



# Agenda Report

**Date:** December 11, 2012  
**To:** Jeffrey W. Collier, City Manager  
**From:** Rod C. Hill, City Controller & Director of Human Resources  
**Subject:** Legal Services Agreement with Rutan & Tucker for Mineral Extraction Endowment

## **RECOMMENDATION**

It is recommended that the City Council authorize the City Manager to execute the legal services agreement with Rutan & Tucker, LLP, related to the Mineral Extraction Endowment project in substantially final form as attached.

## **BACKGROUND**

Rutan & Tucker is a Southern California legal firm that specializes in providing municipal, real estate and trust related legal services.

## **DISCUSSION**

Rutan & Tucker was one of several legal firms interviewed by the City Council's Financial Plan Subcommittee and was recommended for selection to provide legal services related to the mineral extraction endowment establishment based on their legal expertise related to this project. Their services will include, but are not limited to, the following:

- Research and Investigation
- Endowment Establishment and Approval
- Medium and Long-Term Administration

Based on the firm's location in Southern California and their numerous legal specialties, Rutan & Tucker will provide a valuable resource to the City as this project continues to develop. Rutan & Tucker has provided several hourly rates in their proposal, which are based on the particular staff and type of legal work being performed (\$552.50/hr, \$391/hr, and \$289/hr). Due to the uniqueness of this legal project, no defined budget has been established, although the majority of the initial work is anticipated to be completed within six to eight months from the approval of this agreement.

## **FISCAL IMPACT**

\$268,800 has been accumulated in the General Fund from the mineral extraction lease and will be used to cover any costs associated with this agreement.

Submitted by:



Rod C. Hill  
City Controller & Director of Human Resources

Attachment: A. Agreement for Professional Services from Rutan & Tucker

**CITY OF WHITTIER  
AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT**, made and entered into this 11th day of December 2012, by and between the CITY OF WHITTIER, a municipal corporation located in the County of Los Angeles, State of California, hereinafter referred to as "CITY" and Rutan & Tucker, LLP, with principal offices at 611 Anton Blvd., Ste. 1400, Costa Mesa, CA, hereinafter referred to as "CONSULTANT".

**WITNESSETH**

**WHEREAS**, CONSULTANT is a legal firm, the principal members of which are fully qualified and licensed as required under the laws of the State of California; and

**WHEREAS**, The CITY retains and employs CONSULTANT to act as such for CITY to perform such legal services as may be requested of it by the CITY for the establishment of an Endowment related to the Mineral Extraction project. CONSULTANT accepts the employment and agrees to render such services as CONSULTANT on the terms and conditions hereinstated; and

**WHEREAS**, CONSULTANT is experienced in providing such services for municipal corporations and is able to provide personnel with the requisite experience and background to carry out these duties;

**NOW, THEREFORE**, in consideration of the mutual covenants, benefits, and premises hereinabove stated, the parties hereto agree as follows:

1. **SERVICES TO BE PERFORMED**

CITY hereby engages CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the legal and professional services set forth in the scope of services attached hereto as Exhibit "A" and incorporated herein by this reference.

2. **TIME FOR PERFORMANCE**

CONSULTANT shall begin work within ten (10) days following execution of this Agreement by CITY. CONSULTANT shall complete all tasks in accordance with the schedule included in the scope of services, which may be revised with with approval by the City.

3. **PERFORMANCE TO SATISFACTION OF CITY**

CONSULTANT agrees to perform all work in the scope of services to the reasonable satisfaction of CITY and within the time hereinafter specified.

If the quality of work is not satisfactory, CITY in its discretion, has the right to:

- a. Meet with CONSULTANT to review the quality of the work and resolve the matters of concern;
- b. Require CONSULTANT to repeat the work at no additional fee until it meets the requirements of the scope of services to the reasonable satisfaction of CITY; and/or
- c. Terminate the Agreement as hereinafter set forth.

4. COMPLIANCE WITH LAW

All services rendered hereunder shall be performed by CONSULTANT or under its direct supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized by or permitted under State or local law to perform such services.

5. FAMILIARITY WITH WORK

By execution of this Agreement, CONSULTANT warrants that

- a. It has thoroughly investigated and considered the work to be performed, based on all available information.
- b. It carefully considered how the work should be performed, and
- c. It fully understands the difficulties and restrictions attending the performance of the work under this Agreement.
- d. It has the professional and legal competency to perform the work and the production capacity to complete the work in a timely manner with respect to the schedule included in the scope of services.

6. COMPENSATION

A. SERVICES DESCRIBED IN PROPOSAL

For the provision of all services rendered under this Agreement in accordance with the scope of services, attached hereto as Exhibit "A" and all expenses associated therewith, CITY shall pay CONSULTANT an amount consistent with the fees included in Exhibit "A", unless the CITY has given specific advance approval in writing.

B. ADDITIONAL SERVICES.

For any additional services, change orders or any additional compensation of any nature to be proposed for payment to CONSULTANT by CITY, such modification of this original Agreement be in the form of a written amendment to the Agreement signed by authorized representatives of both parties.

It is specifically understood that oral requests or approvals of such additional services, change orders or additional compensation and any approvals from CITY shall be barred and are unenforceable.

C. PAYMENT PROCEDURE.

Progress payments to CONSULTANT, if allowed, shall be in accordance with the fee schedule included in Exhibit "A". CONSULTANT shall submit invoices to the CITY no more frequently than monthly. When work is to be paid on a "time and materials not to exceed" basis, invoices shall be submitted monthly. When work is to be paid on a "lump sum" basis, progress invoices shall be submitted as tasks are completed as described in Exhibit "A". Within ten (10) working days of receipt of such invoice, CITY shall determine whether CONSULTANT has satisfactorily performed the work described in the invoice. CITY shall thereafter pay CONSULTANT for that work which CITY deems to have been satisfactorily completed. Such retention shall be paid to CONSULTANT within thirty (30) days of CITY's determination that CONSULTANT has satisfactorily completed all required tasks.

7. TERMINATION

A. TERMINATION FOR CONVENIENCE.

Either the CITY or the CONSULTANT may terminate this AGREEMENT at any time without cause by giving thirty (30) calendar days written notice to the other of such termination and specifying the effective date thereof. If this AGREEMENT is terminated as provided herein, CONSULTANT will be paid a total amount equal to the service provided as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT.

B. TERMINATION FOR CAUSE.

If for any reason, CONSULTANT shall fail to fulfill in a timely and proper manner its obligation under this AGREEMENT, or if

CONSULTANT shall violate any of the covenants or stipulations of this agreement, CITY shall then have the right to terminate this agreement by giving a five (5) calendar day written notice to CONSULTANT. The notice shall refer to this clause, shall specify the nature of the alleged default, and shall specify the effective date of the termination. The CONSULTANT will be paid a total amount equal to the service provided as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT.

In the event of termination, CONSULTANT shall immediately stop rendering services under this Agreement unless directed otherwise by CITY, and shall deliver to CITY all plans, data, reports, summaries, floppy disks, and all such other information and materials as CONSULTANT may have accumulated in performing this Agreement.

8. COORDINATION OF WORK

A. Selection of Representatives

The following principal(s) of CONSULTANT are hereby designated as the principal(s) and representative(s) of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and to make all decisions in connection therewith:

<u>Joel D. Kuperberg</u>	<u>Attorney</u>
Representative	Title

<u>William H. Ihrke</u>	<u>Attorney</u>
Representative	Title

The foregoing principal(s) may not be changed by CONSULTANT without the express written approval of CITY.

B. Contract Officer

The Contract Officer shall be the City Controller/Director of Human Resources, or such other person as designated by the City Manager of the City. It shall be the CONSULTANT's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the CONSULTANT shall refer any decision which must be made by CITY to the Contract Officer. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Contract Officer.

9. INDEPENDENT CONTRACTOR

A. CONSULTANT Status

CONSULTANT is an independent contractor and not an employee of CITY. Neither CITY nor any of its employees shall have any control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as herein set forth and, CONSULTANT expressly warrants not to, in any time or in any manner, represent that CONSULTANT, or any of CONSULTANT's officers, employees or agents, are in any manner officers, employees, or agents of CITY. It is distinctly understood that said CONSULTANT is and shall at all times remain as to the CITY a wholly independent CONSULTANT, and that CONSULTANT's obligations to the CITY are solely such as are prescribed by this Agreement.

B. CONSULTANT's Personal Services - Inducement

This Agreement contemplates that the CONSULTANT's personal services and those of CONSULTANT's officers, employees, and agents are a substantial inducement to the CITY for entering into this Agreement. CONSULTANT may not assign any interest in this Agreement, except upon written consent of CITY.

Furthermore, unless expressly provided otherwise in CONSULTANT's proposal, CONSULTANT shall not subcontract any portion of the performance contemplated under this Agreement without the prior written approval of the CITY. Nothing in this Agreement shall be construed as preventing CONSULTANT from employing as many employees as CONSULTANT deems necessary for the proper and efficient execution of this Agreement.

10. PERS ELIGIBILITY INDEMNITY.

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 the City, CONSULTANT shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or subcontractors, as well as for the payment of any

penalties and interest on such contributions, which would otherwise be the responsibility of City.

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.

11. INDEMNITY

CONSULTANT hereby agrees to protect, indemnify and hold CITY and its employees, officers and servants free and harmless from any and all losses of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees and other expenses incurred by the CITY arising in favor of any party, including claims, liens, debts, personal injuries, including employees of the CITY, death or damages to property (including property of the CITY) and without limitation by enumeration, all other claims or demands of every character occurring or arising directly out of the negligence, recklessness or willful misconduct of CONSULTANT in the performance of its services under this Agreement. This provision is not intended to create any cause of action in favor of any third party against CONSULTANT or the CITY or to enlarge in any way the CONSULTANT'S liability but is intended solely to provide for indemnification of the CITY for liability for damages or injuries to third persons or property arising from CONSULTANT'S negligent performance hereunder.

12. INSURANCE

Throughout the term of this Agreement, CONSULTANT shall procure and maintain, at its own cost, the insurance as described in Exhibit "B", "Insurance Requirements".

13. MISCELLANEOUS

A. Ownership of Documents

All deliverables described in the scope of services shall be the property of CITY and shall be delivered to CITY upon completion or termination of this Agreement. All hard copy documents and information in electronic files that are assembled or prepared by CONSULTANT shall be made available to CITY upon request to review or to copy, and CITY shall reimburse CONSULTANT for actual



cost of reproduction of documents not included as deliverables in the scope of services. Copies and said documents and electronic information may be retained by CONSULTANT, but shall not be made available by CONSULTANT to any individual or organization without the prior written approval of CITY, except as required by law.

B. Notices

Any notices to be given under this Agreement shall be given by enclosing the same in the sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

CITY:

City of Whittier  
13230 Penn Street  
Whittier, CA 90602  
Attn: City Clerk-Treasurer

CONSULTANT:

Rutan & Tucker, LLP  
611 Anton Blvd, Ste 1400  
Costa Mesa, CA 92628  
Attn: Joel D. Kuperberg, Esq

C. Enforcement of Agreement

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

D. Disputes

In the event of any dispute arising under this Agreement, the injured Party shall notify the injuring Party in writing of its contentions by submitting a claim therefor.

The injured Party shall continue performing its obligations hereunder so long as the injuring Party cures any default within ninety (90) days after service of the notice, or if the cure of the default is commenced within thirty (30) days after service of said notice and is cured within a reasonable time after commencement; provided that, if the default is an immediate danger to the health, safety and general welfare, the CITY may take immediate action. Compliance with the provisions of this Section shall be a condition precedent to any legal action, and such compliance shall not be a waiver of any Party's right to take legal action in the event that the dispute is not cured.

E. Waiver

No delay or omission in the exercise of any right or remedy of a nondefaulting Party on any default shall impair such right or remedy or be construed as a waiver. CITY's consent or approval of any act by CONSULTANT requiring CITY's consent to or approval of any subsequent act of CONSULTANT or any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

F. Rights and Remedies are Cumulative

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

G. Attorney's Fees

If either Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs of suit from the losing Party.

H. Integration

This Agreement, together with attached Exhibits identified herein supersede any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party, which is not embodied herein, nor any other agreement; statement or promise not contained in this Agreement shall be valid and binding. Any modification of the Agreement shall be effective only if it is in writing and signed by all parties.

[SIGNATURES FOLLOW ON NEXT PAGE]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

CITY OF WHITTIER

By \_\_\_\_\_  
Jeffrey W. Collier, City Manager /Date

ATTEST:

By \_\_\_\_\_  
Kathryn A. Marshall, City Clerk-Treasurer /Date

APPROVED AS TO FORM:

By \_\_\_\_\_  
Richard D. Jones, City Attorney /Date

CONSULTANT:

By \_\_\_\_\_  
Joel D. Kuperberg, Rutan & Tucker /Date

November 20, 2012

Jeffrey W. Collier  
City Manager  
City of Whittier  
13230 Penn Street  
Whittier, CA 90602

Re: Proposal for Legal Services  
Endowment for Mineral Extraction  
Revenues

Dear Mr. Collier:

Thank you for meeting with Bill Ihrke and me this past Monday to discuss the City's desire to develop a structure to conserve revenues from the Whittier Hills oil project for future generations of City residents. This is a very exciting project and we appreciate the opportunity to discuss it with you and the members of the Council subcommittee.

In response to an e-mail that your City Attorney, Dick Jones, sent to us on November 19, 2012, we submit this letter proposal to the City of Whittier ("City") to provide legal services in connection with the establishment and administration of an endowment, trust or other structure that would be used to safeguard and invest revenues received from mineral extractions on land owned and leased by the City. As requested, this proposal includes a time line showing our plan and phasing for work to be done, a review of our strategy, and a summary of our fees and proposed budget. We have also included disclosures concerning potential conflicts of interest.

*A. Time Line and Phasing of Work to be Completed*

We propose a three-phased approach to providing our legal services, divided as follows:

- Phase 1: Research and Investigative Work. This phase includes legal research and coordination with City staff to produce a recommended course of action(s) for consideration by the Council Subcommittee and City Council. The recommended action(s) will address how best to structure a long-term strategy for the investment, allocation and preservation of revenues received from mineral extraction. As discussed during the interview, this phase would include researching and coordinating with staff on a variety of alternative approaches, including the development of a structure with redundant protections (i.e., the "belt and suspenders" approach) to protect mineral extraction revenues from immediate expenditure. Among the alternative approaches we discussed were a voter-

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approved initiative, the establishment of a revocable or irrevocable trust, the establishment of separate nonprofit public benefit corporation, and a potential validation action.

Estimated amount of time: Three to six months.

- Phase 2: Endowment Establishment and Approval Work. This phase includes legal services and coordination with City staff to implement the action(s) developed in Phase 1 and approved by the City Council. For example, if, as part of the approved preservation structure, the City Council seeks to have voter approval of expenditure limitations, our office would work with City staff to develop the text of the initiative, and address the legal issues to permit the question to be placed properly on the ballot. Similarly, if the City Council desires the creation of a trust instrument and/or a “support” tax-exempt nonprofit entity to restrict the expenditure of the revenues, we would work with City staff to draft and present the requisite documents to City Council.

Estimated amount of time: Six to twelve months, depending upon the number of actions to be completed. Additional time may be needed to coordinate with a selected election date, if necessary.

- Phase 3: Medium and Long-Term Administration Work. This phase includes the on-going legal services and coordination with City staff to administer and advise the governing body or committee overseeing the preservation structure, once it is established. For example, if the City Council approves the establishment of an irrevocable trust to be governed by a separate nonprofit entity, this phase would include the ongoing provision of legal services and advice concerning the administration of that trust and advise to the nonprofit entity.

Estimated amount of time: Upon completion of all actions from Phase 2, several months or years, depending upon the will of the City Council, the term of the lease, receipt of revenues from mineral extraction, and amount of revenues remaining over time.

It should be recognized that these time frames are very preliminary, based on the limited information available as of this date. We anticipate that we will be able to develop a more refined time estimate for Phase 2 as we complete Phase 1; similarly, the conduct of the Phase 2 activities will provide more detailed information regarding the time estimate for Phase 3. The hope, however, is that the general schedule and phasing, as outlined above, is realistic and would be achievable.

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*B. Review of Strategy*

We propose a review of strategy that includes an assessment of any "milestone" action within one month after that action. For instance, if the City Council determines to place on the ballot the question of the establishment of a trust/endowment for the mineral extraction revenues, we propose that a review of that strategy occur no later than one month after the results of the election have been certified. For purposes of this proposal, a "milestone" action would be the major actions approved by the City Council during Phase 1, to be implemented during Phase 2, that would be integral to the ultimate establishment of the trust/endowment and allocation of revenues.

Rest assured, however, that as a matter of general policy, Rutan always takes direction from the City Council and City management when strategic review is either requested or demanded. We would serve Whittier no differently. If the City Council or the City Manager requests a review of any "milestone" action, or any matter under the purview of Rutan's representation, our firm will timely participate in such review.

*C. Fees and Proposed Budget*

We propose competitive rates for the provision of our legal services, but rates that are higher than the normal rates we charge for municipal legal services, due to the highly specialized nature of legal work required for this endeavor. We propose a rate structure that is 85% of the standard "design rate" that our office charges for the attorneys working on this matter. This results in a proposed rate of \$391 for Joel (based on his current hourly design rate of \$460) and \$289 for Bill (based on his current design rate of \$340 per hour), who would be the lead attorneys for this matter. In the event that the City decides to pursue a trust and/or nonprofit corporation as part of the overall strategy, Rutan proposes to have as the lead attorney from our Corporate Department, Paul Marx, whose proposed rate would be \$552.50, based on his current design rate of \$650 per hour. For many of the trust and/or nonprofit corporation documents necessary for the establishment and general governance, Rutan has highly skilled attorneys and assistants who would be available to work under Paul's supervision at lower rates, therefore saving the City additional costs.

We bill for all time spent, including travel time. Rutan prepares itemized billing statements, and bills in 0.1 hour time increments (six minutes). Rutan also requires reimbursement for various costs incurred in performing legal services, including long distance telephone charges, significant postage, parking, out-of-town travel expenses, duplication (@ 19¢ per page), telecopying, messengers, computer-assisted research (e.g. LEXIS), and other out-of-pocket expenses. Rutan has an 800 telephone number (1-800-RUTAN-76) to eliminate telephone expense charges to clients. Detailed monthly invoices will be sent directly to you. Payment is requested within 30 days of receipt of the invoice.

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With respect to a budget, it is very difficult at this time to make predictions without more guidance from the City Council. We propose that Phase 1 include a preparation of a proposed budget once the City Council and City staff have provided more feedback to our office as to the asset preservation structure and combination of approaches, as referenced above.

*D. Potential Conflicts of Interest*

From time to time, Rutan may also represent other clients that may have interests adverse with the City's interests on matters unrelated to the subject matter of our services for the City as proposed in this letter. Pursuant to the Rules of Professional Conduct of the State Bar of California, an attorney may not, without the informed written consent of each client, accept representation of more than one client in a matter in which the interests of the clients potentially conflict, accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict, or represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interests in the first matter is adverse to the client in the first matter.

At present, Rutan represents Brookfield Homes for general entitlement and development matters, which is or may become adverse to the City. As a condition to our firm undertaking the representation set forth in this letter, the City will need to agree that Rutan may continue to represent, or may undertake in the future to represent, other existing or new clients in any matter, other than a matter in which Rutan represents the City, which may adversely affect the City or City's interest. Rutan agrees, however, that the City's consent to such conflicting representation by Rutan shall not apply in any instances where, as a result of Rutan's representation of the City, Rutan has obtained confidential information of a non-public nature which would be material to Rutan's representation of any such existing or new client. In the event that the City decides to retain Rutan, our office will provide a retainer agreement that will cover any existing or potential conflicts of interest.

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*E. Concluding Remarks*

We believe that Rutan is uniquely qualified to provide the City of Whittier with the requested legal representation. If you have any questions, do not hesitate to contact Bill or me. We very much look forward to working with the City on this exciting and cutting-edge project.

Very truly yours,

RUTAN & TUCKER, LLP

  
Joel D. Kuperberg

WHI:lr

cc: Richard Jones, Esq.



**EXHIBIT "B"**  
**INSURANCE REQUIREMENTS**

The CONSULTANT shall maintain throughout the duration of the term of the Agreement, liability insurance covering the CONSULTANT and, with the exception of Professional Liability Insurance, designating CITY including its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultant's, as additional insured against claims resulting in injury or damage to persons or property (both real and personal) caused by CONSULTANT's work, in amounts no less than the following and with such deductibles as are ordinary and reasonable in keeping with industry standards. It shall be stated, in the Additional Insured Endorsement, that the CONSULTANT's insurance policies shall be primary as respects any claims related to or as the result of the CONSULTANT's work. Any insurance, pooled coverage, or self-insurance maintained by the CITY, its elected or appointed officials, directors, officers, agents, employees, volunteers, or CONSULTANTS shall be non-contributory.

Professional Liability Insurance	\$1,000,000/\$2,000,000
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General Liability:

a.	General Aggregate	\$2,000,000
b.	Products Comp/Op Aggregate	\$2,000,000
c.	Personal & Advertising Injury	\$1,000,000
d.	Each Occurrence	\$1,000,000
e.	Fire Damage (any one fire)	\$ 50,000
f.	Medical Expense (any one person)	\$ 5,000

Workers' Compensation:

a.	Workers' Compensation	Statutory Limits
b.	EL Each Accident	\$1,000,000
c.	EL Disease - Policy Limit	\$1,000,000
d.	EL Disease - Each Employee	\$1,000,000

Automobile Liability

a.	Hired and non-owned vehicle, combined single limit	\$1,000,000
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The CONSULTANT shall provide thirty (30) days advance notice to CITY in the event of material changes or cancellation of any coverage. Certificates of insurance and additional insured endorsements shall be furnished to CITY thirty (30) days after the effective date of this Agreement, and no payments for services provided by CONSULTANT under this agreement shall be made by CITY until it is in receipt of said certificates. Refusal to submit such certificates shall constitute a material breach of this Agreement entitling CITY to any and all remedies at law or in equity, including

termination of this Agreement. If proof of insurance required under this Agreement is not delivered as required or if such insurance is canceled and not adequately replaced, CITY shall have the right but not the duty to obtain replacement insurance and to charge the CONSULTANT for any premium due for such coverage. CITY has the option to deduct any such premium from the sums due to the CONSULTANT.