff has more than 100 years of combined experience working for and consulting to public sector employers.

- **OVER 1,100 PUBLIC EMPLOYERS SERVED**

Our staff members have provided compensation, human resources, training and related consulting services to more than 1,100 public and 200 private employers throughout the U.S.

- **AMERICAN COMPENSATION ASSOCIATION PARTICIPATION (ACA) (NOW WORLDATEWORK)**

Our consultants are active members of ACA, including serving as instructors for the ACA certification courses.

- **SPECIALIZED COMPENSATION AND RELATED RESOURCES**

We utilize our **EZ COMP™** salary survey and plan program, modified **FES** point-factor job evaluation system, **AEP™** performance evaluation plan, and **SNAP™** staffing needs analysis program.

- **FIRST YEAR IMPLEMENTATION WARRANTY**

We provide our clients with extensive implementation support during the first year, and we will analyze, evaluate, classify, and provide a salary range recommendation for any new or changed position or entire job class, at no additional cost.

RECENT CALIFORNIA EMPLOYERS SERVED BY MEMBERS OF OUR STAFF

Apple Valley, Town of
Bell Gardens, City of
Banning, City of
Capitol Area Development Authority
Colton, City of, CA
Commerce, City of
Culver City, City of
Indian Wells, City of
Inglewood, City of
Monterey/Salinas Transit
Monterey, City of
Riverside, City of

Sacramento Housing Authority
Salinas, City of
San Bernardino Assoc'n of Governments
San Clemente, City of
San Juan Capistrano, City of
Santa Ana, City of (SEIU)
Santa Cruz Port District
South Gate, City of
Upland, City of
Vernon, City of
Victorville, City of
Westlake Village, City of

California Active 2020: Riverside, Colton, San Bernardino

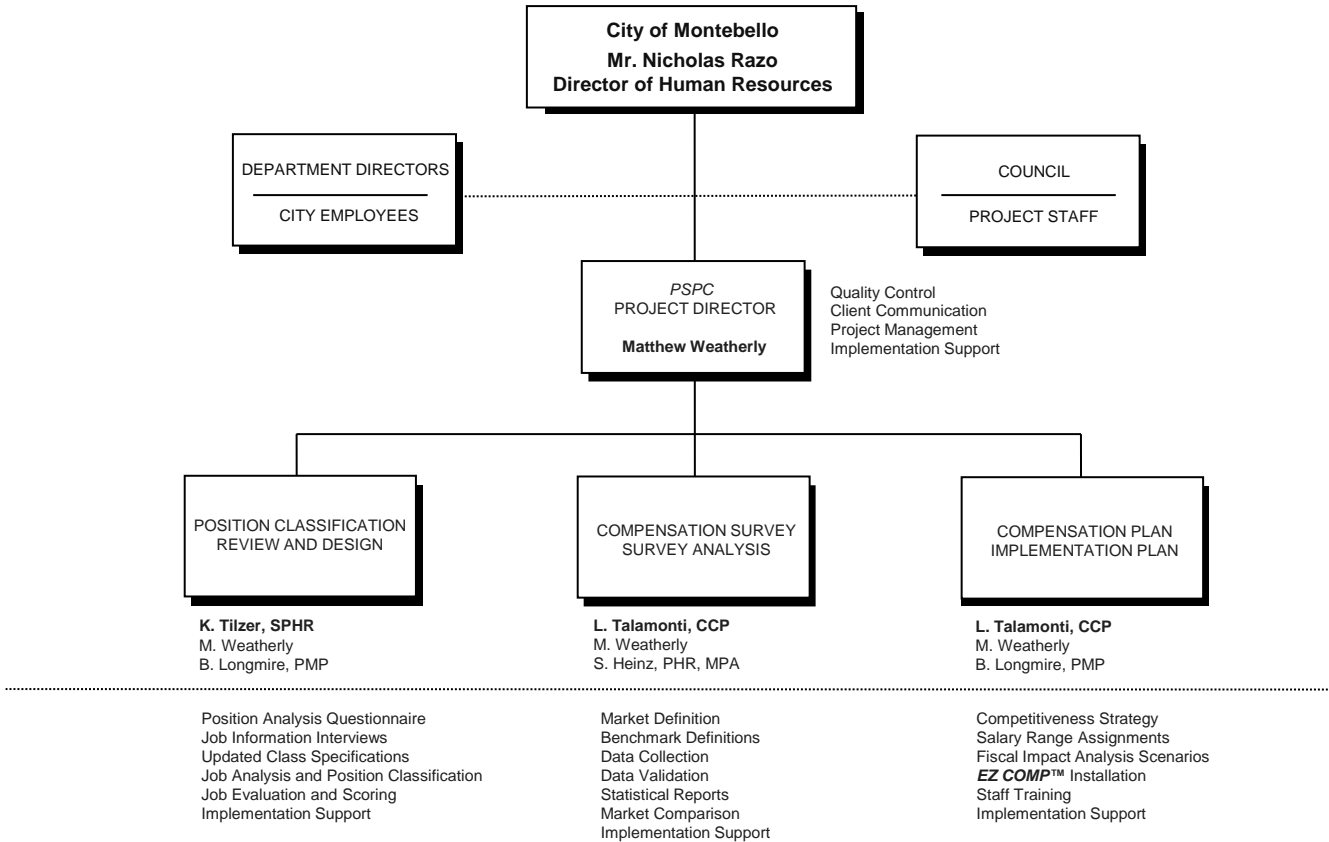
ADDITIONAL RECENT MUNICIPAL EMPLOYERS SERVED BY OUR STAFF

Albuquerque, City of, NM
Aliso Viejo, City of, CA
Allen, City of, TX
Benbrook, City of, TX
Bothell, City of, WA
Bozeman, City of, MT
Carrollton, City of, TX
Casa Grande, City of, AZ
Centralia, City of, WA
Culver City, City of, CA
Dallas, City of, TX
Denton, City of, TX
Edmonds, City of, WA
El Paso, City of, TX
Fairview, Town of, TX
Fort Worth, City of, TX
Frisco, City of, TX
Georgetown, City of, TX

Grand Forks, City of, ND
Grand Prairie, City of, TX
Grapevine, City of, TX
Haltom City, City of, TX
Indian Wells, City of, CA
Kerrville, City of, TX
Killeen, City of, TX
Lamar, City of, CO
Las Cruces, City of, NM
Lisle, Village of, IL
Maricopa, City of, AZ
Minot, City of, ND
Mountain Village, Town of, CO
Oak Brook, Village of, IL
Odessa, City of, TX
Pearland, City of, TX
Plano, City of, TX
Prosper, Town of, TX

Rio Rancho, City of, NM
Rockwall, City of, TX
Roswell, City of, NM
Rowlett, City of, TX
Salinas, City of, CA
San Clemente, City of, CA
San Juan Capistrano, City of, CA
Santa Ana, City of, CA
Scottsdale, City of, AZ
Southgate, City of, CA
Tomball, City of, TX
Upland, City of, CA
Vernon, City of, CA
Victorville, City of, CA
Westlake Village, CA
Winslow, City of, AZ
Woodlands Township, TX
Yuma, City of, AZ

**CITY OF MONTEBELLO
CLASSIFICATION AND COMPENSATION STUDY
PROJECT TEAM ORGANIZATION CHART**



MATTHEW E. WEATHERLY, PRESIDENT, PROJECT LEADER

Mr. Weatherly has over 15 years of experience as a human resources management professional and consultant, specializing in position classification, compensation, recruitment and selection. He has served as a Human Resources Manager with Employee Solutions, Inc. and Staffing Consultant with Initial Staffing Services.

He has completed projects in staff development, recruitment, selection, job descriptions, salary survey, and salary plan development. Among his current and recently completed consulting projects are those for:

- | | | |
|-----------------------------------|---------------------------------|--------------------------------------|
| <i>Banning, City of, CA</i> | <i>Monterey, City of, CA</i> | <i>Salinas, City of, CA</i> |
| <i>Big Bear Lake, City of, CA</i> | <i>North County Fire, CA</i> | <i>San Clemente, City of, CA</i> |
| <i>Commerce, City of, CA</i> | <i>Redwood City, City of CA</i> | <i>Scottsdale, City of, AZ</i> |
| <i>Inglewood, City of, CA</i> | <i>Rialto, City of, CA</i> | <i>Westlake Village, City of, CA</i> |

Mr. Weatherly holds a BS degree in Human Resources Management from Arizona State University. He has been a featured speaker at TMHRA and regional City Manager and HR meetings throughout the US.

ELIZABETH J. LOCURTO, CCP, VICE PRESIDENT

Ms. LoCurto has over 30 years of experience as a compensation manager and consultant for public and private employers, specializing in job analysis, salary surveys, and salary plan development. She has served as Compensation Research Associate for Hayes/Hill, Inc., Senior Compensation Analyst for AON Corporation, Compensation Manager for Loyola University, and Project Manager for the American Compensation Association.

She has conducted projects in job audits, job descriptions, salary surveys, compensation database management, compensation plan development, compensation training course development, and compensation trend research. Among her consulting projects are:

<i>Apple Valley, Town of, CA</i>	<i>Huntington Beach, City of, CA</i>	<i>Sacramento, City of, CA</i>
<i>California Family Health Council</i>	<i>Midland, City of, TX</i>	<i>Seaside, City of, CA</i>
<i>El Paso, City of, TX</i>	<i>Oakland, City of, CA</i>	<i>State Bar of Texas</i>
<i>Fresno, City of, CA</i>	<i>Pomona, City of, CA</i>	<i>Stockton, City of, CA</i>

Ms. LoCurto holds a BS degree in Business Administration from Arizona State University. She holds the Certified Compensation Professional (CCP) designation from the American Compensation Association.

KATHERINE TILZER, SPHR, VICE PRESIDENT

Ms. Tilzer has more than 15 years of experience as a human resources manager and consultant, specializing in employee relations, compensation, and recruitment. She has served as Personnel Manager for Laboratory Corporation of America, Director of Human Resources for Plaza Healthcare, Inc., and Director of Human Resources for American Baptist Homes.

<i>Azusa, City of, CA</i>	<i>Indian Wells, City of, CA</i>	<i>Sacramento County San Dist, CA</i>
<i>Castro Valley Sanitary Dist., CA</i>	<i>Lake Havasu City, AZ</i>	<i>San Bernardino Assn of Govt's, CA</i>
<i>Culver City, City of, CA</i>	<i>Monterey Transit Dist., CA</i>	<i>Victorville, City of, CA</i>
<i>Frisco, City of, TX</i>	<i>Pacific Grove, City of</i>	<i>Water Facilities Authority, CA</i>

She holds a BS degree in Management from the University of Phoenix, and certification as Senior Professional in Human Resources from the Society for Human Resources Management.

SAMUEL HEINZ, MPA, PHR

Mr. Heinz has conducted projects in job analysis, position classification, job evaluation, compensation surveys, and compensation plan development. Among his recent client projects are those for:

<i>Addison, Town of, TX</i>	<i>DeSoto, City of, TX</i>	<i>Prosper, Town of, TX</i>
<i>Apache Junction, City of, AZ</i>	<i>Galveston, City of, TX</i>	<i>Teton County, WY</i>
<i>Bismarck, City of, ND</i>	<i>Midland, City of, TX</i>	<i>The Colony, City of, TX</i>
<i>Carrollton, City of, TX</i>	<i>Odessa, City of, TX</i>	<i>Williston, City of, ND</i>

Mr. Heinz holds a MA degree in Public Administration from Texas Tech.

BOB LONGMIRE, PMP, PROJECT LEADER

Mr. Longmire has more than 10 years of project management experience and consulting for public employers, specializing in employee development, classification, and compensation. He has served as National Sales Director for Connexion Technologies and Brand Marketing Manager for Plink.

He has completed projects in job analysis, position classification, compensation surveys and plan development. Among her consulting projects are those for:

<i>Bell Gardens, City of, CA</i>	<i>Plano, City of, TX</i>	<i>Pitkin County, CO</i>
<i>Colton, City of, CA</i>	<i>Salinas, City of CA</i>	<i>San Bernardino, City of, CA</i>
<i>LaVerne, City of, CA</i>	<i>Greater Orlando Airport, FL</i>	<i>Santa Ana, City of, CA</i>
<i>Monterey, City of, CA</i>	<i>King County Library Systems, WA</i>	<i>Sarasota-Bradenton Airport, FL</i>

Mr. Longmire holds a BS degree in Administration from Colorado Christian University and designation as Project Management Professional from the Project Management Institute.

WAYNE BREDE

Mr. Brede has over 30 years of experience working for the Minnesota Department of Transportation as a Workforce Planning Manager and Staffing Services Manager, and has served as a succession planning and career ladder consultant for nearly 50 public and private employers.

He has conducted projects in workforce development, succession planning, job analysis, position classification, job evaluation, compensation surveys, compensation plan development, employee relations, and recruitment. Among his recent client projects are those for:

<i>El Paso County, TX</i>	<i>Hamilton County, TN</i>	<i>Red Lake Indian Reserv., MN</i>
<i>Fresno, City of, CA</i>	<i>Las Cruces, City of, NM</i>	<i>Rialto, City of, CA</i>
<i>Grand Forks, City of, ND</i>	<i>Minot, City of, ND</i>	<i>San Angelo, City of, TX</i>
<i>Great Falls, City of, MT</i>	<i>Northwest Tech College, MN</i>	<i>San Jose, City of, CA</i>

Mr. Brede holds a BA degree in Mass Communications from the University of Minnesota and holds certificates in Public Sector Personnel Management and Industrial Relations.

PUBLIC SECTOR PERSONNEL CONSULTANTS proposes to utilize only full time members of our firm to complete all of the project tasks and objectives. In order to maintain complete control of the project tasks and deadlines, we will not utilize subcontractors for the completion of the project.

**PROPOSAL TO CONDUCT A CITYWIDE
CLASSIFICATION AND TOTAL COMPENSATION STUDY
FOR THE CITY OF MONTEBELLO**

SCOPE: PROJECT APPROACH AND METHODOLOGY

*SUMMARY OF SERVICES FOR THE CITY
PROJECT SCOPE, APPROACH AND TIMELINE*

PUBLIC SECTOR PERSONNEL CONSULTANTS

SUMMARY OF SERVICES FOR THE CITY OF MONTEBELLO

PUBLIC SECTOR PERSONNEL CONSULTANTS (PSPC) proposes the following program of consulting services and implementation support to conduct a classification and compensation study.

Project Planning and Communication

1. Project planning and scheduling meeting with the City's Human Resources Staff and project designee(s)
2. Policy input and project direction meeting and briefing with Council, Human Resources and designee(s)
3. Project briefing presentation for all employees, Council, City officials, City's project leaders
4. Management and employee communication, progress reports throughout all project phases

Classification Project Tasks

5. Occupational familiarization by review of City's current class specifications and compensation plans
6. Organizational familiarization by review of City organization charts, budgets, and annual reports
7. Job Analysis Questionnaire (JAQ) customized for gathering City employee occupation data
8. Meetings to distribute and explain the JAQ and the project for all City officials and employees
9. Worksite job desk audits / field observations with representatives of each class (*100 included*)
10. Determination of job classification and FLSA Exempt / Non-Exempt designation for each position
11. Recommended title modifications and reclassifications for consideration by department heads
12. Review of position classification recommendations with City's project staff and respective departments
13. Preparation of updated class specs for each City job classification (*est. 100, only bill what we write*)

Custom and Comprehensive Market Compensation Surveys

14. Identification of City's competitive employment areas for compensation surveys, for City approval
15. Identification of City occupations to utilize as survey benchmark job classifications
16. Solicitation of comparator employers and agencies for participation in external compensation surveys
17. Extraction of data from public employer compensation plans, questionnaires, reliable published surveys
18. Consolidation of data from all sources and calculation of prevailing rates for benchmark jobs
19. Computation of extent City's compensation offerings vary from external prevailing rates and practices
20. Review of competitiveness analysis with Human Resources, City Officials and City's project designees

Compensation Plan Development

21. Construction of optional salary range structures for review and selection by City's project leaders
22. Assignment of job classes to salary ranges by internal equity and external competitiveness
23. Assistance with City Council identification of desired, affordable salary competitiveness policy
24. Fiscal impact estimates at various levels of external prevailing rates competitiveness policies
25. Review and critique of draft salary and implementation plans with Human Resources, project leaders

Communication of Results and Implementation Strategies

26. Preparation and presentation of final project reports for the City Council, staff, and City Officials
27. Development of a plan for the implementation of City's updated classification and compensation plan
28. Uploading of **EZ COMP™** program files on a Human Resources Department computer, staff training
29. Development and provision of process for ongoing plan maintenance and subsequent plan updates
30. Assistance with communicating the City's updated plans for all City officials and employees

PROJECT APPROACH AND METHODOLOGY

Following is our overall work plan and approach to achieving the City's objectives for the conduct of a classification and compensation study.

A. OBJECTIVES OF THE PROJECT

The recommended plans, programs, systems and administrative procedures will meet these ten most important criteria.

- Internally equitable
- Externally competitive
- Readily understood
- Easily updated & maintained
- Legally compliant & defensible
- Financially responsible
- Efficiently administered
- Inclusive of employee input
- Reflective of City's values
- Reflective of prevailing "best practices"

B. SCOPE OF THE PROJECT

The project could include: a management and employee communication plan; partnership with the City's Human Resources staff, City Manager, Council, and project designee(s); occupational, organizational, and operational familiarization; Job Analysis Questionnaire (JAQ) and job analysis for all classifications; worksite job information interviews; position classification and job title recommendations for all employees and classifications; FLSA designations; updated classification specifications; **EZ COMP™**; internal equity and external competitiveness evaluation; salary and benefits compensation survey and competitiveness analysis; salary range recommendations; fiscal impact estimates and multiple implementation scenarios; updated classification and compensation plan and classification and compensation plan implementation support for all included employees in all job classifications.

C. PROJECT METHODOLOGY

1. Quality Assurance

To ensure a high quality project, we have built in several layers of procedural and statistical controls, in addition to those already in **EZ COMP™**. Internally, we follow a prescribed series of steps in each project phase, which are reviewed by our Project Director. We request that the Human Resources and City's Project Manager(s) review our work to minimize the chance of errors and to ensure that it reflects the City's organizational values.

2. Project Planning Meetings and Communication Plan Development

We will consult with the Human Resources Director and City Officials or representatives on a communication strategy, plan, and materials, beginning prior to the project and extending to the post-project information meetings. We plan to conduct group pre-project meetings for all City officials and employees where we will discuss the project's scope, answer questions, and distribute and explain the Position Analysis Questionnaire.

D. POSITION CLASSIFICATION ANALYSIS

1. Review of Essential Tasks – Job Analysis Questionnaire

We will review and analyze the current essential tasks, duties and responsibilities, and minimum qualifications of each included position through the Position Analysis Questionnaire (JAQ) to be completed by each employee (or group of employees with identical jobs) in print or electronic format. If the information on the JAQ does not clearly delineate the position's scope of responsibilities, we may return the JAQ to the position's incumbent for additional information, or focus on the data gap during a worksite job information interview.

2. Employee Worksite Job Information Interviews (100 included)

We can conduct a worksite job information interview with a representative incumbent of every job classification. The purpose of these interviews is to verify the data on the JAQ, obtain additional insight into the scope and complexity of the job duties, observe technical processes and working conditions, and to provide employees with an additional method of participation in the project. This process also ensures that we make all internal and external comparisons on the basis of **actual job content** and not merely job title.

3. FLSA Status Determination

We will review the essential tasks and minimum qualifications of each of the City's job classifications and subject them to the Fair Labor Standards Act tests to determine their exempt or non-exempt status.

4. Position Classification

Each of the City's positions will be analyzed and evaluated to determine their primary characteristics, including:

- Is there a current City occupational job group comprised of job classes with essential functions similar to the subject position; if so:
- To which of the group's job classes, and at what level, are the subject position's essential functions similar to the subject position, and if so:
- Are they sufficiently comparable (+/- 20% guideline) to be allocated to that job class, utilize the same job title, require the same minimum qualifications, and be assigned to the same salary range.
- If the City does not currently have a sufficiently comparable job class, what should be the subject position's occupational job class and title, and:
- What should the recommended occupational classification action be, No Change (N), Title Change (T), Merge With Other Job Class (M), New Job Class (J).
- We may find that a job class is overly broad and encompasses several job activities which are regarded with significant salary difference in the marketplace. In such an instance, we will recommend "splitting" the job class into the current job class and a new job class which encompasses the different job activities.

5. Updated Classification Specifications (100 included)

We can prepare an updated class specification in the City's standard or other selected format for each occupational job class. Focus will be on the Essential Functions and Minimum Qualifications. The specifications or descriptions may include (not limited to) the following components:

Job Title – Definition	Education, Training and Experience	Physical Requirements
Distinguishing Characteristics	Licenses and Certifications	Non-Essential Functions
Essential Functions	FLSA Exempt/Non-Exempt Status	Mental Requirements
Desired Knowledge and Skills	Supervision Exercise/Received	Working Conditions

6. Draft Classification Plan Review with Human Resources and Department Heads

We will conduct a review of our initial position classification recommendations and draft job descriptions with the City's Project Team and respective department heads to identify possible errors, obtain feedback, and solicit suggestions for clarification.

7. Various Approaches to Ensure Internal Equity

If desired, and for precision in job class analyses, and subsequent salary range determinations, we may utilize one of several job evaluation systems widely in use, including the Hay Method, Decision Band Method (DBM), and the **Factor Evaluation System (FES)**. **FES** is the most extensively validated and commonly utilized quantitative job evaluation system for public sector occupations, consisting of the following flexible compensable factors.

Knowledge Required	Personal Contacts	Complexity
Supervisory Controls	Scope and Effect	Work Environment
Guidelines Provided	Supervision Exercised	Physical Demands

The job class hierarchy based on job points will reflect the City's relative internal job worth values. The City's annual salary competitiveness policy will be translated into a mathematical formula which, when combined with the job points of each City job class, will determine the proper salary range for each job class and position. This balances internal equity (job points relationships) with external competitiveness (market relationship formula).

- a. *Optional Approach A – FES System*** – We will train a task force of representative City employees in the adaptation of the **FES** point-factor job content evaluation system to the City's job worth values, guide them in the evaluation of a structured benchmark of job classes, conduct QC reviews, and evaluate the remaining job classes within the relative job worth structure established by the task force. We can provide the City with manual or automated versions of this system.
- b. *Optional Approach B – Custom Designed System for the City*** – We will train and guide a task force of representative City employees in the design of a point-factor system of job content evaluation total reflecting the City's relative job worth values, and proceed as in Approach A. We can provide the City with an automated version of the system once it has been developed with the task force.

E. SURVEY AND COMPENSATION ANALYSIS

1. City Involvement in Compensation Plan Development

We will obtain policy direction from the City Council, Human Resources staff, and/or City Officials on the following key components of the salary plan development process:

- Comparator Employer Selection
- Benchmark Job Class Selection
- Compensation Competitiveness Policy
- Salary Structure Selection
- Job Evaluation Method-Salary Plan Linkage
- Draft Compensation Plan Review / Critique
- Total Compensation Points for Analysis
- Project Implementation Plan

2. Comprehensive Compensation Survey

We do not subscribe to or recommend the use of databases or data warehouses used or hosted by other firms! We will collect the complete pay plans from each of the City's comparators and build a custom survey database to ensure accuracy and completeness, unique to the City's job classifications.

- a. Data Collection Protocol** will be developed in consultation with the City's project leaders to determine which salary data elements to include, such as:

Base Salary Information

- Salary grade/step or open range salary plan structure
- Salary range structure Minimum, Midpoint, and Maximum
- Method of salary administration – longevity, performance, or skill

Additional Compensation Information (to be finalized with City representatives)

- City-supported benefits such as health insurance, pension contributions
- Supplemental pay items for special qualifications/certifications
- Individual or group incentive plans, bonus, awards, stipends
- Any additional add-pay or benefits items at City's direction

- b. Benchmark Job Selection** will be made by identifying City job classes common to its employment-competitive public and private employers in the immediate area and throughout the region or State, clearly identifiable, and representative of standard occupational job groups.

- c. Comparator Employers Identification** will be made in consultation with the City's Project Manager(s) or City Council. Criteria include their degree of competition to the City in obtaining and retaining high quality staff, their location in the City's traditional recruitment areas, and their organizational size and complexity.

- d. Compensation Data Collection** will be made by one or more of the following methods.

- Pre-survey contact with the selected comparator employers to solicit participation in the City's compensation survey(s)
- Extraction from the pay plans of designated public employers.
- Customized salary and total compensation and benefits survey requests for local governments and other public employers, distributed by mail, fax, and e-mail.
- As desired, additional data extraction from established salary surveys and commercial survey sources such as Watson Wyatt, ERI, APTA (transit), etc.

- e. Data Quality Control** includes editing data for accuracy and proper matching to the City's survey benchmark jobs, and phone/fax/E-mail follow-ups for data clarification and to obtain comparators' benchmark job descriptions.

3. Prevailing Rates Calculation

We will consolidate the compensation data from all sources, enter the information into the **EZ COMP™** program, and compute the prevailing rates, inclusive of cost of living differentials, as the statistical mean of the survey data for each benchmark job class. Data will be projected forward from the date of collection to a common date relating to the City's salary plan year by the annual Prevailing Rate Increase Factor (PRI) applicable at that time.

4. Compensation Competitiveness Comparison

We will provide the City with charts comparing its current salary structures to those of the selected public and private comparator employers. We will calculate the extent that the City's offerings vary from the prevailing rates and practices of other relevant employers.

5. Compensation Competitiveness Policy

We will assist the City to select a compensation competitiveness policy which best fits its compensation strategy and financial resources, by providing fiscal impact estimates at various percentage relationships to the prevailing rates.

6. Salary Plan Structure Development

We will review the City's current wage plans and **1)** utilize the City's current wage plan structures to identify internally equitable and externally competitive salary ranges for each City job class or **2)** prepare alternative salary range structures and schedules for the City to select the best fit for its competitiveness strategy, with these optional criteria:

- Method of administration, i.e.: measured job performance, longevity, or skill
- Width of the salary ranges, grades, or broad bands, from Minimum to Maximum
- Varying salary range widths for FLSA non-exempt or exempt positions
- Open salary ranges for pay-for-performance or variable compensation plan
- If steps within the salary ranges, number of steps, percentage separation
- Number of salary ranges, grades, or broad bands in the salary schedule
- Percentage of separation between salary ranges, grades or broad bands
- Recognition for longevity, unique assignments, and special skill requirements
- Remuneration for required special licenses, certifications and registrations
- Linkage of performance evaluations to performance increase opportunities

7. Salary Range Assignment Development

We will assign each job classification to a salary range in the City's current or selected new salary structure on the basis of a combination of factors, including:

- the prevailing rates for the benchmark job classes
- its current relationship to similar or occupationally related job classes
- the 15% guideline for salary range separation between sequential job classes
- the 25% guideline for salary separation of a department head job class

8. Implementation Plan Development

We will consult with the Human Resources and Project Team on a plan for transition to the recommended plan, including a timetable for the principal activities, employee communication, impact on budget processes, and estimates of required financial resources.

F. ENSURING THE CITY'S SELF-SUFFICIENCY

The City will be self-sufficient in all aspects of maintenance of the updated position classification and compensation plan through these services.

1. Procedure Manuals

- *PSPC Position Classification Procedure Guide*
- *PSPC Salary Administration Procedure Guide*
- *City of Montebello **EZ COMP**[™] Procedure Guide*

2. Training Workshop – for City staff in position classification, job evaluation, compensation surveys, and compensation plan design and administration.

3. Electronic Class Specification Library – we can provide the City with all updated classification specifications in hard copy and electronic library format for internal maintenance.

4. EZ COMP[™] – program and project files on one of the City's computers, a custom user's manual, and system training for key City and Human Resources staff.

5. Initial Year's Implementation Warranty Support – we will analyze, evaluate, classify, and provide a salary range recommendation for any new or changed position or entire job classification, **at no cost to the City** for one year.

G. EXTENSIVE EMPLOYEE INCLUSION AND COMMUNICATION

Very important factors for successful implementation of new or updated classification and compensation plans are **1)** extensive employee inclusion, and **2)** extensive employee communication. City officials and employees will participate in one or more of the following activities:

- Attending pre-project briefings and question and answer sessions
- Completing a Position Analysis Questionnaire (JAQ) describing their position
- Elaborating on their jobs in individual or group job information interviews
- Requesting a second review of their position's occupational job classification
- Receiving information pamphlet/booklet describing the updated salary plan

H. MINIMAL CITY SUPPORT REQUIRED

We are completely self-sufficient in projects of this nature and do not require any substantive staff support from the City other than payroll data, and arrangements for group and individual meetings and interviews. We appreciate, but do not require, any office space, telephone, clerical assistance, computers, or office equipment. We will provide all data entry, data processing, duplicating, and related report preparation functions.

I. REPORTS AND PRESENTATIONS

1. Draft and Final Report Preparation

We will provide the City's project leader(s) with a draft of our report for review and critique, including the classification plan, compensation market data, salary comparison tables, fiscal estimates, salary range listings, and implementation procedures. We will incorporate their critique into the development of a final report summarizing the project's findings, recommendations, and detailed description of the City's updated position classification and compensation plans.

2. Final Report Presentations

We will conduct a workshop or formal presentation of our final report and recommendations to the Human Resources staff, City Officials, and employees.

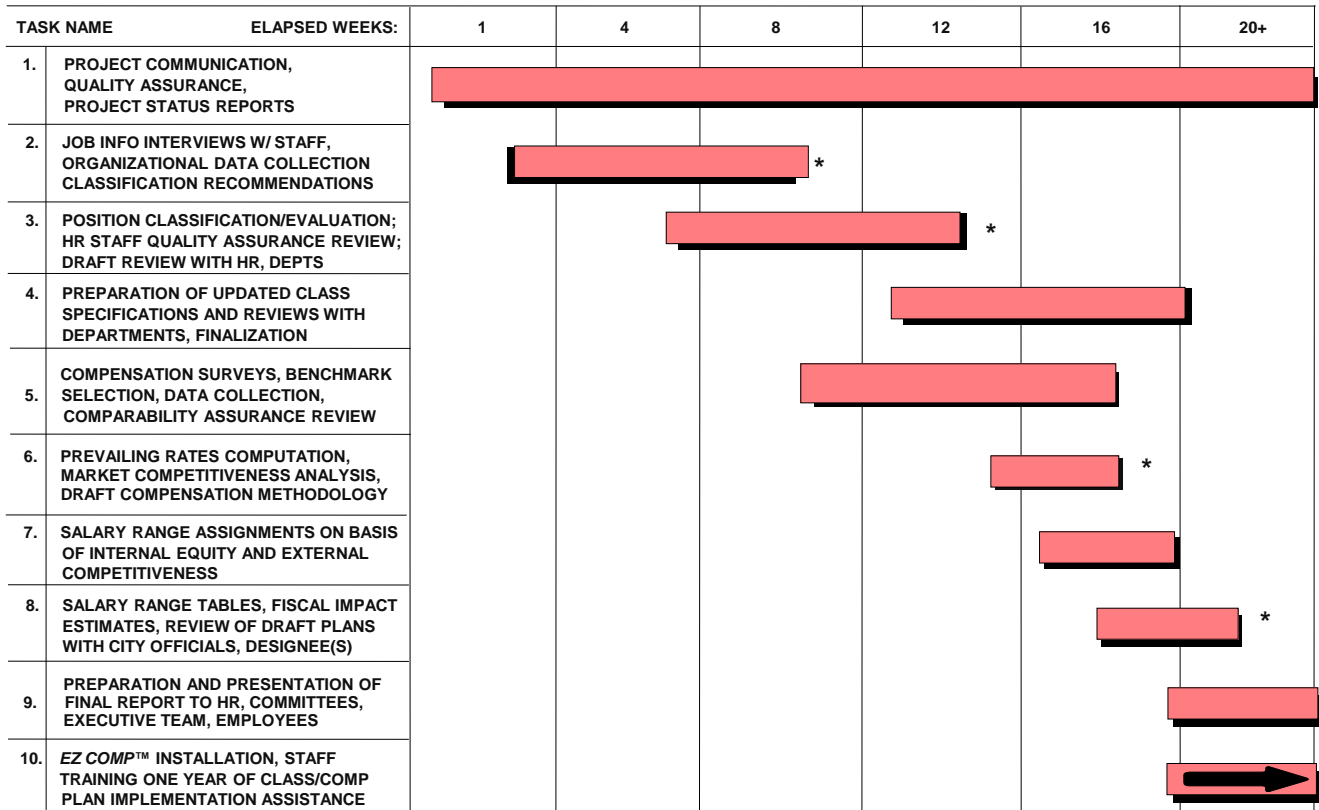
3. EZ COMP™ Program Installation

We will install our **EZ COMP™** program and project files on one of the Human Resources Department's computers and provide training to key staff in the maintenance and update of the classification and compensation plan.

4. Implementation Warranty

To ensure effective implementation of the new plan, we will analyze, evaluate, and provide a salary range recommendation for any new or changed job class, **at no cost to the City** for one year.

ESTIMATED PROJECT ELAPSED TIME CHART



* Progress reviews with the City

**PROPOSAL TO CONDUCT A CITYWIDE
CLASSIFICATION AND TOTAL COMPENSATION STUDY
FOR THE CITY OF MONTEBELLO**

CLIENT REFERENCES

PUBLIC SECTOR PERSONNEL CONSULTANTS

REPRESENTATIVE PROJECT REFERENCES

Following is a listing of agencies which are representative of more than 1,100 employers, for whom members of our firm have services similar to those requested by the City.

WESTLAKE VILLAGE, CITY OF, CA

Ms. Audrey Brown, Assistant City Manager
31200 Oak Crest Drive
Westlake Village, CA 91361
(818) 706-1613
audrey@wlv.org

FY 2018 Class and Comp Study

SAN JUAN CAPISTRANO, CITY OF, CA

Mr. Sam Penrod, HR / Risk Manager
32400 Paseo Adelanto
San Juan Capistrano, CA 92675
(949) 234-4565
SPenrod@sanjuancapistrano.org

Classification and FY 2017 Compensation Study

SCOTTSDALE, CITY OF, AZ

Ms. Donna Brown, HR Director
9191 E. San Salvador Drive
Scottsdale, AZ 85258
(480) 312-2615
DBrown@scottsdaleaz.gov

FY 2018 Class and Compensation Study

SALINAS, CITY OF, CA

Mr. Jim Pia, Assistant City Manager
200 Lincoln Avenue
Salinas, CA 93901
(831) 758-7201
jimp@ci.salinas.ca.us

FY 2018 Classification Study
FY 2016 Total Compensation Study

WOODLANDS TOWNSHIP, TX

Ms. Susan Welbes, HR Director
2801 Technology Forest Blvd.
Woodlands, TX 77381
(281) 201-3800
swelbes@thewoodlandstowship-tx.gov

FY 2020 Compensation Study

FRISCO, CITY OF, TX

Ms. Lauren Safranek, HR Director
6101 Frisco Square Boulevard
Frisco, TX 75034
(972) 292-5210
lsafranek@friscotexas.gov

FY 2017 Salary and Benefits Survey and Pay Plan
2014 Surveys; Annual Salary Survey Update Support;
Position Classification and FY 2002 Salary Plan

**PROPOSAL TO CONDUCT A CITYWIDE
CLASSIFICATION AND TOTAL COMPENSATION STUDY
FOR THE CITY OF MONTEBELLO**

FEE PROPOSAL

PUBLIC SECTOR PERSONNEL CONSULTANTS

PROJECT RATES BY MAJOR TASK

A. PROJECT COST ESTIMATE

We estimate that the project's total cost, including all fees for professional services and reimbursement for out-of-pocket expenses, **will not exceed** the indicated amounts.

Major Project Components – Classification Study*

- Planning Meetings, Kick Off, Communication	\$ 5,000
- Job Information Interviews / Desk Audits (100 included)	\$ 10,000
- Position Classification, Job Titling, FLSA	\$ 5,000
- Updated Job Descriptions/Class Specifications (100 included)	<u>\$ 10,000</u>
Classification Study:	\$ 30,000

Major Project Components – Compensation Study

- Total Compensation Survey	\$ 30,000
- Pay Plan Modeling, Implementation Options and Costing	\$ 7,500
- Reporting and Presentations	<u>\$ 2,500</u>
Compensation Study:	\$ 40,000
Total Not To Exceed:	\$70,000

B. FLEXIBLE WORK PLAN, NEGOTIABLE TOTAL COST, TERMS

Our work plan is flexible and total project cost negotiable, and we will discuss, modify, add or delete, any work task to increase the project's responsiveness to the City's needs and financial resources. We will provide the City with monthly invoices for the professional services provided and out-of-pocket expenses incurred during the month. We request that the City pay the invoices within thirty (30) days of their receipt.

C. ESTIMATED TIMELINES

We estimate that the project can be completed within 120 days of initial project planning; preparation of class specifications occasionally takes additional time.

PROFESSIONAL SERVICES AGREEMENT

**CITY OF MONTEBELLO PROFESSIONAL SERVICES
AGREEMENT NO. 3804
BY AND BETWEEN CITY OF MONTEBELLO
AND
PUBLIC SECTOR PERSONNEL CONSULTANTS**

THIS AGREEMENT ("Agreement") is made and entered into on August 13, 2020, by the CITY OF MONTEBELLO, a municipal corporation (hereinafter referred to as "CITY") and [NAME OF CONSULTANT] (hereinafter referred to as "CONSULTANT"). CITY and CONSULTANT are sometimes referred to herein individual as a "Party," and jointly as the "Parties."

RECITALS

WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to City to complete the City's Classification and Total Compensation Study, as more fully described herein; and

WHEREAS, CONSULTANT represents the degree of specialized expertise contemplated within California Government Code, Section 37103, and is qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees; and

WHEREAS, no official or employee of CITY has a financial interest, within the provisions of Sections 1090 – 1092 of the California Government Code, in the subject matter of this Agreement; and

WHEREAS, CONSULTANT responded to CITY's Request for Proposals dated April 23, 2020 (RFP No. 20-12), as such is set forth fully in **Exhibit "A"** hereto and incorporated fully herein by this reference (hereinafter "Consultant Proposal").

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. CONSULTANT shall provide to CITY those services that are set forth fully in the Scope of Services, as such is set forth fully in **Exhibit "A"** hereto and incorporated fully herein by this reference (hereinafter "Professional Services").

B. CONSULTANT shall complete the Scope of Services within the time set forth in the Schedule of Performance, as such is set forth in **Exhibit "B"** hereto and incorporated fully herein by this reference.

B. CONSULTANT shall be compensated a sum not-to-exceed (the "Maximum Compensation") for performance of the Professional Services as set forth in the Schedule of Compensation attached hereto as **Exhibit "C"** and incorporated fully herein by this reference ("Compensation"). CONSULTANT shall provide an itemized billing statement to CITY each month for Professional Services performed. CONSULTANT shall not incur fees or costs which exceed the Maximum Compensation without the prior written consent of CITY.

C. CITY will be invoiced at the end of the first billing period following commencement of work and at the end of each billing period thereafter. Payment in full of an invoice must be received by CONSULTANT within thirty (30) days of the date of such invoice.

D. Work performed shall be deemed approved and accepted by CITY as and when invoiced unless CITY objects within fifteen (15) days of invoice date by written notice specifically stating the details in which CITY believes such work is incomplete or defective, and the invoice amount(s) in dispute. CITY shall pay undisputed amounts as provided for in the preceding paragraph.

E. Failure of CITY to submit full payment of an invoice within thirty (30) days of the date thereof subjects this agreement and the work herein contemplated to suspension or termination at CONSULTANT's discretion.

SECTION 2. TERM.

This Agreement shall commence upon the date the last of the Parties executes this Agreement herein below ("Effective Date"), and shall terminate upon completion of the Scope of Services set forth herein, unless terminated sooner as provided in Section 7 herein.

The Parties agree that Sections 4(B), 9, 10, 11, 13, 16, 17, 18, and 19 shall survive for three (3) years following the expiration or termination of this Agreement.

SECTION 3. PERFORMANCE.

A. CONSULTANT shall at all times, faithfully, competently, and to the best of its ability, experience and talent, perform all tasks described herein.

B. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by companies 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 written approval, additional individuals, consultants or subcontractors to assist in the completion of services as herein defined. Compensation for additional individuals, consultants or subcontractors shall be the sole and exclusive responsibility of CONSULTANT.

E. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three (3) years, unless otherwise provided for in **Exhibit "A."** Upon CITY providing twenty-four (24) hours advanced prior notice, CONSULTANT shall make all records, invoices, time cards, cost control sheets and other records maintained by CONSULTANT in connection with this Agreement available during CONSULTANT's regular working hours to CITY for review and audit by CITY.

F. All reports, documents or other written material developed by CONSULTANT in the performance of this Agreement shall be and remain the property of CITY without restriction or limitation upon its use or dissemination by CITY. Such material shall not be the subject of a copyright application by CONSULTANT. Any alteration or reuse by CITY of any such materials on any project other than the Project shall be at CITY's sole risk, unless CITY compensates CONSULTANT for such reuse.

SECTION 4. WORK PRODUCT.

A. CONSULTANT hereby agrees that all work produced pursuant to this Agreement, and provided to CITY during and upon completion of this Agreement, shall be the property of CITY, and ownership of said work product shall be retained by CITY. CONSULTANT may take and retain copies of such written products as desired.

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 by CONSULTANT without prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. All such written products shall be returned to 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.

C. Documents are provided in CONSULTANT's standard software formats. CITY recognizes that electronic or magnetic data and its transmission can be easily damaged, may not be compatible with CITY's software formats and systems, may develop inaccuracies during conversion or use, and may contain viruses or other destructive programs, and that software and hardware operating systems may become obsolete. As a condition of delivery of electronic or magnetic data, CITY agrees to defend indemnify and hold CONSULTANT, its sub-contractors, agents and employees harmless from and against all claims, loss, damages, expense and liability arising from or connected with its use, reuse, misuse, modification or misinterpretation. In no event shall CONSULTANT be liable for any loss of use, profit or any other damage.

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 CITY's City Administrator ("City Administrator").

SECTION 6. CITY SUPERVISION.

The City Administrator shall have the right of general supervision of all work performed by CONSULTANT and shall be CITY's 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 Administrator.

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 contract shall at the option of CITY cease and terminate upon the giving of like notice. In the event of any such termination for default by CONSULTANT, CITY may take over the work and prosecute the same to completion by contract or otherwise for the account and at the expense of CONSULTANT. CONSULTANT and his sureties shall be liable to 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. CITY shall have the option, at its sole discretion and without cause, to terminate this Agreement in whole, or in part, after giving written notice to CONSULTANT at least five (5) business days before the termination is to be effective. Upon the termination of this Agreement as provided herein, 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 CONSULTANT prior to the date of termination; (2) that CONSULTANT provides CITY with adequate proof that CONSULTANT incurred the costs, and is unable to be seek a refund for such costs; and (3) such costs were within the scope of work or services to be performed under this Agreement. 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 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 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 CONTRACTOR.

A. CONSULTANT is and shall, at all times, remain as to CITY a wholly independent contractor. Neither CITY nor any of its elected officials, officers, employees or agents shall have control over the conduct of CONSULTANT except as expressly set forth in this Agreement. 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 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 subcontractors 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 subcontractors with workers' compensation insurance or any other insurance.

SECTION 11. PERS ELIGIBILITY INDEMNITY.

A. In the event that CONSULTANT or any employee, agent, or subcontractor 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 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 subcontractors, 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 subcontractors 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. CITY, and its appointed or elected officers, employees, or agents, shall not be liable at law or in equity occasioned by failure of CONSULTANT to comply with this section.

SECTION 13. INDEMNIFICATION.

CONSULTANT agrees to, and shall defend, indemnify, protect and hold harmless, 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 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 CITY.

SECTION 14. INSURANCE COVERAGE.

During the Term of this Agreement, CONSULTANT shall carry, maintain, and keep in full force and effect all of the following minimum scope of 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):** Broad-form, Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including premise-operations, products-completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury, and advertising injury, with limits no less than **Two Million Dollars and Zero Cents (\$2,000,000)**, combined single limits, per occurrence. If a general aggregate limit applies, the limit shall be twice the required occurrence limit.

- **Business Automobile Liability Insurance:** For owned vehicles, hired, and non-owned vehicles, 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 **One Million Dollars and Zero Cents** (\$1,000,000.00) 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 **One Million Dollars and Zero Cents** (\$1,000,000.00) per accident for bodily injury or disease. CONSULTANT agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against CITY, its elected and appointed boards, officers, officials, employees, agents and volunteers for losses arising from work performed by CONSULTANT for CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

By executing this Agreement, CONSULTANT further certifies as follows:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work contemplated herein.

- **Professional Errors and Omissions (E&O) Liability** insurance appropriate to the CONSULTANT's profession, with limit no less than **Two Million Dollars and Zero Cents** (\$2,000,000.00) per occurrence or claim, **Two Million Dollars and Zero Cents** (\$2,000,000.00) aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retroactivity date shall be prior to the start of work set forth herein, CONSULTANT shall obtain and maintain said E&O liability insurance during the Term of this Agreement and for five (5) years after completion of work hereunder. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement, CONSULTANT shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the work.

If CONSULTANT maintains higher limits than the minimums shown above, CITY requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CITY.

CONTACTOR shall require each of its subcontractors, 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, with a current rating of at least A:VII in the latest edition of Best's Insurance Guide, and approved by CITY.

Each insurance policy required herein shall state that coverage shall not be canceled, except after providing CITY thirty (30) days' (or ten [10] calendar days' for non-payment) prior written notice. 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 CITY, its officers, agents, employees and volunteers 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 (2) 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 elected and appointed boards, officers, officials, 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 (30) 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.

Except for professional liability and workers' compensation policies, the policies herein are primary and non-contributing with any insurance that may be carried by 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 subcontractors, from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not CITY has received a waiver if subrogation endorsement from the insurer.

Coverage not affected. Any failure to comply with the reporting provisions of the policies contemplated herein, shall not affect coverage provided to CITY, its elected and appointed boards, officers, officials, employees, agents and volunteers.

Coverage applies separately. CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by 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.

CITY, its officers and employees shall not be responsible for any claims in law or in equity occasioned by failure of CONSULTANT to comply with this section.

CITY reserves the right to modify these requirements, including limits, based on the nature of risk, prior experience, insurer, coverage, or other special circumstances.

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-contractor, 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-contractors. 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. If any action at law or in equity is brought to enforce this Agreement or because of alleged dispute, breach, default or misrepresentation in connection with the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, expert fees, costs and necessary disbursements incurred in that action or proceeding, in addition to such other relief as may be sought and awarded. 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 litigation is reasonably required 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 and costs in addition to any other relief to which it may be entitled.

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.

G. 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.

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:

CITY ADMINISTRATOR
City of Montebello

1600 West Beverly Boulevard
Montebello, California 90640

CONSULTANT
Public Sector Personnel
Consultants
149 S. Barrington Ave., #726
Los Angeles, CA 90049

SECTION 22. NON-DISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYER.

In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, sub-contractor, 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-contractor 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 and its officers, employees, associates and subconsultants, if any, shall comply with all California conflict of interest statutes applicable to Consultant's Services under this Agreement, including, but not limited to, the Political Reform Act (Gov. Code, § 81000 et seq.) and Government Code Section 1090. CONSULTANT further 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 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 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.

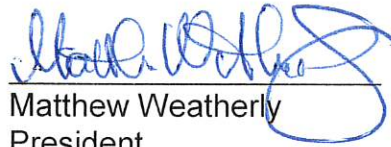
CITY OF MONTEBELLO

CONSULTANT



René Bobadilla
City Manager


Dated: 9/9/2020



Matthew Weatherly
President

Dated: 9/30/2020

ATTEST:



Irma Barajas
City Clerk



APPROVED AS TO FORM



Arnold M. Alvarez-Glasman
City Attorney