

CITY OF LA HABRA HEIGHTS



REQUEST FOR PROPOSAL

Traffic Mitigation Study RFP No. 2019-05

RFP Circulation Date:
November 26, 2019

Proposal Submission Deadline:
Tuesday, December 17, 2019 at 3:00 p.m.

INTRODUCTION

The City of La Habra Heights (“City”) is seeking qualified traffic and/or transportation consultants to prepare a study and traffic mitigation plan for Hacienda Road, East Road and West Road. The study should identify and evaluate, including costs, ways to reduce or eliminate cut through traffic, reduce traffic volume, reduce traffic speed, as well as identify possible solutions to provide breaks in traffic flow to allow residents at all intersections opportunity to enter and exit the road, and for Emergency Vehicles to navigate the road at peak hours. The City is also seeking to evaluate the cost of services provided and examine which traffic control devices are the most effective solutions.

PROJECT SCHEDULE

The following is a tentative time schedule related to the requested work.

| | |
|-------------------|------------------------------|
| Issue RFP | November 26, 2019 |
| Proposals Due | December 17, 2019 |
| Award of Contract | January 13, 2020 (Tentative) |
| Community Meeting | TBD |

RESPONSE SUBMITTAL

To be considered, one original and three copies of each proposal must be received **no later than Tuesday, December 17, 2019, at 3:00 p.m.** The original response must be unbound. “City of La Habra Heights 2019 Traffic Mitigation Study RFP” must be clearly marked on the outside of the envelope.

**Submit Proposal to:
City of La Habra Heights
1245 N. Hacienda Road
La Habra Heights, CA 90631**

NO LATE SUBMITTALS WILL BE ACCEPTED.

Any requests for clarification or other questions concerning this RFP must be submitted via email to:

Fabiola Huerta, City Manager
fhuerta@lhhcity.org

GENERAL REQUIREMENTS

The City of La Habra Heights reserves the right to reject any or all responses, to waive any informality in any responses, and to select the firm that best meets the City’s needs.

Responses must be submitted no later than the date and time stated. Responses shall be reviewed and rated as set forth in the Selection Process section of this RFP. The City will then determine which firm best meets the City's requirements.

The City reserves the right to reject in whole or in part any of the responses.

The City reserves the right to negotiate final pricing with the most qualified firm.

The City's standard Professional Services Agreement is included as Attachment II. Upon award of the contract, it is expected that the successful proposer will accept the Agreement terms and conditions. The response to the RFP shall be made a binding part of the selected firm's contract. Any contract modifications are to be stated upfront, at the time of submittal.

At the time the contract is awarded, the firm must be able to provide all required insurance documentation to the City. If these requirements are not met, the City reserves the right to select the next best qualified firm.

Any costs incurred in the preparation of a response, presentation to the City, travel in conjunction with such presentations, or samples of items shall be the responsibility of the respondent. The City assumes no responsibility and no liability for costs incurred by respondents prior to issuance of a contract or purchase order.

The proposer shall furnish the City with such additional information as the City may reasonably require.

All data, documents and other products used or developed during performance of the services will remain the property of the City.

SUBMITTAL REQUIREMENTS

The City requests responses are to be organized in a logical format that is relevant to these services. The responses shall also be concise, excluding excessive or irrelevant material.

Transmittal Letter

A cover letter signed by an official authorized to solicit business and enter into contracts for the Proposer. The cover letter should include the name, address, email address and phone number of the contact person, and shall certify the proposal is valid for at least 90 days.

Experience/Qualifications

This section shall define the experience of the Project Manager, other key personnel and sub-consultants assigned to the services. Describe the personnel's experience with similar services for municipal clients over the last five years, including the presentation

of results to elected officials. The designated Project Manager shall be the primary contact with the City during the contract period. Provide resumes of the Project Manager, other key personnel, and sub-consultants if applicable.

References

Provide a minimum of three references from public agencies where similar services have been provided within the last three years. Include a detailed description of the services, the agency names, contact names and phone numbers, and dates of services performed.

Sample

Provide a sample of a traffic study and an estimate that was recently completed for a client, similar to the scopes of work requested here.

Cost Summary

Provide a complete fee schedule for all of the services proposed in your response and any additional services that are recommended. Include one-time or set-up charges, research fees, minimum fees, or other fees that will be charged. Define the total not-to-exceed cost proposal.

OVERVIEW AND SCOPE OF SERVICES

The Scope of Services for the Traffic Mitigation Study is set forth in Attachment I.

SELECTION PROCESS

Staff will review the responses and make a recommendation to the City Council for approval (tentatively scheduled for January 13, 2020). The City intends to evaluate the proposed services based upon the data presented in response to the RFP. The following general selection criteria will be used to evaluate each proposal:

1. Ability to meet service requirements: understanding the needs and requirements of the City and scope and services offered;
2. Experience, qualifications and knowledge of key personnel;
3. References for similar work completed within the last three years;
4. Completeness of responses to the Request for Qualifications; and
5. Proposed pricing.

ATTACHMENTS

- I. Scope of Services
- II. Professional Services Agreement

ATTACHMENT I

SCOPE OF SERVICES

Traffic Mitigation Study

Project tasks shall include, but are not necessarily limited to, the following. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

La Habra Heights is a rural, hillside community. In developing solutions, priority should be given to access needs of local residents over commuter traffic.

Study Area

The area to be studied under this scope of work is Hacienda Road, East Road and West Road. Although, these are the main roads to be considered, the consultant should research the greater area and how intersecting roads are affected, as well as understand past traffic studies (available upon request).

Study Goals

The study should identify and evaluate, including costs, ways to reduce or eliminate cut through traffic, reduce traffic volume, reduce traffic speed, as well as identify possible solutions to provide breaks in traffic flow to allow residents at all intersections opportunity to enter and exit the road.

The study should examine how those possible solutions reduce congestion and provide breaks so that Emergency Vehicles can traverse the road during peak hours.

Recommendations shall be consistent with the La Habra Heights General Plan including General Plan **Goal 11**. Resist and discourage urban features such as curbs, gutters, sidewalks, streetlights, and traffic signals.

Community Meeting

Attend and conduct one kick off two-hour community meeting, to be scheduled by the City, to hear residents' concerns and suggestions.

Data Collection & Analysis

Provide an analysis of the historical data as well as recent traffic conditions in the study area.

Analyze current traffic patterns through traffic counts and turning movement counts during different times of day.

Provide an analysis of wait times to execute turns on and off Hacienda Road from non-signalized intersections and from residential driveways at different times of day. This data shall be taken with the goal to understand when, or if, measures are needed to reduce those wait times.

Development of Alternatives

The traffic plan will include, but not be limited to:

- Analysis of traffic counts and wait times;
- Analysis for 2019 to 2029 traffic conditions;
- Recommendations on how to achieve safe and efficient intersections;
- Strategic placement of traffic calming measures;
- Discussion of how recommendations will affect access of abutters compared to doing nothing;
- Discussion of how recommendations will allow emergency response access;
- Cost estimates for all proposed options;
- Innovative, low key, low cost solutions are encouraged.

The proposal, at a minimum, should indicate how the firm will accomplish the tasks outlined and provide the services detailed. A detailed engineering report documenting the findings of the study will be required as part of the final work product.

ATTACHMENT II
PROFESSIONAL SERVICES AGREEMENT
(City of La Habra Heights/*Name of Consultant*)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of La Habra Heights, a California municipal corporation (“City”), and _____ ***[enter consultant (company’s) name]*** a _____ ***[insert consultant’s state of incorporation]***, _____ ***[enter consultant’s legal status e.g., individual, partnership, corporation, nonprofit public benefit corporation, limited liability company]*** (“Consultant”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: _____ ***[insert description of consultant’s services]***.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 “Scope of Services”: Such professional services as are set forth in Consultant’s _____ ***[enter consultant’s proposal date]*** proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 “Approved Fee Schedule”: Such compensation rates as are set forth in Consultant’s _____ ***[insert date fee schedule submitted to City]*** fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 “Commencement Date”: _____.
- 3.4 “Expiration Date”: _____.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of _____ Dollars (\$_____, _____) unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state, and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule and Section 5 of this Agreement above.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten (10) business days of receipt of each invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty (30) calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant unless otherwise required by law.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule nor to claim payment other than in compliance with this Agreement, including Section 5.1 above. Fees for such additional services shall be paid within sixty (60) days of the date Consultant issues an invoice to City for such services.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as his employer.

Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

9. CONFIDENTIALITY

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. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and expenses of litigation.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as

a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation statute or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies apply to the claim, demand, damage, liability, loss, cost or expense.

Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, and hold harmless City and any and all of its boards, officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual for which Consultant shall bear legal liability) in the performance of professional services under this agreement.

Indemnity for Other than Professional Liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its

boards, employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including reasonable attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
 - 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.

- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.
- 11.6 Consultant shall provide proof to the City's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 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 the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

- 13.1 Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.
- 13.2 The Consultant shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the City to assure proper accounting. These records will be made available for audit purposes to the City or any authorized representative, and will be retained five years after the expiration of this Agreement unless permission to destroy them is granted by the City. (24 CFR Part 8.4, Sec. 84.53).

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

City of La Habra Heights
1245 North Hacienda Road
La Habra Heights, CA 90631
Phone: (562) 694-6302
Fax: (562) 694-4410

If to Consultant:

Name of Consultant
Street Address or P.O. Box
City, State Zip Code
Telephone: () ____ - ____
Facsimile: () ____ - ____

With courtesy copy to:

Michael Maurer, City Attorney
Best Best & Krieger, LLP
2855 East Guasti Road, Suite 400
Ontario, CA 91761
Telephone: (909) 483-6640
Facsimile: (909) 944-1441

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

- 17.1. City shall have the right to terminate this Agreement for any reason on thirty (30) calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty (60) calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2. If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid

to Consultant for the full performance of the services required by this Agreement.

- 17.3 This Agreement may be terminated by either party, if there has been a material default or breach on the part of the other party in any of its representations, warranties, covenants, or obligations contained in this Agreement and such default or breach is not cured within ninety (90) days following written notification from the non-breaching party.

18. GENERAL PROVISIONS

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the neuter form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in a writing signed by a representative authorized to bind the party asserted to have consented to the waiver.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

19. PREVAILING WAGE LAW

- 19.1. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance

of other requirements on certain “public works” and “maintenance” projects. If the services under this Agreement are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of La Habra Heights

“Consultant”
Name of Company or Individual

By: _____
Fabiola Huerta, City Manager

By: _____
Name, Level of Officer

Date: _____

Date: _____

Attest:

By: _____
Anna Badillo, Administrative Assistant

Date: _____

Approved as to form:

By: _____
Michael Maurer, City Attorney

Date: _____

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT "B"
APPROVED FEE SCHEDULE