



CITY OF La Habra Heights
REQUEST FOR PROPOSALS (RFP) NO. 2022-03
FOR
PAVEMENT MANAGEMENT PROGRAM UPDATE

CITY OF LA HABRA HEIGHTS
Fabiola Huerta
City Manager
1245 N. Hacienda Road
La Habra Heights, CA 90631

RFP DATES:

Request for Proposal Posting:	Wednesday, May 4, 2022
Submittal Deadline:	Tuesday, May 24, 2022, 5:00 pm
Projected Award Date:	Monday, June 13, 2022



City of La Habra Heights

Public Works Department

Phone: (562) 694-6302
FAX: (562) 694-4410

NOTICE INVITING PROPOSALS

NOTICE IS HEREBY GIVEN that proposals will be received from qualified firms for a Pavement Management Program Update.

Responses to this Request for Proposals (RFP) will be accepted until **Tuesday, May 24, 2022 at 5:00 p.m. PST.** Proposals received after this date/time will not be considered. It is the responsibility of the Proposer to ensure that any proposals submitted have sufficient time to be received by the City of La Habra Heights prior to the proposal due date and time.

All notifications, updates and addenda will be posted on the City's website. Proposers shall be responsible for monitoring the site to obtain information regarding this solicitation. Failure to respond to required updates may result in a determination of a nonresponsive proposal. Questions regarding this Request for Proposals shall be made in writing via e-mail to the City Manager as identified in this RFP. Submission of a proposal shall constitute acknowledgement and acceptance of all terms and conditions contained in this RFP and all exhibits and attachments hereto.

Proposals shall be enclosed in a sealed envelope and marked clearly with following information, formatted as follows:

**“SEALED PROPOSAL FOR
CITYWIDE PAVEMENT MANAGEMENT PROGRAM UPDATE
CITY OF LA HABRA HEIGHTS**

DO NOT OPEN WITH REGULAR MAIL.”

**City of La Habra Heights
Attn.: City Manager / Fabiola Huerta
1245 N. Hacienda Rd.
La Habra Heights, CA 90631**

Proposals shall be MAILED, HAND DELIVERED, OR COURIERED.
LATE ELECTRONIC OR FACSIMILE PROPOSALS WILL NOT BE CONSIDERED.



**CITY OF LA HABRA HEIGHTS
REQUEST FOR PROPOSALS
FOR
PAVEMENT MANAGEMENT PROGRAM UPDATE**

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**CITY OF LA HABRA HEIGHTS
REQUEST FOR PROPOSALS
FOR
PAVEMENT MANAGEMENT PROGRAM UPDATE**

I. INTRODUCTION / PROJECT DESCRIPTION

The City of La Habra Heights (City) is seeking a qualified consultant to update the City’s 2019-2024 Pavement Management Program (PMP). The City must have a current updated PMP as required by Metro, Caltrans, and the (FHWA) Federal Highway Administration in order to qualify for funding various projects. A detailed Scope of Work and agreement terms are attached as part of the Appendix.

A. PROJECT BACKGROUND

The City is seeking proposals from qualified consulting engineers to update its PMP using the latest version of MicroPAVER. The objective is to develop a comprehensive street improvement program/strategy based upon the City’s annual budget. The last update to the Pavement Management Program was completed in 2019 by the consulting firm of Bucknam Infrastructure Group (report available upon request).

Within the La Habra Heights pavement management network there are approximately 4,806,950 SF of pavement which is broken down into 222 pavement sections totaling 42.1 miles.

Since the preparation of the 2019 PMP, the City has completed two (2) significant street rehabilitation projects – the FY 18/19 Street Improvement Project and the FY 19/20 Street Improvement Project. The City will also begin a third street rehabilitation project in June 2022 – the FY 20/21 Street Improvement Project. The results of the three projects should be incorporated into the 2022 PMP update. The FY 21/22 Street Improvement Project is in the final stage of design and is estimated to begin construction in Fall 2022. Design of the 22/23 Street Improvement Project will begin in July 2022.

B. SUMMARY OF ANNUAL BUDGET PROJECTIONS

- | | |
|---------------------------------------|-----------|
| • FY 21/22 Street Improvement Project | \$896,455 |
| • FY 22/23 Street Improvement Project | \$899,650 |
| • FY 23/24 Street Improvement Project | \$867,227 |
| • FY 24/25 Street Improvement Project | \$857,019 |
| • FY 25/26 Street Improvement Project | \$876,966 |

The FY 23/24 project will be the first project to be designed based on the results of this PMP update. Utilizing the budget as stated above, the PMP update should recommend a repair program to achieve the City's goal of a weighted PCI of 75 in 5 years.

II. **INSTRUCTIONS TO PROPOSERS**

A. CITY RESPONSIBILITIES

The City will provide information in its possession relevant to preparation of required information in the RFP. The City will provide only the staff assistance and documentation specifically referred to herein.

B. PROPOSER RESPONSIBILITIES

Point of Contact: The selected Proposer will assume responsibilities for all services in its proposal. The selected Proposer shall identify a sole point of contact with the greatest knowledge in regard to the required service operations and contractual matters, including payment of any and all charges resulting from the Agreement.

Evidence of Financial Capacity: Proposer may be requested to submit its most recent audited financial statement, evidencing Proposer's financial capacity to fully perform the required services, including provision of equipment and personnel expenses over a ninety (90) day period. If said financial statement does not reflect full ninety (90) day operational capacity, Proposer may include a letter of credit as evidence of supplemental capacity.

C. REQUEST FOR INFORMATION OR CLARIFICATION

All questions or requested clarifications shall be made in writing via e-mail to the City Manager (contact information as noted on the cover page to this RFP) no fewer than five (5) business days prior to the date and time set for opening of proposals. No verbal requests or responses will be accepted. Significant interpretations or clarifications will be addressed via addenda to this RFP.

D. ADDENDA

Any changes in RFP from the date of release to date of submittal will result in an addendum or amendment. Notification of such addendum or amendment will be emailed to the prospective consultants. Addenda shall become part of the agreement documents.

E. LICENSES AND PERMITS

All data collection and inspections must be performed by qualified and trained personnel.

The selected Proposer shall be required to obtain a City of La Habra Heights business license prior to commencing any work in La Habra Heights.

Additionally, Proposer will be responsible for obtaining any licenses/permits required by the Scope of Work, attached herein as Exhibit A, as part of the Appendix.

F. INSURANCE

The selected Proposer shall provide the required evidence of insurance coverage as set forth in the Scope of Work within ten (10) business days after receipt of notice that the contract has been awarded. Failure to provide the required insurance certificates shall be cause for

the annulment of the award and the forfeiture of the proposal guaranty.

G. CITY RIGHT TO REJECT

The City reserves the right to reject any or all proposals submitted and no representation is made hereby that any contract will be awarded pursuant to this RFP or otherwise.

The City reserves the right to accept or reject the combined or separate components of this proposal in part or in its entirety or to waive any minor inconsistency, informality or technical defect in the proposal.

H. BID PROTESTS

Proposers with concerns or rebuttal of any staff determination of non-responsiveness or non-responsibility may submit, in writing within five (5) business days, to the City Manager, any concerns regarding the RFP process or staff determination. Such writing shall be considered by the City Manager or her designated representative, and may be acted upon within five (5) business days. If no action is taken within such time, there shall be no change to the staff determination. The exercise by Proposer of its right to submit written concerns shall be a condition precedent to seeking judicial review of any award of a contract hereunder.

III. **SUBMITTAL REQUIREMENTS**

A. GENERAL

- I. Number of Copies and Signature: Three (3) hard copies and one (1) digital file on USB Flash Drive (or equivalent) of Statement of Qualifications shall be signed by a company official with the power to bind the company and submitted to the City of La Habra Heights, per the instructions above under "Notice Inviting Proposals". One (1) copy of Fee Proposal shall be submitted, as outlined below.
- II. Deadline: Proposals are due to the City of La Habra Heights, at the date, time, and location set forth above in the Notice Inviting Proposals.

B. PROPOSAL CONTENTS

A responsive proposal shall contain the following documentation:

I. *STATEMENT OF QUALIFICATIONS*

The Statement of Qualifications shall be limited to a MAXIMUM of (15) DOUBLE-SIDED PAGES (excluding front and back covers, section dividers and exhibits). Font size shall be minimum 11-pt. The page limitation includes all appendices, attachments, and supplemental information.

1. Cover Letter: Proposals shall include a letter signed by a principal or authorized representative who can make legally binding commitments for the entity.
2. Background: Provide a description of firm's background and project qualifications.
3. Firm and Personnel Experience: Proposal shall include a profile of the firm's experience. Include the names, technical, and design experience of project team/sub-consultants that will be providing services. At a minimum, this should

include the project manager/principal agent, associates in charge when project manager/principal agent is unavailable, key personnel, and an organization chart identifying only those who will perform work for the proposed project and the percentage of each individual's time devoted to this project. Sub-consultants, if any, shall be identified in the proposal with the same requirements as for the main consultant. The project manager/principal agent shall be the primary contact person to represent firm and will be the person to conduct the presentation, if invited for an interview.

4. Relevant Project Experience: Proposal shall include a list of projects which firm or personnel have completed within the last (5) years, including significant work with public agencies. Project information should include project description, year completed, client name, along with a person to contact and contact information.
5. Project Understanding and Work Plan: A statement outlining the firm's understanding of the scope of work, anticipated approach, suggestions or special concerns that the City should be made aware of, and tasks you feel are necessary for successful completion. Identify any assumptions and/or exclusions used in preparation of the scope of work and associated fee estimate. The work plan should outline procedures and methods the consultant will utilize to administer and manage the project, and to address the items listed under the Scope of Work.
6. Schedule: Proposal shall include a timeline to complete the project, based upon the Scope of Work as detailed in Exhibit A of this RFP and availability of skilled labor force.
7. Sample Pavement Management Program Report: (Key Pages Only)
8. Terms and Conditions: A statement that the firm accepts all the terms and conditions outlined in the City's standard consultant services agreement, and can meet all insurance requirements made part of the agreement.

II. FEE PROPOSAL:

Proposer's fee proposal shall be submitted concurrently with the technical proposal, but under separate cover, clearly labeled as "Fee Proposal". The fee proposal shall be detailed per task and hours for a total not to exceed fee. Also include a schedule of current hourly rates for applicable personnel.

IV. CONTRACT AWARD

A. REQUEST FOR COUNCIL ACTION

All proposals will be reviewed by the City to determine whether they meet the essential requirements outlined in the RFP. Evaluations of the proposals will be based on the firm's qualifications, project understanding and work plan, past experience, and schedule.

Following evaluation and rating, a selection committee may conduct interviews with only those consultants whose qualifications are most desirable for this project. Final selection will be made within two weeks after the interviews are complete. The City Manager will recommend award of a contract to the Proposer providing the best value to the City.

B. EXECUTION OF AGREEMENT

A sample Agreement is attached herein as an Exhibit as part of the Appendix. "Proposer" will hereinafter be referred to as "Consultant"

The term of the contract will begin after the contract agreement is fully executed, and all required bonds, insurance documents and contents of the Information Packet have been received and approved.

V. **IMPLEMENTATION**

A. KICK-OFF MEETING

A kick-off meeting will be held after award of contract. Consultant and its team will meet with City of La Habra Heights staff to conduct introductions, discuss scope of services, and implementation process.

B. NOTICE TO PROCEED

Following kick-off meeting, a formal Notice to Proceed (NTP) will be issued to begin work.

VI. **PUBLIC RECORDS**

All data, documents and other products used, developed, or produced during response preparation of the RFP will become property of the City. All responses to the RFP shall become property of the City. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.

Proposals will become public record after award of contract. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.

**APPENDIX
EXHIBIT A
SCOPE OF WORK**

**CITY OF LA HABRA HEIGHTS
REQUEST FOR PROPOSALS
FOR
PAVEMENT MANAGEMENT PROGRAM UPDATE
SCOPE OF WORK**

SCOPE OF WORK

Introduction:

The City of La Habra Heights (City) is seeking a qualified Consultant to update the City's 2019-2024 Pavement Management Program (PMP). The City must have a current updated PMP as required by Metro, Caltrans, and the (FHWA) Federal Highway Administration in order to qualify for funding for various projects.

Project Background:

The City's roadways consist of approximately 4,806,950 square feet (42.3 miles) of AC paved streets. The roadways are divided into 222 pavement sections. The City's pavement network is broken down into five zones.

- 7.0 center miles of arterial/collector roads, and
- 35.3 center miles of local residential roads.

The pavement conditions of the street network were last surveyed in 2019 and the overall condition of the City's pavement network was rated as "Fair" with a weighted average PCI of 67.2. The City wishes to resurvey all the roadways for the upcoming 2022 Pavement Management Program update.

Project Scope:

The Scope of Work is intended as a guide only. The Proposer is advised to add any critical tasks or elements which may have been overlooked, or delete any extraneous tasks deemed not necessary to the success of the project:

Task 1.1 - Project Management and Administration

The Consultant shall monitor project progress and maintain project files. Other responsibilities include supervising and reviewing the inspection process and pavement report.

The Consultant shall attend approximately three meetings (project kickoff, 65% and 100%) with City staff to outline scope, process, expectations, staff experience, observations, review schedule, budget, project documents, project goals, format of deliverables and clarify responsibility of each party.

The Consultant shall coordinate sub-consultants (if any), review existing data to be provided by the City and complete any other administrative tasks associated with the project.

The project manager shall attend approximately three public meetings to present the report to the Roads Advisory Committee and City Council.

Any necessary City permits will be issued at no cost to the Consultant.

Task 1.2 - Update Maintenance and Rehabilitation History

Review all maintenance and rehabilitation activities conducted by the City since the last PMP update. Update the City's database to include all street segments that have been rehabilitated since the last update.

City staff will provide the current database in MicroPAVER format and a list of streets improved since the last update.

The Consultant will provide 12 months of as-needed support services to maintain and update

the PMP database as streets are maintained or rehabilitated.

Task 1.3 - Pavement Condition Surveys

Collect and record pavement distress data, as per ASTM D6433-11. The collected data shall be used in the analysis and determination of the pavement conditions following ASTM D6433-11 guidelines. The Consultant will be collecting the distress data of all City roads.

The pavement distress data shall be collected by a walking survey method; and a **minimum 25% sampling rate** is utilized.

Information for each segment shall include, but not be limited to: roadway classification, roadway width and length, pavement type, pavement condition and pavement condition index score, recommended rehabilitation or maintenance strategy and estimated cost.

Input pavement distress data into the City's database and calculate Pavement Condition Index (PCI) for each segment utilizing the latest version of MicroPAVER software. The Consultant shall keep a log of any discrepancies between the database information (i.e. dimensions, surface type, etc.) and actual field conditions, and shall coordinate with City staff to correct the database as necessary. Corrections/changes to the database shall not be made without prior City staff approval.

Task 1.4 - Database Verification and Organization

Verify database information against City's database information to add, delete, and/or correct segments, as needed. Organize and re-label branches and segments in a more logical manner.

Task 1.5 - Budgetary Analysis

Forecast future PCI values for each segment and create budget scenarios for each network utilizing the latest version of MicroPAVER software. The Consultant shall coordinate with City staff to develop a 5-year maintenance and rehabilitation strategy (including but not limited to selecting segments, treatment type, costs, and year of implementation). The program shall have the ability to generate various cost estimates based on substituting different rehabilitation alternatives.

Task 1.6 - Final Report

The Consultant shall prepare a final Pavement Management Program report and any other required submittal items. The report shall include, without limitation, the methods, findings and recommendations of the Consultant, which shall be presented in a single comprehensive document which, should include findings generated as part of other tasks described herein. The Consultant will revise if needed.

General Requirements:

- All work shall be performed in conformance with the City, Metro, Caltrans, and the FHWA's policies, procedures, and standards.
- The Consultant has total responsibility for the accuracy and completeness of all inspections performed and documents prepared. The documents furnished under the Agreement shall be of a quality acceptable to the City. The criteria for acceptance shall be a product of neat appearance, well organized, and technically and grammatically correct. The assumption of the number of review rounds is not allowed.

- The Consultant shall submit digitally the collected distress data forms.
- Include maps and other related information, such as street improvement timeline, as requested by City staff in final report.

Project Deliverables:

- Pavement Condition Program Report signed and sealed by a registered engineer.
- Update and provide the current MicroPAVER system database with GIS maps.
- Provide one (1) electronic version of the PMP report in Microsoft Excel format.
- Provide draft reports with maps.
- Development of a comprehensive final report with tables and figures to summarize the condition of the current street system, and recommended needs.
- The Report shall contain all collected pavement data, pavement condition, recommended maintenance activities, and estimated costs for current and future years. The Report must be signed by a registered engineer.
- Generate reports on an as-needed basis on a specific group, or area with needed treatment maps and estimate costs.
- Generate a 5-year rehabilitation plan and maintenance plan.
- Final PMP report in three (3) hard copies and one (1) digital file on USB Flash Drive (or equivalent).

Project Schedule and Milestones:

- | | |
|--|--------------------|
| • Complete inspection and submit data for review | July 28, 2022 |
| • Submit Draft Pavement Management Report | August 12, 2022 |
| • City Review | August 26, 2022 |
| • Complete Final Pavement Report | September 22, 2022 |

**APPENDIX
EXHIBIT B
SAMPLE PROFESSIONAL SERVICES AGREEMENT**

**CITY OF LA HABRA HEIGHTS
REQUEST FOR PROPOSALS
FOR
PAVEMENT MANAGEMENT PROGRAM UPDATE
SAMPLE PROFESSIONAL SERVICES AGREEMENT**

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.

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.
- 11.2 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 e.g.

Date: _____

Date: _____

Attest:

By: _____
Anna Badillo, City Clerk Specialist

Date: _____

Approved as to form:

By: _____
Michael Maurer, City Attorney

Date: _____