



**REQUEST FOR PROPOSALS**

**Strategic Planning Services**

|                       |  |
|-----------------------|--|
| <b>Proposals Due:</b> | <b>December 5, 2024 at 6 PM</b>  |
| RFP Administrator:    | Andres Rangel<br>Assistant to the City Manager/PIO<br><a href="mailto:arangel@accessduarte.com">arangel@accessduarte.com</a> |
| RFP Issued:           | November 7, 2024   |

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# INTRODUCTION AND INSTRUCTIONS

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## I. SUMMARY

Through this Request for Proposals (“RFP”) and evaluation process, the City of Duarte (“City”) is seeking the services of a professional firm for the facilitation and development of a **five-year Strategic Plan for the City of Duarte**. The objective of the development of a strategic plan is to provide a roadmap that is consistent with the City Council’s vision to identify best practices and continuous improvement strategies to improve efficiencies and enhance both internal and external operations and customer service in a manner that adapts to the ever changing and evolving long term goals of the City. The required services and performance conditions are described in the Scope of Required Services section.

The proposals will be reviewed and ranked accordingly, but are not limited to, understanding and knowledge of the requirements as set forth in this RFP, reliability, cost, references of comparable services, resumes/references of personnel assigned, and if any, distinguishing features, skills and/or services proposed.

For the purposes of this RFP, the words “Bidder”, “Contractor”, “Consultant”, “Firm”, “Proposer”, and “Vendor” shall be used interchangeably and read to be the same. Failure to submit all the mandatory components of this RFP may result in the determination that the Proposal is not eligible for further consideration. As such, each Proposer is directed to carefully review the proposed Agreement (Attachment A) and the insurance and indemnification provisions therein.

## II. SCOPE OF REQUIRED SERVICES

The City of Duarte invites proposals for the facilitation and development of a **five-year City of Duarte Strategic Plan**. A strategic plan is a vital tool for local jurisdictions to ensure that the vision and priorities set by the City Council are clearly conveyed to employees and the community, and that City strategies and projects are developed to meet City Council priorities, and that overall city government is accountable to meeting community needs.

The City is aware that there are a variety of perspectives, models, and approaches available to develop a strategic planning document. Therefore, the successful firm should propose a framework or model(s) that they believe to be most suitable for the City of Duarte at this time.

### a. Background Review and Environmental Scan

The selected firm will identify internal and external factors to inform the development of the strategic plan, providing a realistic context for the organization’s goals. This includes:

- Internal Assessment: Conduct a thorough analysis of the City’s organizational structure, processes, workflows, communication channels, and organizational culture. Perform a SWOT (Strengths, Weaknesses, Opportunities, and Threats) analysis for internal operations.
- External Assessment: Assess the City’s economic, social, and environmental landscape, also incorporating a SWOT analysis of these external factors.
- Review key documents such as resident and employee surveys, past priority setting initiatives, and other strategic planning materials.

b. Stakeholder and Employee Engagement

Engage with both internal and external stakeholders to ensure comprehensive feedback is integrated into the strategic plan. This process will include facilitating half-day workshops with City Council and City staff to evaluate current services, outline strategic issues, and develop new priorities as needed. A community engagement strategy will be created to facilitate discussion with local businesses, community partners, governmental officials, and other key entities. An optional strategy for broader community engagement may also be implemented if the consultant finds it essential to develop robust engagement with stakeholders.

c. Goal Setting and Action Plans

The firm will collaborate with city leadership to establish clear, measurable goals (SMART goals) that align with the community’s aspirations. Detailed action plans will be created, outlining specific initiatives, projects, and timelines for each department. The firm will identify and categorize City Council priorities into strategic areas, and transform conceptual goals into realistic, achievable targets. Methods for implementing and measuring goals and objectives will be provided, linked to department-level work plans.

d. Development of Strategic Plan

Based on insights from the background review, stakeholder engagement, and workshops, the firm will develop a draft strategic plan that includes a clear and concise mission and vision that reflects current and future community needs. The plan will outline major strategic issue areas and provide a defined goal for each. An implementation plan will be developed with benchmarks or milestones to measure the City’s progress and will include timetables for goal achievements.

e. Council Workshop and Approval

The firm will present the draft Strategic Plan at a City Council workshop. Following revisions, the firm will attend a City Council meeting for the final adoption of the Strategic Plan.

f. Cadence of Updates to Strategic Plan

Recommend a cadence and framework for updating the strategic plan, ensuring its long-term relevance and adaptability as the City’s needs evolve.

The City requires any Proposer to have experience in strategic planning and organizational effectiveness. Experience with local government agencies is required and recent experience in a municipality is preferred.

Proposers shall read the information contained in this RFP to understand how to submit the proposal, what documents must accompany the proposal and what legal obligations apply when the Proposer submits a proposal. Any Proposer that wishes to be considered for this work must submit the information requested in this RFP and if applicable, participate in an evaluation interview panel, if invited.

### III. SUBMITTAL INFORMATION

**Proposals are due on December 5, 2024 prior to 6 PM local time and must be submitted via email to the RFP Administrator.** RFP Administrator information can be found below.

**RFP Administrator:** Andres Rangel, Assistant to the City Manager/PIO  
Email: [arangel@accessduarte.com](mailto:arangel@accessduarte.com)

It is the sole responsibility of the Proposer to ensure their RFP is submitted to the RFP Administrator before the stated deadline. The City shall not be held liable for complications arising due to connectivity or network issues.

### IV. RFP SCHEDULE

The following is a tentative schedule of this entire RFP process.

| TENTATIVE SCHEDULE                   |                                 |
|--------------------------------------|---------------------------------|
| <b>RFP Published:</b>                | <b>November 7, 2024</b>         |
| <b>Questions from Proposers Due:</b> | <b>November 18, 2024</b>        |
| <b>Questions and Answers Posted:</b> | <b>November 21, 2024</b>        |
| <b>Proposals Due:</b>                | <b>December 5, 2024 by 6 PM</b> |
| <b>Review of Proposals:</b>          | <b>December 9-12, 2024</b>      |
| <b>Anticipated Contract Award:</b>   | <b>January 14, 2025</b>         |

### V. QUESTIONS

Please direct any questions or concerns to Andres Rangel at [arangel@accessduarte.com](mailto:arangel@accessduarte.com) by 6 PM on Monday, November 18, 2024. Only questions with “Strategic Planning Services” in the

subject line will be accepted. Answers to submitted questions will be posted on the City's website at AccessDuarte.com on Thursday, November 21, 2024.

## **VI. GENERAL CONDITIONS**

### Permits and Licenses

The successful Proposer and all employees or agents shall secure and maintain in force such licenses and permits, as are required by law, including a City of Duarte business license.

### Fees for Services

All fees for services are to remain firm for the length of the contract. Increases in fees, if any are proposed, after the initial first year term must be clearly stipulated on the Cost Proposal page submitted with the proposal.

### Execution of the Contract

The Professional Services Agreement in the form set forth in Attachment A, attached hereto, shall be executed by the successful Proposer, returned to the City for execution, and shall be accompanied by evidence of insurance as required, all within five (5) calendar days after the Proposer has received notice of award of contract. No proposal shall be considered binding upon the City until it has been executed by the City. The failure of the successful Proposer to execute the contract and to submit evidence of insurance as, and within the time, required shall be cause for the annulment of the award.

### Indemnification

Consultant shall defend, indemnify and hold harmless the City from and against all damages and liability caused by the negligent actions or willful misconduct of the Consultant or its employees, agents, or representatives. Consultant shall not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the City or any of its employees, agents, or representatives acting in an official capacity.

### Insurance

Specific insurance requirements are noted in Attachment A, and evidence of the insurance coverages will need to be in place before starting work. The City will require certificates of insurance and required endorsements when the successful Proposer submits a signed contract to the City. Proof of insurance is not necessary to submit a Proposal, but the Proposer must be prepared to meet all City insurance requirements, if the Proposer is awarded the contract.

It is highly recommended the Proposer confer with their respective insurance carriers or brokers to determine, in advance of proposal submission, the availability of insurance certificates and endorsements as prescribed in Attachment A.

### Identifying Proprietary Information; Public Records Act

A Proposer must identify, and list all copyrighted material, trade secrets, or other proprietary information (“protectable documents”) that the Proposer included in its Proposal which the Proposer believes should be exempt from disclosure under California’s Public Records Act, Government Code Section 6250, et seq.

By listing the documents, the Proposer agrees to indemnify, defend, and hold harmless the City, its officers, agents, employees, and representatives from and against any action, claim, lawsuit, or proceeding, including costs and expenses, arising out of or connected with the City’s refusal to disclose the protectable documents to any party making a request for those items.

The City will treat any Proposer, who fails to identify documents that the Proposer believes should be exempt from disclosure, as having waived its right to an exemption from disclosure, as the Public Records Act provides.

#### Cost for Preparing Qualifications

Costs for developing the qualifications in response to this RFP are the sole responsibility and obligation of the Proposer and shall not be chargeable in any manner to the City.

#### Conflict of Interest

All Proposers responding to this RFP must avoid organizational conflicts of interest which would restrict full and open competition in the procurement. An organizational conflict of interest means that due to other activities, relationships, or contracts, a Proposer is unable, or potentially unable, to render impartial assistance or advice to the City; a Proposer’s objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or a Proposer has an unfair competitive advantage.

#### Disclosure

Please disclose any and all past or current business and personal relationships with any current City elected officials, appointed officials, City employees, or family members of any current City elected official, appointed official, or City employee. Any past or current business relationship may not necessarily disqualify the firm from consideration.

#### Sample Agreement

The firm selected by the City will be required to execute a Professional Services Agreement (“Agreement”) with the City. The form of the Agreement is enclosed as Attachment A but may be modified to suit the specific services and needs of the City. If a Proposer has any exceptions or conditions of the Agreement, these must be submitted for consideration with the proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement.

# QUALIFICATIONS GUIDELINES

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Proposals should be prepared simply and economically, providing a straightforward and concise explanation of the capabilities of the Proposer to satisfy the requirements of this RFP. Emphasis in the submission of the Proposals should be placed on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer.

## VII. CONTENTS OF THE QUALIFICATIONS

### a. Vendor Information Form and Cover Letter

Complete the Vendor Information Form and attach it to the cover letter. The cover letter should summarize key elements of the Proposal. An individual authorized to bind the Proposer must sign the letter. The letter must stipulate the proposal price will be valid for thirty (30) days. Indicate the address and contact information of the office from which the Project will be managed.

### b. Firm Experience

Provide a summary of projects that are similar in scope to the type of services noted herein. The summary should include client name, description, project team, date completed, and total project cost.

Include at least three (3) sample reports prepared for another comparable organization. Provide examples of data collection forms, surveys or other similar documents you propose to use on this project.

### c. Project Team

Provide the names and qualifications of the key individuals who will be responsible for delivering these services, their respective roles, and the organizational structure of the team. Technical support staff should be included if they will perform a significant role in the preparation of the work products. If the firm has multiple offices, the office of record for each team member shall be listed as well as the primary office location where the work is to be performed.

After the contract is signed, the successful Proposer may not replace key staff unless their employment is terminated or agreed to by the City. The City must approve replacement staff before a substitute person can be assigned to provide the services. The City reserves the right to request the successful Proposer replace a staff member assigned to the project should the City consider such a replacement to be in the best interest of the City.



d. Project Understanding and Approach

Describe the Proposer's understanding of the City of Duarte, and the project, as outlined in this RFP, documents described in Appendix B, as well as a high-level approach to the successful implementation of the proposed scope of services.

e. Scope of Services and Methodology

Provide a proposed Scope of Services as requested and consistent with this RFP. Please list any additional services suggested as separate line items.

f. Schedule

Provide a proposed schedule for the project. Please also consider an alternative schedule that affords additional time to complete a quality project and any benefits and tradeoffs associated with a longer schedule.

g. Cost Proposal

Provide a detailed not-to-exceed cost analysis for the entirety of the project, including basic fee structure and break down of any other charges and hourly compensation rates related to the proposal.

## **VIII. CONDITIONS FOR QUALIFICATIONS ACCEPTANCE**

This RFP does not commit the City to award a contract or to pay any costs incurred for any services, including cost of responding to this RFP. The City, at its sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source(s), or to cancel this RFP in part or in its entirety. All qualifications will become the property of the City. If any proprietary information is contained in the qualifications, it should be clearly identified.

# EVALUATION AND AWARD

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## IX. SELECTION PROCESS

After review of the submitted proposals, the City may invite some or all Proposers to present their qualifications and proposed approach in an interview or may decide to select one Proposer without conducting interviews and enter into contract negotiations directly. Proposers interviews, if necessary, will be scheduled at the City's discretion.

Proposals will be first screened to ensure responsiveness to the RFP. The City may reject as non-responsive, any proposal that does not include the documents required to be submitted by this RFP. At any time during the evaluation process, the City reserves the right to request clarification or additional information from any or all Proposers regarding their proposals. The City may reject a proposal in which a proposer's approach, qualifications, or price is not considered acceptable by the City.

The final selection will be based upon the following criteria:

### Understanding of Project Requirements (30%)

Clarity in addressing the scope of services outlined in the RFP and demonstrated comprehension of the strategic planning process.

### Firm Experience and Qualifications (30%)

Relevant experience in facilitating strategic planning for local government agencies or comparable organizations, along with successful completion of similar projects.

### Proposed Methodology and Approach (25%)

Effectiveness and creativity of the proposed framework for the strategic plan, including engagement strategies for stakeholders and the community.

### Cost of Proposal (15%)

Clarity and competitiveness of the proposed budget, including a detailed breakdown of costs.

# ATTACHMENTS

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## RFP SUBMITTAL CHECKLIST

- 1. Submittal Checklist
- 2. Vendor Information Form
- 3. Proposal
- 4. Acknowledge Insurance Requirements

Bidder acknowledges the review of, and agreement to comply with the City’s insurance requirements.

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Authorized Signature

- 5. Acknowledge Workers’ Compensation Insurance Requirements

Bidder acknowledges the review of, and agreement to comply with the statutory Workers’ Compensation insurance requirements.

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Authorized Signature

- 6. Acknowledge City Business License Requirement

Bidder agrees to comply with the City’s business license requirement.

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Authorized Signature

# VENDOR INFORMATION FORM

Legal Contractual Name: \_\_\_\_\_

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

Contact Person & Title: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Your Firm is: **(check one)**

Corporation

Limited Liability Partnership

Partnership

Sole Proprietorship

Individual

Joint Venture

If corporation, incorporated under laws of the State of: \_\_\_\_\_

Names of Individuals with Authorization to sign contracts (Corporations and Partnership require at least two signatures):

\_\_\_\_\_

\_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

City of Duarte Business License Number: \_\_\_\_\_

(Duarte business license will be required of the successful Proposer)

**CITY OF DUARTE  
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“**Agreement**”) is made and effective as of \_\_\_\_\_ (“**Effective Date**”), by and between the City of Duarte (“**City**”), and \_\_\_\_\_, a [**California corporation**], (“**Consultant**”). City and Consultant may sometimes herein be referred to individually as a “**Party**” and collectively as the “**Parties**.” In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**1. RECITALS**

The City wishes to engage the services of Consultant to provide [**brief summary of services**] as described further in this Agreement. Consultant wishes to provide all such services and has the necessary expertise and competency to provide such services.

**2. TERM**

This Agreement shall commence on the Effective Date and shall remain and continue in effect until [**date**] or until the tasks listed in the Scope of Services are completed, whichever is later, unless sooner terminated pursuant to the provisions of this Agreement. The term may be extended upon execution of a written amendment between the Parties.

**3. SERVICES AND PERFORMANCE**

A. In compliance with all terms and conditions of this Agreement, Consultant shall provide services more particularly described in the “Scope of Services,” which is attached hereto and incorporated herein by this reference as Exhibit A. The services may be referred to herein as the “Services” or “Work.” In the event of any inconsistency between the terms of Exhibit A and this Agreement, the terms of this Agreement shall govern.

B. As a material inducement to City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first-class work and services, and Consultant is experienced in performing the type of work and services contemplated herein. The minimum standard of care for all professional services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant represents that the Services will be performed by Consultant or under its direct supervision, and that all personnel engaged in such Work shall be fully qualified and shall be authorized and permitted under applicable Federal, State, and local law to perform such Work. Consultant shall pay all wages, salaries, and other amounts due to such personnel in connection with their performance of the Services and as required by law

C. The experience, knowledge, capability, and reputation of Consultant, its principals, and employees were a substantial inducement for City to enter into this Agreement. Therefore, without the prior written approval of City, which may be given or withheld at City's sole and absolute discretion, Consultant shall not (i) contract with any other entity to perform in whole or in part the Services required hereunder; or (ii) transfer, assign, convey, or encumber (voluntarily or by operation of law) any or all of this Agreement.

D. Consultant shall obtain and maintain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the Services required by this Agreement prior to the commencement of Services. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the Services, and shall indemnify, defend, and hold harmless City and its elected and appointed officials, boards, members, officers, agents, representatives, employees, and volunteers ("City Personnel") against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City related to the Services.

E. Consultant shall provide all Services rendered hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of City and any Federal, State, or local governmental agency having jurisdiction in effect at the time Service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included, and this Agreement shall be read and enforced as though they were included.

F. Consultant shall assume all costs arising from the use of patented or copyrighted materials, including, but not limited to, equipment, devices, processes, and software programs, used or incorporated in the Services or Work performed by Consultant under this Agreement. Pursuant to Paragraph 7, Consultant shall indemnify, defend (with legal counsel acceptable to City), and hold City and City Personnel harmless from any and all suits, actions, or proceedings of every nature for or on account of the use of any patented or copyrighted materials.

G. Consultant shall not subcontract the performance of any of the Services without the prior written approval of City.

H. The Parties have determined that prevailing wage laws do not apply to this Agreement because the Services do not include construction, alteration, demolition, installation, or repair work or are otherwise exempt under California's prevailing wage laws (California Labor Code section 1720 et seq.). Notwithstanding the foregoing, it is agreed by the Parties that, in connection with performance of the Services, including, without limitation, any and all "public works" (as defined by applicable law), Consultant shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of California Labor Code section 1781, as the same may be amended from time to time, and/or any other similar law. Pursuant to Paragraph 7, Consultant shall indemnify, defend (with legal counsel acceptable to City), and hold City and City Personnel harmless from and against any liability, loss, damage, cost, or expenses (including but not limited to reasonable attorneys' fees, expert witness fees,

court costs, and costs incurred related to any inquiries or proceedings) arising from or related to (i) the noncompliance by Consultant or any party performing the Services of any applicable local, State, and/or Federal law, including, without limitation, any applicable Federal and/or State labor laws (including, without limitation, the requirement to pay State prevailing wages and hire apprentices); (ii) the implementation of California Labor Code section 1781, as the same may be amended from time to time, or any other similar law; and/or (iii) failure by Consultant or any party performing the Services on Consultant's behalf to provide any required disclosure or identification as required by California Labor Code section 1781, as the same may be amended from time to time, or any other similar law.

#### **4. MANAGEMENT**

City's [title] shall represent City in all matters pursuant to the administration of this Agreement and review the Services performed by Consultant. The City Manager shall have the authority, subject to the limitations set forth in Paragraph 5, to enlarge the Scope of Services or increase the compensation due to Consultant. Consultant's official representative in the administration of this Agreement shall be [name and/or title], who shall have the authority to make all decisions for Consultant and bind Consultant to the terms of this Agreement.

#### **5. COMPENSATION**

A. City agrees to pay Consultant an amount not to exceed \$[amount], based on the Scope of Services set forth in Exhibit A.

B. Consultant shall not be compensated for any Services rendered in connection with its performance of this Agreement that are in addition to those set forth herein, unless such additional services are authorized in advance, and in writing, by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given. Unless otherwise agreed to by the Parties in writing, all provisions in this Agreement applicable to Consultant's performance of the Services shall also apply to any additional services.

C. Consultant shall be paid monthly and shall submit monthly invoices/reports to City, within ten (10) days following the end of each month, showing actual Services performed. Invoices shall include billings for all charges, including authorized direct costs incurred by Consultant during the month covered by the invoice. Consultant shall be paid on the next regular Council warrant after all required paperwork is submitted. If City disputes whether Consultant has earned its fee or any portion, City shall give written notice to Consultant within thirty (30) days of receipt of Consultant's monthly invoice/report stating the basis for such dispute.

#### **6. SUSPENSION OR TERMINATION OF AGREEMENT**

A. City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving written notice upon Consultant. Upon receipt

of said notice, Consultant shall immediately cease all Work under this Agreement, unless the notice provides otherwise. In the event this Agreement is suspended or terminated pursuant to this subparagraph (A), Consultant shall submit a final invoice/report to City pursuant to Paragraph 4, and City shall be entitled to receive a return of the fee paid to Consultant, or portion thereof, if the reason for the termination is failure by Consultant to have timely performed the Services set forth in Exhibit A. In City's sole and absolute discretion, prior to effecting a suspension or termination pursuant to this subparagraph (A), City may first serve upon Consultant a written notice of the default specifying the default and the amount of time that Consultant shall have to cure, correct, or remedy the default. If Consultant fails to cure the default within the specified period of time, City shall have the right to immediately terminate this Agreement pursuant to this subparagraph (A). Notwithstanding any other provision of this Agreement to the contrary, City's termination of this Agreement pursuant to this subparagraph (A) shall not preclude or prejudice any other remedy to which City may be entitled in law or in equity.

B. Consultant may terminate this Agreement only due to a material breach by City, and only upon not less than thirty (30) days' prior written notice to City which notice shall specify the material default. Upon receipt of such notice, City may, but shall not be obligated to, effect to remedy such default, which remedy will cause the notice of termination to no longer apply, and this Agreement to continue in effect.

## **7. RECORDS AND OWNERSHIP OF DOCUMENTS**

A. Consultant shall maintain complete and accurate records with respect to costs, expenses, receipts, and other such information required by City that relate to the performance of Services under this Agreement. Consultant shall maintain adequate records of Services provided in sufficient detail to produce an evaluation of Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of six (6) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, computer files, surveys, notes, and other documents prepared in the course of providing the Services to be performed pursuant to this Agreement ("Work Product") shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of Consultant. Consultant shall provide such items to City promptly upon completion of this Agreement. City acknowledges that such Work Product is not intended or represented to be suitable for use unless completed by Consultant, or for use or reuse by City or others on extensions of the Services or Work under this Agreement, or for any other use or purpose, without written verification or adaptation by Consultant. Any such use, reuse, or



any modification of the Work Product, without written verification, completion, or adaptation by Consultant, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to Consultant or to its officers, directors, members, partners, agents, employees, and consultants.

C. Any information gained by Consultant in the performance of this Agreement shall be considered confidential and such information and the reports, records, documents, and other materials prepared by Consultant in the performance of Services under this Agreement shall not be released publicly or to any other client of Consultant without the prior written approval of the City Manager.

## **8. INDEMNIFICATION**

A. To the fullest extent permitted by law, except as set forth in subparagraph (B), Consultant shall indemnify, defend (with legal counsel acceptable to City), and hold harmless City and City Personnel from and against any and all claims, actions, suits, claims, demands, judgments, attorneys' fees, costs, damages, losses, penalties, obligations, expenses, or liabilities ("Claims") that may be asserted or claimed by any person or entity arising out of, or pertaining to, Consultant's negligence, recklessness, or willful misconduct, whether or not there is concurrent active or passive negligence on the part of City and/or any City Personnel, but excluding any Claims arising from the sole negligence or willful misconduct of City or any City Personnel. Consultant shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorneys' fees incurred in connection therewith. Consultant shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities. In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such Claims arising out of or in connection with the Work being performed or Services being provided under this Agreement, Consultant shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorneys' fees and expert witness fees. Consultant's duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant's proportionate percentage of fault. Consultant's percentage of fault shall be determined, as applicable, by a court of law, jury, or arbitrator. In the event any loss, liability, or damage is incurred by way of settlement or resolution without a court, jury, or arbitrator having made a determination of Consultant's percentage of fault, the Parties agree to mediation with a neutral third-party to determine Consultant's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost requirement owed to City.

B. The provisions of this subparagraph (B) apply only if Consultant is a "design professional" within the meaning of California Civil Code section 2782.8(c). If Consultant is a "design professional," within the meaning of Section 2782.8(c), then notwithstanding subparagraph (A), to the fullest extent permitted by law (including, without limitation, California Civil Code sections 2782 and 2782.6), Consultant shall defend (with legal counsel acceptable to City), indemnify, and hold harmless City and City Personnel from and against any Claim that

arises out of, pertains to, or relates to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any sub-consultant, subcontractor, or any other person directly or indirectly employed by them, or any person that any of them control, arising out of Consultant's performance of any task or Service for or on behalf of City under this Agreement. Such obligations to defend, hold harmless, and indemnify City or any City Personnel, shall not apply to the extent that such Claims are caused, in part, by the sole negligence or willful misconduct of City or City Personnel. Consultant's cost to defend City and/or City Personnel against any such Claim shall not exceed Consultant's proportionate percentage of fault with respect to that Claim; however, pursuant to California Civil Code section 2782.8(a), in the event that one or more of the defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with City (and, if applicable, other parties) regarding any unpaid defense costs. To the extent Consultant has a duty to indemnify City or any City Personnel under this subparagraph (B), Consultant shall be responsible for all incidental and consequential damages resulting directly or indirectly, in whole or in part, from Consultant's negligence, recklessness, or willful misconduct.

C. Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and all amounts for which City may be liable to third parties, by reason of Consultant's negligent acts, errors, omissions, or willful misconduct, in performing or failing to perform Consultant's obligations under this Agreement. City in its sole and absolute discretion, may withhold any payment due to Consultant, without liability for interest, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or withhold shall not act as a waiver of Consultant's obligation to pay City any sums Consultant owes City.

## **9. INSURANCE**

Without limiting Consultant's indemnification obligations of City as set forth in this Agreement, and prior to the commencement of Work, Consultant shall obtain, provide, and maintain, at its own expense, during the entire term of this Agreement including any extension thereof, policies of insurance of the type and amounts described in Exhibit B and in a form satisfactory to City.

A. No Work or Services under this Agreement shall commence until Consultant has provided City with Certificates of Insurance evidencing the required insurance coverages and said Certificates of Insurance are reasonably approved by City. Certificates are to reflect that the insurer will provide thirty (30) days' written notice to City of any cancellation of coverage. In the event any of said policies of insurance are reduced in limits or cancelled for any reason, Consultant shall, prior to the cancellation date, submit new evidence of insurance.

B. The provisions of any workers' compensation or similar law will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any

statutory immunity defenses under such laws with respect to City, its employees, officials, and agents.

C. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the Work performed under this Agreement. City assumes no obligation or liability by such notice, but has the right to monitor the handling of any such claim or claims if they are likely to involve City.

D. The City's Director of Administrative Services shall have the authority to adjust or amend the insurance requirements in Exhibit B of this Agreement so long as such amendment or adjustment is agreed to in writing by the Parties.

## **10. INDEPENDENT CONTRACTOR**

A. Consultant is and shall at all times remain as to City a wholly independent contractor. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, officials, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents is in any manner officers, officials, employees, or agents of City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

B. No City-provided employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing Services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing Services hereunder.

## **11. NO UNDUE INFLUENCE**

Consultant declares and warrants that no undue influence or pressure was or is used against or in concert with any officer or employee of City in connection with the award, terms, or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City shall receive compensation, directly or indirectly, from Consultant, or from any officer, employee, or agent of Consultant, in connection with the award of this Agreement or any Work to be conducted as a result of this Agreement. Consultant further warrants that it has not employed or retained any company or person other than a bona fide employee working for Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, in its discretion, to deduct

from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**12. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or has responsibilities with respect to this Agreement during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for Work to be performed in connection with the Services performed under this Agreement.

**13. COVENANT AGAINST DISCRIMINATION**

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this Agreement there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, gender, gender identity, gender expression, physical or mental disability, age, military status, marital or familial status, sexual orientation, national origin, or ancestry.

**14. NONLIABILITY OF CITY OFFICERS AND EMPLOYEES**

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

**15. NOTICES**

Any notices which either Party may desire to give or may be required to give to the other Party under this Agreement must be in writing and may be given either by (a) personal service; (b) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery; (c) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below or at any other address as that Party may later designate by notice; or (d) e-mailing the notice to the e-mail addresses as set forth below:

If to City: City of Duarte  
[Redacted]  
Attn: [Redacted]  
1600 Huntington Drive  
Duarte, California 91010

If to Consultant: [Redacted]  
Attn: [Redacted]



**16. GOVERNING LAW; ATTORNEYS' FEES; LITIGATION MATTERS**

The internal laws of the State of California, without regard to principles of conflicts of laws, shall govern the interpretation of this Agreement. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding anything in this Agreement to the contrary, in no event shall Consultant be entitled to economic or consequential damages or to punitive damages. In the event of any litigation arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party all reasonable costs incurred, including staff time, court costs, attorneys' fees, expert witness fees, and other related expenses. The Superior Court of the County of Los Angeles shall have exclusive jurisdiction over any litigation between the Parties concerning this Agreement. Service of process on City shall be made in the manner required by law for service on a public entity. Service of process on Consultant shall be made in any manner permitted by law and shall be effective whether served inside or outside of California.

**17. RIGHTS AND REMEDIES ARE CUMULATIVE; WAIVER**

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

B. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No waiver by either Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**18. SEVERABILITY**

If any portion of this Agreement is found by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way affect, impair, or invalidate any other term, covenant, or condition, or provision contained in this Agreement. Upon a determination that any term or

provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to give effect to the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be performed as originally contemplated to the greatest extent possible.

## **19. INTERPRETATION; ENTIRE AGREEMENT**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, relating to the obligations of the Parties described in this Agreement, are merged into this Agreement and shall be of no further force or effect.

## **20. CONFLICTS OF INTEREST**

Consultant represents, warrants, and covenants that he, she, or it presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Consultant's obligations and responsibilities under this Agreement. Consultant further agrees that while this Agreement is in effect, Consultant shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Consultant's obligations and responsibilities under this Agreement. Consultant acknowledges that pursuant to the provisions of the Political Reform Act (California Government Code section 87100 et seq.), City may determine Consultant to be a "consultant" as that term is defined by the Political Reform Act. In the event City makes such a determination, Consultant agrees to complete and file a "Statement of Economic Interest" with the City Clerk to disclose such financial interests as required by City. In such event, Consultant further agrees to require any other person doing Work under this Agreement to complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by City.

## **21. NO THIRD-PARTY BENEFICIARIES**

This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

## **22. PARAGRAPH HEADINGS AND SUBHEADINGS**

The paragraph headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**23. COUNTERPARTS**

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

**24. EXECUTION OF CONTRACT**

The persons executing this Agreement on behalf of each of the Parties represent and warrant that (i) such Party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party; (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement; and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound.

**25. CITY MANAGER AUTHORITY**

City's City Manager shall have the authority to make non-material changes, non-material amendments, or clerical edits to this Agreement on behalf of the City.

[Signatures on following page.]

**IN WITNESS WHEREOF**, the City Council of the City of Duarte caused the Agreement to be subscribed by its Mayor or City Manager and said Consultant has executed or caused this Agreement to be executed by its duly authorized officer(s).

**CITY OF DUARTE**

**CONSULTANT**

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

\_\_\_\_\_  
**[City Manager or Mayor]**

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

**Date:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTEST**

\_\_\_\_\_  
**City Clerk**

**Date:** \_\_\_\_\_

**APPROVED AS TO FORM  
RUTAN & TUCKER, LLP**

\_\_\_\_\_  
**City Attorney, City of Duarte**

**Date:** \_\_\_\_\_



**EXHIBIT A**

**Scope of Services**

**[ATTACH DOCUMENTS HERE]**

## EXHIBIT B

### **Insurance Requirements**

#### A. Insurance Required

(1) Commercial General Liability insurance in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage.

(2) Automobile Insurance covering bodily injury and property damage for all activities of Consultant arising out of or in connections with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles in an amount not less than \$1,000,000 combined single limit for each accident.

(3) Workers' Compensation Insurance providing statutory benefits as required by California law.

(4) Employer's Liability Insurance with limits in an amount not less than \$1,000,000.

(5) Professional Liability or Errors and Omissions Insurance designed to protect against acts, errors, or omissions of Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement, and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the Services required by this Agreement.

B. All insurance policies required hereunder, except the workers' compensation insurance, shall comply with the following requirements:

(1) All insurance shall be written by insurers that are admitted and licensed to do business in the State of California and with A.M. Best's rating of A- or better and a minimum financial size VII in accordance with the latest edition of Best's Key Rating Guide.

(2) The policies shall be endorsed to name City and its officers, officials, employees, agents, and volunteers as additional insureds.

(3) All of Consultant's insurance: (i) shall contain no special limitations on the scope of protection afforded to the additional insureds; (ii) shall be primary insurance and any insurance or self-insurance maintained by the additional insureds or any of them shall be in excess of Consultant's insurance and shall not contribute with it; (iii) shall be "occurrence" rather

than “claims made” insurance; (iv) 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; (v) shall prohibit Consultant from waiving the right of subrogation prior to a loss except for professional liability; and (vi) shall not contain any provision or definition that would serve to eliminate so-called “third party action over” claims, including any exclusion for bodily injury to an employee of the insured.

(4) City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days’ advance written notice of such change.

C. Consultant shall renew the required coverage annually as long as City or its employees or agents face an exposure from Consultant’s operations pursuant to this Agreement. Termination of this obligation shall survive the termination or expiration of this Agreement and shall not be effective until City executes a written statement