



PROFESSIONAL SERVICES AGREEMENT

LEGISLATIVE ADVOCACY AND GRANT FUNDING SERVICES TOWNSEND PUBLIC AFFAIRS

THIS AGREEMENT is made and entered into this ___ day of ___, 2021, by and between the CITY OF LA HABRA, a municipal corporation ("CITY"), and TOWNSEND PUBLIC AFFAIRS, INC., a California corporation ("CONSULTANT").

WITNESSETH:

A. WHEREAS, CITY proposes to utilize the services of CONSULTANT as an independent contractor to provide legislative advocacy and grant funding services, as more fully described herein; and

B. WHEREAS, CONSULTANT represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, CITY and CONSULTANT desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of CITY has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. CONSULTANT shall provide the professional services described in the CONSULTANT's Proposal ("Proposal"), attached hereto as Exhibit "A" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by CONSULTANT pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. CONSULTANT also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise CITY of any changes in any laws that may affect CONSULTANT's performance of this Agreement. CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The CONSULTANT shall at all times observe and comply with all such laws and regulations. Officers and employees shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this section.

1.3. Performance to Satisfaction of City. CONSULTANT agrees to provide services and work under this Agreement consistent with the requirements and standards established by

applicable federal, state and County laws, ordinances, regulations and resolutions. The CONSULTANT represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Evaluations of the work will be done by the Director or his or her designee. Evaluations of the work will be done by the Director or his or her designee. If the quality of work is not satisfactory, CITY in its discretion has the right to:

- (a) Meet with CONSULTANT to review the quality of the work and resolve the matters of concern;
- (b) Require CONSULTANT to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. CONSULTANT warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. CONSULTANT shall indemnify and hold harmless CITY from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against CITY for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of CONSULTANT's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, CONSULTANT shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

CONSULTANT shall, in all solicitations and advertisements for employees placed by, or on behalf of CONSULTANT state that all qualified applicants will receive consideration for employment without regard to age, race, color, religion, sex, marital status, national origin, or mental or physical disability. CONSULTANT shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

1.6. Non-Exclusive Agreement. CONSULTANT acknowledges that CITY may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties

set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of CITY. CONSULTANT may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at CONSULTANT's sole cost and expense.

1.8. Confidentiality. Employees of CONSULTANT in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of CITY. CONSULTANT covenants that 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 written authorization by CITY. CITY shall grant such authorization if disclosure is required by law. All CITY data shall be returned to CITY upon the termination of this Agreement. CONSULTANT's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. CONSULTANT shall be paid in accordance with the fee schedule set forth in Exhibit "A". CONSULTANT's total compensation shall not exceed \$3,500 dollars per month (an annual amount of \$42,000).

2.2. Additional Services. CONSULTANT shall not receive compensation for any services provided outside the scope of services specified in the CONSULTANT's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the CITY or the Project Manager for this Project, prior to CONSULTANT performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the CITY request in writing additional services that increase the hereinabove described "SCOPE OF SERVICES", an additional fee based upon the CONSULTANT's standard hourly rates shall be paid to the CONSULTANT for such additional services. Such increase in additional fees shall be limited to 25% of the total contract sum or \$25,000 whichever is less.

2.3. Method of Billing. CONSULTANT may submit invoices to the CITY for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all CONSULTANT's services which have been completed to CITY's sole satisfaction. CITY shall pay CONSULTANT's invoice within forty-five (45) days from the date CITY receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of CONSULTANT's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to CITY or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by CITY as set forth in Exhibit "A."

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the CONSULTANT is encountered, a time extension may be mutually agreed upon in writing by the CITY and the CONSULTANT. The CONSULTANT shall present documentation satisfactory to the CITY to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a term of one (1) year, ending on _____, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Prior to the conclusion of that term, the parties may meet to discuss the potential extension of the agreement. Successful past performance by CONSULTANT during the term of this agreement will be a critical factor in the possibility of an agreement extension. The CITY decision to either grant or deny an extension will be final.

4.2. Notice of Termination. The CITY reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least fifteen (15) days prior written notice to CONSULTANT. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, CONSULTANT shall immediately stop rendering services under this Agreement unless directed otherwise by the CITY. If the CITY suspends, terminates or abandons a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the CONSULTANT defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time, the CITY shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

CITY shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the CONSULTANT, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record

for thirty (30) days or longer; or

- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, CITY shall pay CONSULTANT for reasonable costs incurred and professional services satisfactorily performed up to and including the date of CITY's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the CITY or in the possession of the CONSULTANT. CITY shall not be liable for any claim of lost profits.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by CONSULTANT in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the CITY within ten (10) days of delivery of termination notice to CONSULTANT, at no cost to CITY. Any use of uncompleted documents without specific written authorization from CONSULTANT shall be at CITY's sole risk and without liability or legal expense to CONSULTANT.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. CONSULTANT shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by CITY:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO from #CG 00 01 11 88, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident. CONSULTANT agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the CITY, its officers, agents, employees, and volunteers for losses arising from work performed by CONSULTANT for the CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

The CONSULTANT shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the

duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the Community Services Director before execution of this Agreement by the CITY. CITY, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the CONSULTANT to comply with this section.

- (c) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. CONSULTANT shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither CITY nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by CONSULTANT under this Agreement are adequate to protect CONSULTANT. If CONSULTANT believes that any such insurance coverage is insufficient, CONSULTANT shall provide, at its own expense, such additional insurance as CONSULTANT deems adequate.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The CITY and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the CONSULTANT pursuant to its contract with the CITY; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; automobiles owned, leased, hired, or borrowed by the CONSULTANT."
- (b) Notice: "CONSULTANT shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, CONSULTANT shall forthwith obtain and submit proof of substitute insurance. Should CONSULTANT fail to immediately procure other insurance, as specified, to substitute for any canceled policy, CITY may procure such insurance at CONSULTANT's sole cost and expense."
- (c) Other insurance: "The CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the CITY shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to CITY, its officers, officials, agents, employees, and volunteers.

- (e) The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by CITY. No policy of insurance issued as to which CITY is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. CONSULTANT shall provide to CITY certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITY, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which CONSULTANT may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The Executive Director or his or her designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

CONSULTANT shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of CONSULTANT called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. CITY shall designate a Project Manager to work directly with CONSULTANT in the performance of this Agreement. It shall be the CONSULTANT's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the CONSULTANT shall refer any decision, which must be made by CITY, to the Project Manager. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Project Manager.

CONSULTANT shall designate a Project Manager who shall represent it and be its agent in all consultations with CITY during the term of this Agreement and who shall not be changed by CONSULTANT without the express written approval by the CITY. CONSULTANT or its Project Manager shall attend and assist in all coordination meetings called by CITY.

6.4. Notices. Any notices, documents, correspondence or other communications

concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

TOWNSEND PUBLIC AFFAIRS
1401 Dove St Suite 330
Newport Beach, CA 92660
Tel: 949-399-9050
Fax: N/A
Attn: Christopher Townsend

IF TO CITY:

CITY OF LA HABRA
110 East La Habra Blvd.
La Habra, CA 90631
Tel: 562-383-4030
Fax: N/A
Attn: Jim Sadro

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California. CONSULTANT agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. CONSULTANT shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of CONSULTANT's interest in this Agreement without CITY's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of CITY's consent, no subletting or assignment shall release CONSULTANT of CONSULTANT's obligation to perform all other obligations to be performed by CONSULTANT hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. To the fullest extent of the law, and consistent with Civil Code section 2782.8, CONSULTANT agrees to defend, indemnify, hold free and harmless the CITY, its elected and appointed officials, officers, agents and employees, at CONSULTANT's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against CITY, its elected and appointed officials, officers, agents, and employees to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, its employees, and/or authorized subcontractors, in performing professional services pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence, recklessness or willful misconduct of the CONSULTANT, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts

liability against the CITY, its elected and appointed officials, officers, agents, and employees based upon such negligence, recklessness, or willful misconduct, whether or not the CONSULTANT, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CONSULTANT shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints or suits arising out of the sole or active negligence or willful misconduct of the CITY. Further, in no event shall the cost to defend charged to the professional exceed the professional's proportionate percentage of fault, unless otherwise specified in Civil Code section 2782.8. This provision shall supersede and replace all other indemnity provisions contained either in the CITY's specifications or CONSULTANT's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. CONSULTANT is and shall be acting at all times as an independent contractor and not as an employee of CITY or the CITY. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of CITY or the CITY or otherwise act on behalf of CITY or the CITY as an agent. Neither CITY or the 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, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of CITY. CONSULTANT shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for CONSULTANT and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. CONSULTANT shall indemnify and hold CITY harmless from any and all taxes, assessments, penalties, fines and interest asserted against CITY and any legal fee incurred by the City by reason of any challenge/claim made against CITY regarding the independent contractor relationship created by this Agreement. CONSULTANT further agrees to indemnify and hold CITY harmless from any failure of CONSULTANT to comply with the applicable worker's compensation laws. CITY shall have the right to offset against the amount of any fees due to CONSULTANT under this Agreement any amount due to CITY from CONSULTANT as a result of CONSULTANT's failure to promptly pay to CITY any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against CITY relating to CONSULTANT's performance or services rendered under this Agreement, CONSULTANT shall render any reasonable assistance and cooperation which CITY might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by CONSULTANT or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of CITY. CONSULTANT agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of CITY. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of CITY and without liability or legal exposure to CONSULTANT. CITY shall indemnify and hold harmless CONSULTANT from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from CITY's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by CONSULTANT. CONSULTANT shall deliver to CITY any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by CITY or its authorized representative, at no additional cost to the CITY. CONSULTANT or CONSULTANT's agents shall execute such documents as may be necessary from time to time to confirm CITY's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. CONSULTANT has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by CONSULTANT, or any of its subcontractors, pursuant to this Agreement and provided to CITY may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which CONSULTANT informs CITY of such trade secret. The CITY will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. CITY shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. CONSULTANT and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to CONSULTANT's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, CONSULTANT and its officers, employees, associates and subconsultants shall not, without the prior written approval of the CITY Representative, perform work for another person or entity for whom CONSULTANT is not currently performing work that would require CONSULTANT or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. CONSULTANT shall be responsible for its work and results under this Agreement. CONSULTANT, when requested, shall furnish clarification and/or explanation as may be required by the CITY's representative, regarding any services rendered under this Agreement at no additional cost to CITY.

6.16. Prohibited Employment. CONSULTANT will not employ any regular employee of CITY while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent

this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of CITY and CONSULTANT and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF LA HABRA,
A municipal corporation

Jim Sadro, City Manager

Date: _____

ATTEST:

Laurie Swindell, CMC, City Clerk

TOWNSEND PUBLIC AFFAIRS, INC.

Christopher Townsend

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

EXHIBIT A
CONSULTANT'S PROPOSAL