

CITY OF LA HABRA HEIGHTS



REQUEST FOR PROPOSALS

SOLID WASTE CONSULTANT SERVICES

RFP No. 2023-02

**RFP Circulation Date:
March 16, 2023**

**Proposal Submission Deadline:
Tuesday, April 18, 2023 at 2:00 p.m.**

**City of La Habra Heights
Request for Proposals
SOLID WASTE CONSULTANT SERVICES**

Date: March 16, 2023

Department: City Manager's Office

Project Name: **SOLID WASTE CONSULTANT SERVICES**

Proposal Due Date: Tuesday, April 18, 2023 Time: 2:00 P.M.

Proposals must be submitted to:

City of La Habra Heights
City Clerk's Office
Attn: RFP-SOLID WASTE CONSULTANT SERVICES
1245 N Hacienda Rd
La Habra Heights, CA 90631

Due Date and Delivery

Proposals must be for the entire scope of services outlined in this RFP. Incomplete proposals will not be considered. The proposer shall submit a package clearly marked on the outside as "**RFP-SOLID WASTE CONSULTANT SERVICES**" to the City Clerk's Office. The package shall contain the following:

- Five (5) bound copies and one (1) electronic copy (flash drive is preferred method, emails not accepted) of the proposal;
- One (1) original and four (4) copies of the cost proposal in a separate sealed envelope clearly marked "Sealed Cost Proposal"; and
- A signed W-9.

Proposals must be received by the City Clerk's Office no later than 2:00 p.m. Tuesday, April 18, 2023. Submissions received after this deadline will be rejected. Submissions by facsimile or electronic mail will not be accepted.

A. General Information

The City of La Habra Heights ("City") is requesting proposals from firms or individuals for SOLID WASTE CONSULTANT SERVICES.

B. Description of the Government

The City of La Habra Heights is a General Law City in the State of California and is located southeast of downtown Los Angeles. The City was incorporated in 1978 and operates under a council-manager form of government. The City is a community consisting of approximately 6.2 square miles with an estimated population of 5,712. The City operates as a "contract city" utilizing contracts with other government entities, private firms and individuals to provide many traditional municipal services to the community. Contracted services include sheriff, city attorney, animal control, and refuse collection.

C. Background

The City of La Habra Heights is currently seeking a qualified solid waste consulting firm with California experience in all aspects of solid waste, recycling, and organic waste consulting services. A consultant with experience in a hillside community with multiple solid waste service requirements preferred. The Consultant will provide services for the procurement of a Solid Waste Contract for the collection, hauling, processing, and disposal of solid waste, recyclables, organics, and other materials which can be diverted from landfills. The City's current franchisee has been engaged in a long-term agreement that is currently set to expire May 31, 2024.

D. Objective

The selected Solid waste Consultant will evaluate the City's current solid waste programs and services, and potential services needed in the future, work closely with City staff in the development of a Request for Proposals to solicit solid waste service proposals and negotiation of a new franchise agreement.

E. Addendum

If it becomes necessary to revise any part of this RFP, an addendum to the RFP will be published and distributed through the City's website. All addenda shall become a part of the RFP document requiring acknowledgment by the proposer.

F. Evaluation and Selection

The following is a tentative schedule of this entire RFP process. While the City will attempt to apply the necessary resources to maintain this schedule, the following dates are merely projections and the City reserves the right to modify this schedule as needed to accommodate the completion of this RFP process. The following is a tentative timeline for the evaluation and RFP selection procedure.

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TENTATIVE PROJECT SCHEDULE	
RFP Published:	March 16, 2023
Questions from Proposers Due:	March 30, 2023 at 5:00 p.m.
Questions and Answers Posted:	April 6, 2023
Proposals Due:	April 18, 2023 at 2:00 p.m.
Anticipated Contract Award:	May 8, 2023

G. Questions

Please direct any questions or concerns to Fabiola Huerta at FHuerta@Lhhcity.org by 5:00 p.m. on March 30, 2023. Only questions with “**QUESTION-SOLID WASTE CONSULTANT SERVICES**” in the subject line will be accepted. Answers to submitted questions will be posted on the City’s website.

No oral statements by any City employee or representative will be binding against the City. It is the responsibility of the Contractor to check the City’s website for issuance of addendum or clarification related to the RFP. The City does not guarantee that questions submitted **after Thursday, March 30, 2023 at 5:00 p.m.** will receive a response prior to the deadline submittal, unless subsequently modified by the City by addendum.

H. Scope of Work

Project tasks shall include, but are not necessarily limited to, those items noted below. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant’s proposal.

Throughout the entire length of the project services, Consultant shall work directly with the City to establish scheduled meetings in person, by phone, and/or video conferences. Consultant shall have comprehensive knowledge of all State, County, and Local regulations regarding the collection, hauling, processing, and disposal of all types of waste including solid waste, universal waste, designated waste, E-waste, construction & demolition waste, hazardous waste, used oil/filters, recyclables, and organic waste. Consultant shall have comprehensive knowledge of franchise contract provisions, state and local environmental challenges, best management practices, industry standards, options for service, and charges for rates.

- a. Evaluate the City’s current solid waste programs and services, and potential services needed in the future.
- b. Work closely with City staff in the development of a Request for Proposals to solicit new solid waste service proposals and negotiation of a new franchise agreement.

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- c. Draft and prepare a Request for Proposals for the solicitation of contractors to provide Solid Waste services for the City under contractual franchise agreement.
- d. Prepare a list of potential providers and invite each provider to submit a proposal.
- e. Assist with conducting a pre-proposal meeting with prospective proposers and the preparation of the written response(s) of any subsequent addenda to the RFP.
- f. Develop the written criteria and the methodology to evaluate and rank each proposal submitted.
- g. Coordinate any site visits to facilities of potential service providers and prepare questions for City to ask providers during visit.
- h. Prepare a technical analysis of each proposer to verify the ability to comply with, provide for, and meet the requirements of a contract period.
- i. Evaluate each proposer's experience and ability to perform the contract through references. Analyze the financial capability and strength of the proposer to perform in the contract.
- j. Assist the City in negotiating services, terms, rates, and the preparation of a final agreement for approval by Council.
- k. Work with City staff in the preparation of report and presentation to Council for the recommendation and/or options for the procurement of a solid waste contractor. The target date to initiate (roll out) service is June 1, 2024 for the collection, hauling, processing, and/or disposal of solid waste services.

I. Deliverables

The successful proposer shall provide:

1. Cover Letter

The Cover Letter shall be addressed to City Manager Fabiola Huerta, and at minimum, must contain the following:

- a. Identification of firm, including name, address, and telephone number.
- b. California Secretary of State Entity Number.
- c. Name, title, address, and telephone number of contact person during period of proposal evaluation.
- d. Statement to the effect that the proposal shall remain valid for a period of not less than 120 calendar days from the date of submittal.
- e. Signature of a person authorized to bind the firm to the terms of the proposal.

2. Executive Summary

In a brief narrative, describe the proposed solution by setting forth the overall approach and plans to meet the requirements of the RFP. The intent of this narrative is to convey to the City that the firm understands the objective of the requested service, the nature of the work, and the level of effort necessary to successfully provide the defined services. The narrative should stipulate how the firm's approach and plans to provide the services are appropriate to the tasks involved.

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3. Scope of Work / Methodology

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work of this RFP. The methodology should include:

- a. Describe the firm's approach to managing the project, including an implementation plan that describes in detail the specific plans to manage, control, and supervise the project in order to ensure satisfactory provision of services.
- b. Provide a project timeline designed to meet the requirements of the City, as well as scheduling and control methodology that will be used to ensure the schedule will be met. The timeline should include key milestone dates and a detailed description of key project steps.
- c. Provide a description of the implementation plan considerations, including estimated timeframes and deliverables for various stages of the project.
- d. Detailed description of the specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.
- e. Provide a detailed description and/or examples of your quality control procedures that ensures all work products delivered to the City (i.e., drafts and final versions) are of high-quality, accurate and have been thoroughly reviewed prior to delivery to the City.

4. References

Provide at least three (5) references, past and present, using the same service being proposed, preferably in a hillside community with multiple service trucks required, and indicate the scope of work, date, and the name, email address, and telephone number of the client contact. Also, provide a complete list of other municipalities in California utilizing your Solid Waste Consulting services over the past five (5) years.

5. Required Statements

- a. A statement that all charges for services will be a "Not-To-Exceed" fee, as submitted with and made part of said consultant's quote.
- b. A copy of the consultant's hourly rate schedule and a written statement that said hourly rate schedule is part of the consultant's quote for use in invoicing for progress payments and for extra work incurred that is not part of this RFP.
- c. A written statement by the consultant that all federal laws and regulations shall be adhered to notwithstanding any state or local laws and regulations. In case of conflict between federal, state, or local laws or regulations, the strictest shall be adhered to.
- d. A written statement by the consultant shall allow all authorized federal, state, county, and the City officials access to place of work, books, documents, papers, fiscal, payroll materials, and other relevant contract records pertinent to this project. All relevant records shall be retained for at least three (3) years.

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- e. A written statement that the consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- f. A written statement that the consultant shall comply with the California Labor Code., pursuant to said regulations entitled: Federal Labor Standards provisions; Federal Prevailing Wage Decision; and State of California Prevailing Wage Rates, respectively.
- g. A written statement that the consultant shall comply with the Copeland Anti-kickback Act (18 USC 874 C) and the implementation regulation (29 CFR 3) issued pursuant thereto, and any amendments thereof.

J. Administrative Elements

- 1. The consultant shall assign a responsible representative and an alternate to perform the assigned tasks. Both staff members shall be identified in the proposal. The consultant's representative will be responsible for all duties from contract negotiations through project completion. If the primary representative is unable to continue with the project, then the alternate representative will become the primary representative. Any other changes in responsible representative must be approved, in advance, by the City. The City will have the right to reject other proposed changes in personnel and may consider any other changes in responsible personnel a breach of contract.
- 2. The consultant shall provide all necessary personnel, instruments, equipment, and materials to perform the described services.
- 3. The City reserves the right to accept or reject any or all proposals or to waive any defects or irregularities in the proposals or selection process.
- 4. Proposals will be evaluated on the basis of the response to all provisions of this RFP. Since this solicitation is an RFP as opposed to a Bid, pricing alone will not constitute the entire selection criteria. The City may use some or all of the following criteria and corresponding percentages in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance. The City reserves the right to modify the evaluation criteria and percentage of score as deemed appropriate prior to the commencement of evaluation.

POTENTIAL PROPOSAL EVALUATION CRITERIA	
EVALUATION CRITERIA	PERCENTAGE OF SCORE
Qualifications and experience of the Proposer related to the services described in this RFP.	20%
Proposer's understanding of the project and subject matter expertise in a hillside community, varying multiple services.	25%
Proposer's ability and available resources to perform the requested services.	25%
Proposed project costs.	30%

K. Agreement for Professional Services

The City has provided a copy of the Agreement for Professional Services. Please review this agreement and provide the City with a written statement of your firm's willingness to accept the terms of the agreement. **Please specifically identify each and every term of the agreement which your firm is unwilling to accept and the reason therefore (See Attachment No. 1). Please provide proposed Compensation and Scope of Work Exhibits with proposal.**

L. Insurance

Within three (3) business days of successful selection, consultant must provide the City with Certificates of Insurance providing coverage as outlined in Section 11 of the Agreement for Professional Services naming the City, its agents and officers as additional insureds by written endorsement.

M. Business License

The successful consultant(s) and any sub-consultants are required to obtain a City Business License prior to award of Contract, and to maintain the license for the entire term of the Agreement. The Business License is not a prerequisite for submission of a proposal.

N. Subcontracting

The Proposer may utilize the services of specialty subconsultants on those parts of the work that, under normal contracting practices, are performed by specialty subconsultants. Unless a specific subconsultant is listed by Proposer, Proposer is representing to City that Proposer has all appropriate licenses, certifications, and registrations to perform the work hereunder.

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After submission of his/her proposal, the Proposer shall not award work to any unlisted subconsultant(s) without prior written approval of the City. The Proposer shall be fully responsible to the City for the performance of his/her subconsultants and of persons either directly or indirectly employed by them.

Nothing contained herein shall create any contractual relation between any subconsultant and the City.

O. Public Information

All materials received relative to this RFP will become public information and be available for inspection after the award of contract. The City reserves the right to retain all proposals submitted, whether or not the proposal was selected or judged to be responsive.

P. Attachments

Attachment No. 1 - Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT
(City of La Habra Heights/ **Consultant's Name**)

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 **Consultant's Name, a California S-Corporation, LLC.** (“Consultant”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: **Description of 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 the **Name of Section of Consultant's Date** proposal to City. The proposal is 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 **Date** fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 “Commencement Date”: **Date.**
- 3.4 “Expiration Date”: **Date** or upon completion or termination.

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

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Consultant under this Agreement exceed the sum of **Not to exceed amount in numerical format and written out** 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 the services consistent with the standard of care governing like professionals and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state, and local laws and regulations exercise the standard of care to, 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

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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 become, upon payment in full of all amounts due hereunder, 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, marked or otherwise designated as "Confidential Information," 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, 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 to the extent cause by the Consultant's negligence or willful misconduct in 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.

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- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and to the extent of coverage under Consultant's general liability insurance defend City, its officers, 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 material failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees.
- 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 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, 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.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by 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 ("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 by any negligent 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 to the extent of coverage under Consultant's general

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liability insurance hold harmless City, and any and all of its boards, employees, officials and agents from and against any third party claim 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 Liability 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

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officers, employees, agents and volunteers as additional insureds on Consultant's general liability and automobile liability policies. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.

- 11.6 Consultant shall provide an ACORD Certificate of Insurance as 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, and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled 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 additional insurance coverage 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 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. The City was notified of the \$25,000 deductible and it was approved.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as 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

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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
Telephone: (562) 694-6302
Fax: (562) 694-4410

If to Consultant:
**Consultant's address and phone
number**

With courtesy copy to:

Michael Maurer, City Attorney
Best Best & Krieger, LLP
300 South Grand Ave., 25th Floor
Los Angeles, CA 90071
Telephone: (213) 787-2557
Facsimile: (213) 617-7480

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 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. 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

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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 here from 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"
Consultant

By: _____
Fabiola Huerta, City Manager

By: _____
Name and Title

Date: _____

Attest:

Date: _____

By: _____

Professional Services Agreement
City of La Habra Heights / *Consultant's Name*

Rafferty Wooldridge,
Assistant City Manager

Date: _____

Approved as to form:

By: _____
Michael Maurer, City Attorney

Date: _____

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
APPROVED FEE SCHEDULE