

**CITY OF LA HABRA  
PROFESSIONAL SERVICES AGREEMENT  
WITH OCY MANAGEMENT, INC.**

THIS AGREEMENT is made and entered into this 21 day of July, 2025 (“Effective Date”), by and between the CITY OF LA HABRA, a municipal corporation (“City”), and OCY MANAGEMENT LLC, a California Limited Liability Corporation (“Contractor”).

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Contractor as an independent contractor to provide professional services for Senior Transportation Services through Orange County Transportation Authority Senior Mobility Program Funding, as more fully described herein; and

B. WHEREAS, Contractor 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 Contractor 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 CONTRACTOR**

1.1. Scope of Services. Contractor shall provide the professional services described in the Contractor’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 Contractor 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 contractors in similar fields and circumstances in accordance with sound professional practices. Contractor 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 Contractor’s performance of this Agreement. Contractor 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. Contractor shall operate pursuant to Orange County Transportation Authority (OCTA) Senior Mobility Program operational requirements, as outlined in Exhibit A. The Contractor 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 Contractor to comply with this Section.

1.3. Performance to Satisfaction of City. Contractor agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Contractor to review the quality of the work and resolve the matters of concern;
- (b) Require Contractor 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. Contractor 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. Contractor warrants that it is not suspended or debarred from doing business with the United States government and can legally be paid from federal funds. Contractor 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 Contractor's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Contractor 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

Contractor shall, in all solicitations and advertisements for employees placed by, or on behalf of Contractor shall 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. Contractor 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. Contractor acknowledges that City may enter into agreements with other contractors 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. Contractor may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Contractor's sole cost and expense. All insurance requirements contained in this Agreement are independently applicable to any and all subcontractors that Contractor may engage during the term of this Agreement.

1.8. Confidentiality. Employees of Contractor in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Contractor covenants that all data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Contractor 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. Contractor's covenant under this Section shall survive the termination of this Agreement.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Contractor shall be paid in accordance with the fee schedule set forth in Exhibit "A". Contractor's total annual compensation shall not exceed forty-thousand Dollars (\$40,000.00), or two hundred thousand (\$200,000.00) for the lifetime of the contract, unless authorized herein by the City's Project Manager.

2.2. Additional Services. Contractor shall not receive compensation for any services provided outside the scope of services specified in the Contractor'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 Contractor 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 Contractor's standard hourly rates shall be paid to the Contractor for such additional services. Such increase in additional fees shall be limited to 10% of the total contract sum. The City Manager is authorized to approve a Change Order for such additional services. Where the original contract is \$35,000.00 or less, City Council approval shall be required prior to any increase bringing the total compensation to more than \$35,000.00.

2.3. Method of Billing. Contractor shall provide City a monthly invoice following the conclusion of each month, providing a detailed statement indicating service hours, rates, and program participants. City shall pay Contractor's invoice within forty-five (45) days from the date City receives said invoice. All invoices must have all financial and ridership information as required by Orange County Transportation Authority's Senior Mobility Program guidelines. Contractor takes responsibility for the accurate, correct, and complete information for submission to OCTA. 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 Contractor'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. Contractor shall have all financial records pursuant to OCTA standards readily available for City to acquire for inspection.

### **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 Contractor is encountered, a time extension may be mutually agreed upon in writing by the City and the Contractor. The Contractor 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 period of 5 years, ending on July 20, 2030, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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 Contractor. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Contractor 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 Contractor 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 Contractor 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.

The 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 Contractor, 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 Contractor 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 Contractor. 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 Contractor 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 Contractor, at no cost to City. Any use of uncompleted documents without specific written authorization from Contractor shall be at City's sole risk and without liability or legal expense to Contractor.

## **5.0. INSURANCE**

5.1. Insurance. The Contractor and all subcontractors, if any, shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement, including any extension thereof, insurance as set forth in Exhibit "B" attached hereto and incorporated herein by this reference.

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

5.2. 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 the 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.

5.3. Certificates of Insurance. Contractor shall provide to City certificates of insurance showing the insurance coverages, as well as providing the City with the required endorsements in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance and endorsements shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

5.4. 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 Contractor 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 City Manager 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 the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Contractor shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives, and agreements on behalf of Contractor 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 Contractor in the performance of this Agreement. It shall be the Contractor's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Contractor 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.

Contractor 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 Contractor without the express written approval by the City. Contractor 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 CONTRACTOR:

IF TO CITY:

OCY Management  
520 W Dyer Rd  
Santa Ana, CA 92707  
Tel: (714) 427-2555  
Attn: Akbar Meji  
President

City of La Habra  
101 W La Habra Boulevard  
La Habra, CA 90631  
Tel: 562-383-4200  
Attn: Kelly Fujio  
Director of Community  
Services

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. Contractor agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. Contractor shall not voluntarily or by operation of law assign, transfer, sublet, or encumber all or any part of Contractor'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 Contractor of Contractor's obligation to perform all other obligations to be performed by Contractor hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. Contractor agrees to protect, defend, indemnify, and hold free and harmless the City, its officers, officials, agents, employees, and volunteers, at Contractor's sole expense, from and against any and all claims, liabilities, demands, actions, expenses, damages, suits or other legal proceedings brought against the City, its officers, officials, agents, employees, and volunteers arising out of or in any way connected with the performance of the Contractor, its employees, and/or authorized subcontractors' work undertaken pursuant to this Agreement including all acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of the Contractor, its employees and/or subcontractors. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its officers, officials, agents, employees, and volunteers based upon the work performed by the Contractor, its employees, and/or authorized subcontractors under this Agreement, whether or not the Contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable, and whether or not there is any evidence of fault or wrongdoing by the Contractor, its employees and/or its subcontractors. Notwithstanding the foregoing, the Contractor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Contractor's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Contractor is and shall be acting at all times as an independent contractor and not as an employee of City. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor 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. Contractor 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 Contractor and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Contractor shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor 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, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor 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, Contractor 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 Contractor's performance or services rendered under this Agreement, Contractor 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, preliminary notes, working documents, files, and tapes furnished or prepared by Contractor or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Contractor agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City but shall be made available to the City within ten (10) days of request or within ten (10) days of termination. 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 Contractor. City shall indemnify and hold harmless Contractor 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 Contractor. Contractor shall deliver to City any findings, reports, documents, information, data, preliminary notes and working documents, 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. Contractor or Contractor'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. Contractor 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 Contractor, 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 7920.000 *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 7924.510, and of which Contractor 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. The 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. Contractor and its officers, employees, associates, and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor'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, Contractor and its officers, employees, associates, and subcontractors shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates, or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor's duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project, if any, have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Contractor pursuant to this Agreement.

6.15. Responsibility for Errors. Contractor shall be responsible for its work and results under this Agreement. Contractor, 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. In the event that an error or omission attributable to Contractor occurs, then Contractor shall, at no cost to City, provide all necessary design drawings, estimates, and other Contractor professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.16. Prohibited Employment. Contractor 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, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the City's Request for Proposals, the Contractor's Proposal.

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 Contractor 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:

\_\_\_\_\_  
Rhonda J. Barone, CMC, City Clerk  
of the City of La Habra

CONTRACTOR:

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
William J. Rouse, OCY Management, President

\_\_\_\_\_  
Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Keith Collins, City Attorney

Date: \_\_\_\_\_

APPROVED AS TO INSURANCE:

\_\_\_\_\_

Date: \_\_\_\_\_

Lucy Coelho-LaFreniere, Risk Manager

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Kelly Fujio, Project Manager

Date: \_\_\_\_\_

DEPARTMENTAL APPROVAL:

\_\_\_\_\_  
Kelly Fujio, Director of Community Services

Date: \_\_\_\_\_

DRAFT

**EXHIBIT A**  
**CONTRACTOR'S PROPOSAL AND SCOPE OF WORK**

DRAFT

## EXHIBIT B

### INSURANCE REQUIREMENTS

#### MINIMUM SCOPE OF INSURANCE.

- (a) **Commercial General Liability (CGL)** which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (b) **Automobile Liability Insurance** with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1) with limit no less than \$1,000,000 each accident for bodily injury and property damage. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- (c) **Workers’ Compensation** as required by the State of California with statutory limits, and Employer’s Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease.
- (d) **Sexual Abuse/Molestation Insurance** Lessee shall procure and maintain Sexual Abuse/Molestation Insurance Liability coverage with limits of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. Coverage may be provided as part of Commercial General Liability coverage, Professional Liability coverage, or as a separate policy.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the lessee.

Lessor reserves the right to review industry standards and a comparison of similar buildings in the area and impose a reasonable increase of the insurance limits every three (3) years from the Effective Date of this lease.

#### **ENDORSEMENTS**

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The insurance policies shall contain or be endorsed to contain, the following provisions:

- (a) Commercial General Liability
  - (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the

Lessee including materials, parts or equipment furnished in connection with such work or operations.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of contractor
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Contract

Additional Insured Endorsements shall be at least as broad as ISO Form(s) CG 20 10 11 85; or CG 20 10 and CG 2037.

- (2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(b) Auto Liability

- (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Lessee.

- (2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(c) Workers' Compensation

- (1) **Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

## **INSURANCE OBLIGATIONS OF LESSEE**

The Insurance obligations under this lease agreement shall be: (1) all the Insurance coverage and/or limits carried by or available to the Lessee; or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the Lessor. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Lessee under this lease agreement.

## **NOTICE OF CANCELLATION**

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Lessor except ten (10) days shall be allowed for non-payment of premium.

## **WAIVER OF SUBROGATION**

Required insurance coverages shall not prohibit Lessee from waiving the right of subrogation prior to a loss. Lessee shall waive all rights of subrogation against the indemnified parties and Policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the Lessor has received a waiver of subrogation endorsement from the insurer.

## **EVIDENCE OF INSURANCE**

- (1) All policies, endorsements, certificates, and/or binders shall be subject to approval by the Lessor as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the Lessor. The Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- (2) The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the Lessor. If such coverage is cancelled or reduced, Lessee shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Lessor evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

## **DEDUCTIBLE OR SELF-INSURED RETENTION**

Any deductible or self-insured retention must be approved in writing by the Lessor and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The Lessor may require the Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

## **CONTRACTUAL LIABILITY**

The coverage provided shall apply to the obligations assumed by the Lessee under the indemnity provisions of this contract.

## **FAILURE TO MAINTAIN COVERAGE**

Lessee agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the Lessor.

### **ACCEPTABILITY OF INSURERS**

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

### **CLAIMS MADE POLICIES**

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Lessee's lease agreement with the Lessor and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this lease agreement.

### **INSURANCE FOR SUBCONTRACTORS**

Lessee shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this lease agreement, including adding the Lessor as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractor's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as broad as CG 20 38 04 13.