



REQUEST FOR PROPOSAL

Issue Date: October 5, 2020

Preparation of 2021-2029 Housing Element Update

Deadline for Submission:
12:00 p.m. (noon) on Tuesday, October 27, 2020

CONTACT PERSON:
Jim Kasama, City Planner
City of Bradbury
600 Winston Avenue
Bradbury, CA 91008-1123
jkasama@cityofbradbury.org



I. INTRODUCTION

The City of Bradbury (City) is seeking proposals from qualified consultants to provide consulting services to prepare the City's 2021-2029 Housing Element Update (HEU) for certification by the California Department of Housing and Community Development (HCD) by the deadline of October 15, 2021.

II. CITY PROFILE

Founded in 1881 and incorporated in 1957, the City of Bradbury is a unique residential/equestrian community nestled in the foothills of the San Gabriel Mountains. The City's approximate 2.0 square miles includes three different recreation trails, sloping hillsides, and more rugged mountainsides. The City is comprised of three distinct neighborhoods consisting of entirely single-family homes. The gated communities of the Bradbury Estates and the Brad Oaks (Woodlyn Lane) Estates occupy the major portion of the hillsides, while the ungated residences occupy the lower, flatter area of the City. The City is a true "contract city" with a small full-time staff, contracting many of the services provided to residents. Bordered to the west by the City of Monrovia, and to the south and east by the City of Duarte, and to the north by the Angeles National Forest, the City operates under the City Council/City Manager form of government. As such, the City Manager oversees all city functions. The City Council takes great pride in the City and strives to provide the highest level of service to its residents, all while embodying the City motto of "Preserving Rural Tranquility."

III. PROJECT OBJECTIVES

The City of Bradbury's project objective in preparing the update to the Housing Element is to obtain a State Department of Housing and Community Development certified Housing Element for 2021-2029. It is the City's objective in reviewing the Regional Housing Needs Assessment (RHNA) to assure the allocation is feasible for the available land and development standards.

The City's Housing Element underwent a comprehensive mid-term update in March 2019 for the 2014-2021 Housing Element cycle and was certified by the HCD in November 2019. The individual or consultant selected should use the currently adopted Housing Element and build upon it in preparing the 2021-2029 Housing Element. The 2021-2029 HEU should be a comprehensive document that addresses current and projected housing conditions and needs in the City. The HEU process should proactively engage residents and community stakeholders, and comply with all applicable laws and regulations. Proposals should establish a timeline, including milestone dates to ensure that the final 2021-2029 Housing Element is reviewed and submitted in advance of the October 15, 2021 HCD deadline.

IV. SCOPE OF WORK

The major elements of the work program are described below. The City will authorize work on the Housing Element update immediately.

1. Project Administration

A. Project Management shall include:

1. Management and supervision of the consultant team.



2. Coordination, contact, and consultation with responsible agencies and affected organizations, including the distribution of pertinent documentation.
 3. Obtaining and preparing information and documentation as needed, including sites inventories, annual reports, and CEQA statements. The City's 2014-2021 Housing Element Mid-Term Update may be viewed at:
<https://www.cityofbradbury.org/images/Mid-term%20Update%20of%202014-21%20Housing%20Element%20-%20March%202019.pdf>
 4. Coordination with the City's project team. Periodic meetings with City staff should be scheduled to address staff concerns, apprise staff of procedural requirements, and discuss progress toward completion of the work program. The City anticipates meeting a minimum of once a month with the selected consultant to monitor progress of the HEU.
 5. Ensuring compliance with the requirements of State Housing Element Law and pertinent legislation, including the submittal of a Draft and Final Housing Element to HCD for review and certification.
- B. Project Initiation: The consultant will attend a first meeting with City staff to further define roles, responsibilities, paths of communication, reporting, and deliverables; to review and receive available project information; and to refine the work program.
- C. Project Schedule: The consultant will work with City staff to develop a project schedule that includes tasks and milestones for review of the RHNA and the certification of the Housing Element by the State Department of Housing and Community Development no later than October 15, 2021. The project schedule shall include a detailed explanation of all stages of the project, including, at a minimum:
- Identification of major milestones, tasks, meetings, and work products
 - Timeline for public outreach, stakeholder meetings, workshops, and anticipated commission and council hearings
 - Delivery of analyses and findings of assessment of the RHNA and HEU
 - Timelines for responses to HCD reviews and City review times
- 2. Housing Element Update**
- A. Document Review: The consultant will review all applicable City, regional, and State documents pertaining to the HEU. The consultant shall be responsible for identifying and resolving any information gaps.
- B. Evaluate the Current Housing Element: The consultant will review and evaluate the current Housing Element and its programs to determine the revisions that must be made to comply with current State law and HCD requirements, and ensure certification of the completed HEU. The consultant shall prepare an analysis of the City's progress towards meeting the identified goals, policies, and programs since the adoption of the current 2014-2021 Housing Element.
1. The consultant shall prepare a Housing Element Assessment Memo summarizing the results from this analysis and recommend specific changes to be incorporated into the HEU. The



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- consultant shall provide five (5) hard copies and one (1) electronic copy in Microsoft Word format of the Housing Element Assessment Memo.
2. The consultant shall consider the findings of the Housing Element Assessment Memo and prepare a Detailed Outline for the HEU. The consultant shall provide five (5) hard copies and one (1) electronic copy in Microsoft Work format of the Housing Element Detailed Outline.
- C. Technical Studies and Issues Evaluation: The following studies shall be required to assist in compiling, analyzing, and clarifying information as needed for the continued work on the HEU in order to comply with the HCD's requirements:
1. Update population and housing characteristics.
 2. Review and recommend changes to regional housing needs based on City and sub-regional allocation.
 3. Update housing needs analysis.
 4. Examine constraints to the provision of adequate housing for the community.
 5. Conduct at-risk housing analysis.
 6. Inventory and assess resources and opportunities available to address the City's current and future housing needs through a site inventory analysis and constraints analysis.
 7. Prepare any additional information required by the State's current Housing Element law, including recently adopted legislation applicable to the 6th RHNA and Housing Element cycle.
 8. Assess progress toward achieving previous goals, policies, and programs since the adoption of the 2014-2021 Housing Element Mid-Term Update.
 9. Reevaluate goals, policies, programs, and priorities, which shall include the prior work completed on the Housing Element by the City.
 10. Work closely with representatives of the San Gabriel Valley Council of Governments (SVMCOG) on assessing, analyzing, and recommending strategies for sub-regional housing allocations.
- D. Administrative Draft Housing Element: The City requires preparation of an Administrative Draft Housing Element.
1. The consultant shall work toward compiling the above described technical analyses and issues evaluation into document form. The Administrative Draft Housing Element will be a complete draft and include all required components of a Housing Element. The consultant shall consider input from City officials, City staff, stakeholders, the public, and any other public agencies while preparing the Administrative Draft Housing Element.
 2. Six (6) hard copies and one (1) electronic copy in Microsoft Word format of the Administrative Draft Housing Element shall be provided for staff review.



3. Pertinent technical data should accompany the Administrative Draft Housing Element for City Review.
- E. Public Review Draft Housing Element Preparation: The consultant shall prepare a Public Review Draft Housing Element based on City staff's comments on the Administrative Draft Housing Element. The consultant will resolve any issues and make requested revisions identified by City staff and incorporate the changes into the Public Review Draft Housing Element. The consultant shall prepare a notice announcing the release of the Public Review Draft Housing Element for public comment. Staff anticipates taking the Public Review Draft Housing Element to the Planning Commission and City Council as a discussion item for review prior to submittal to HCD.
1. Fifteen (15) hard copies and one (1) electronic copy in Microsoft Word format of the Draft Housing Element shall be provided for posting and distribution to the public and stakeholders online, at City Hall, and to City staff for review.
 2. It shall be the responsibility of the consultant to prepare a notice announcing the release of the Public Review Draft Housing Element and mail copies to interested agencies for their review. The City would expect a 30-day public review period for the Public Review Draft Housing Element.
- F. Draft Final Housing Element Preparation: The consultant shall revise the Public Review Draft Housing Element in response to comments by City staff, the City Council, Planning Commission, public, stakeholders, and interested agencies, and prepare the Draft Final Housing Element.
1. The consultant shall prepare a Transmittal Letter to HCD detailing how the Housing Element meets State law requirements. The consultant shall submit the Transmittal Letter and the Draft Final Housing Element to HCD for comment. The consultant shall provide ten (10) hard copies and one (1) electronic copy in Microsoft Word format of the Transmittal Letter and the Draft Final Housing Element.
 2. The consultant shall maintain contact with HCD throughout the review period and respond to any requests for information and respond to HCD's comments. The consultant must work closely with HCD and the City to ensure that the City meets State requirements, including recommending modifications to the Housing Element as required to obtain HCD approval. The consultant shall make follow-up contact with HCD to verify that the proposed document revisions meet the requirements of the HCD prior to the production of the Final Housing Element.
- G. Community Engagement and Public Meetings: The consultant shall develop and execute a public outreach program for the Housing Element update in coordination with the City that meets the HCD standards and meaningfully engages a broad array of community interests in the HEU process. The proposal should discuss and outline the different outreach approaches and what is recommended for this effort to best engage community stakeholders in the process.

At a minimum, the proposal should include two (2) public outreach meetings/workshops, one (1) Planning Commission presentation, and one (1) City Council presentation. The consultant will be responsible for planning and executing the public outreach program including, but not limited to, creating stakeholder contact/ mailing lists, developing workshop notices/flyers, sign-in sheets,



making presentations, providing workshop handouts/exhibits, and supporting City staff as necessary. The consultant shall prepare summary meeting minutes for each public workshop. The City will be responsible for publishing/ mailing notices, as necessary.

1. Stakeholder Meetings:

- a. The consultant shall hold two (2) stakeholder/public workshop meetings at the beginning of the Housing Element update process.
- b. The consultant shall provide stakeholder contact/ mailing lists, public workshop notices, workshop participation sheets, presentations and related materials/handouts, and summary meeting minutes.

2. Planning Commission Presentation:

- a. The consultant shall participate in one (1) public hearing before the Planning Commission related to approval of the Final Housing Element.
- b. The consultant shall provide ten (10) hard copies and one (1) electronic copy in Microsoft Word format of the Final Housing Element for the public hearing before the Planning Commission.

3. City Council Presentation:

- a. The consultant shall participate in one (1) public hearing before the City Council related to approval of the Final Housing Element, as recommended by the Planning Commission.
- b. The consultant shall provide ten (10) hard copies and one (1) electronic copy in Microsoft Word format of the Final Housing Element for the public hearing before the City Council.

H. Final Housing Element Preparation: The consultant shall prepare a final version of the Housing Element, including any changes to the Public Review Housing Element and Draft Final Housing element required by the HCD and the City.

1. The consultant shall provide fifteen (15) hard copies and one (1) electronic copy in Microsoft Word format of the Final Housing Element for consideration by the City's Planning Commission and City Council.
2. Once the City adopts the Housing Element, the Consultant shall transmit the document to the State HCD for certification by October 15, 2021. The consultant shall follow through with assisting the City in achieving State certification of the Housing Element after adoption by the City, including but not limited to, ongoing communication and follow-up with HCD and modifications to the document if necessary.

3. Optional Tasks

The consultant is requested to submit an Optional Proposal to review the City's Development Code to identify any inconsistencies that are caused by the proposed goals, policies, programs, and revisions to the Housing Element. The consultant shall prepare the required amendments to the Development Code.



As part of the process of amending the Development Code, the consultant shall conduct public/community workshops in tandem with the public outreach for the Housing Element to the extent feasible. Public Participation and Engagement, Project Coordination, Project Scheduling, and Consultant Responsibilities of the Development Code Amendments, including public hearings, will follow the requirements set forth for the HEU.

V. SUBMITTAL REQUIREMENTS

1. Contact Information: This request is issued for the City by the Planning Department. All questions pertaining to this Request for Proposals shall be directed by email to the City Planner, Jim Kasama, and answers will be forwarded to all firms:

City of Bradbury
Jim Kasama, City Planner
600 Winston Avenue
Bradbury, CA 91008
E-mail: jkasama@cityofbradbury.org

2. Firm Profile: Including size and organization, function and capabilities, and firm's philosophy.
3. Relevant Experience and Skills: Focusing on the specific needs identified in this proposal. The proposal should document the specific communities in which the consultant has done Housing Elements and noting HCD certifications.
4. Project Team: Include precise designations of responsible principles and project manager, names and resumes of all personnel, and the designation of an alternate project manager in the event an illness or other occurrence prevents the project manager from overseeing the contract.
5. Current and Accessible References: References from projects and communities must have experience with the particular individuals assigned rather than with the firm. Falsification of work experience by documenting projects not handled by the firm or individuals will be grounds to eliminate the proposal from further consideration.

Provide a listing of at least three (3) cities for which work or selected tasks have been performed within the past five (5) years and are of a similar nature to the services requested herein. Name and description of the project shall be provided, and a specific reference person to contact.
6. Hourly Rate: Rates for the individual(s) assigned to the selected tasks. This shall be inclusive of all services to be provided pursuant to this Proposal. Rates shall remain valid for each fiscal year of the term of the Agreement.
7. Description of Services: Provide a detailed description of services to be provided to complete the Housing Element Update. Specifically address the task listed in the Scope of Work section above. Other considerations may be included in the addition to the proposed Scope of Work.
8. Timeline/Schedule of Costs: The individual/firm shall provide a timeline indicating estimated completion dates for each task, key project milestones and deliverables, including a schedule of costs for each task that may be incorporated into the scope of services.



9. The proposal shall **NOT** exceed 30 pages in length, including all tabs, indexes, and appendices. The covers do not count in the total page count. Proposals not expressed in plain English will not be considered.

VI. SELECTION PROCESS AND CRITERIA

1. Proposal Review: Upon receiving a satisfactory number of proposals by the October 27, 2020 deadline, consultants will be evaluated by the City. The best qualified consultants will be invited to participate in an interview.
2. Selection Criteria: The City will select a consultant to provide the services pursuant to this Request for Proposal based on evaluation of the proposals, interview process, and references. Selection will be based on a determination of the consultant deemed most qualified to provide the services outlined in this Request and utilizing, but not limited to, the following criteria:
 - Completeness of the proposal: How thoroughly the proposal responds to the issues, concerns, and evaluation criteria contained in the RFP.
 - HCD experience: The experience of the consultant in preparing Housing Elements and addressing Regional Housing Needs Allocations; experience in working with the Department of Housing and Community Development.
 - Qualifications: Qualifications of key personnel, including principal(s), project manager(s), and other individuals pertinent to the successful completion of the project.
 - Performance: Demonstrated ability to produce a timely and high-quality project.
 - References: Quality of reference checks.
 - Cost-effectiveness: A clear and consistent commitment to cost containment and fair play.
3. Interviews: Depending on the number of qualified proposals the City receives, selected consultants will potentially be invited for an interview.
4. Professional Services Agreement: Upon identification of a preferred provider, the City will require a professional services agreement, subject to negotiation of precise duties, terms of payment, and other City requirements.
5. Contract Approval and Execution: The professional services agreement will be presented to the City Council for approval and execution by the City Manager or designee.
6. Compliance with Regulations: The selected individual/firm shall be required to comply with all applicable State and federal regulations, including but not limited to the Civil Rights Act of 1964, Civil Rights Act of 1968, Nondiscrimination Labor Standards, and Executive Orders 11246 and 11375 (Equal Opportunity in Employment).
7. Terms of Services: The Service Agreement to be entered into under this Proposal shall be for a 12-month period.



VII. MISCELLANEOUS PROVISIONS

1. **Costs:** The City of Bradbury assumes no responsibility for any costs incurred by an individual/firm in the preparation and/or presentation of a proposal in response to this request.
2. **Rights of City:** The City reserves the right to reject any and all proposals received, or to request additional information from any or all of the respondents for the purpose of ascertaining the most qualified individual/firm for the service requested.
3. **Completeness:** To be considered, respondents must submit a complete response in accordance with the requirements contained herein. Proposals must be signed by an officer of the consultant authorized to bind the firm to its provisions. All proposals, with associated costs and agreements, shall be considered valid and binding on the consultant for a period of ninety (90) days after the proposal due date.
4. **Ownership of Reports:** All documents prepared by the selected individual/firm under this request shall become the property of the City of Bradbury upon receipt by the City.

VIII. FILING DEADLINE

To be considered, five (5) complete copies and an electronic version of the complete proposal must be received by the City of Bradbury no later than **12:00 p.m. (noon) on Tuesday, October 27, 2020**, at the following:

**Planning Department
City of Bradbury
600 Winston Avenue
Bradbury, CA 91008-1123
Attn: Jim Kasama, City Planner**

Proposals must be sealed and clearly state on the outside of the package or envelope **“2021-2029 Housing Element Update.”** The City assumes no responsibility for errors or delays by public or private carriers in delivering any proposal.

We welcome and appreciate your interest in the project. Please email City Planner, Jim Kasama at jkasama@CityofBradbury.org, if you have any questions.

Attachments:

1. Tentative Schedule
2. Sample Contract – Professional Services Agreement



ATTACHMENT 1

TENTATIVE SCHEDULE FOR HOUSING ELEMENT UPDATE

<u>Task</u>	<u>Month</u>
Contract Award	November 2020
Project Initiation	November 2020
Technical Studies/Issues Analyses	November – December 2020
Administrative Draft Housing Element	December 2020 – March 2021
Prepare Public Review Draft Housing Element	April 2021
Public Review Draft Housing Element to Planning Commission	May 2021
Public Review Draft Housing Element to City Council	June 2021
Prepare Draft Final Housing Element	July 2021
Draft Final Housing Element to HCD	August 2021
Final Housing Element Public Hearing – PC	August 2021
Final Housing Element Public Hearing – CC	September 2021
Final Housing Element to HCD	October 2021

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ATTACHMENT 2

SAMPLE CONTRACT

The following is a sample contract into which the consultant will enter with the City of which the printed terms are non-negotiable:

**PROFESSIONAL SERVICES AGREEMENT
HOUSING ELEMENT UPDATE CONSULTANT**
(City of Bradbury / _____)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Bradbury, a California municipal corporation (“City”), and _____, a California _____ (“Consultant”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant:
Update the Bradbury General Plan’s Housing Element
- 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.
- 2.3 Consultant submitted a proposal dated _____, 2020, to the City for services related the above tasks.

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 called for in City’s Request for Proposals as supplemented by Consultant’s proposal, which proposal is attached hereto as Exhibit A (the “Proposal”) and incorporated herein by this reference.
- 3.2 “Approved Fee Schedule”: The fees for Consultant’s Services shall be as set forth in the attached Exhibit B.
- 3.3 “Commencement Date”: The date upon which the City provides written notification, including e-mail notification, to commence Services.
- 3.4 “Expiration Date”: The date upon which City accepts the final report prepared by Consultant.



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.
- 5.2 Consultant shall perform all work in accordance with the professional standards of Consultant’s profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 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 such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute.
- 5.4 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. _____ shall be Consultant’s Project Administrator, who shall have direct responsibility for management of Consultant’s performance under this Agreement. No change shall be made in Consultant’s Project Administrator without City’s prior written consent.

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 (Exhibit “B”) and Section 5.1 of this Agreement above.
- 6.2 Consultant shall submit invoices for the services performed pursuant to this Agreement no more than once a month, but at least every two months. The invoice shall itemize the services rendered during the billing period and the amount due.

Within ten business days of receipt of the invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within forty-five calendar days of receipt of the invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other payroll



deductions from payments made to Consultant unless otherwise required by law.

- 6.3 If Consultant determines that additional work is required to perform the Services beyond that estimated in the Proposal, Consultant shall provide City with a written request to exceed the amount set forth in the Proposal with an explanation for the need. Any additional services shall be performed at the rates set forth in the Proposal.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material (“written products” herein) originally developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant. Any substantive modification of the Documents by City, or at City’s direction, or any use of the completed Documents for other City projects, or any use of uncompleted Documents, without the written consent of Consultant, shall be at City’s sole risk and without liability or legal exposure to Consultant. City agrees to hold Consultant harmless from all damages, claims, expenses and losses arising out of any reuse of the Documents for purposes other than those described in this Agreement, unless Consultant consents in writing to such reuse.

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 or its employees look to City as its employer. Consultant and its employees shall not be entitled to any benefits from City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement may be deemed confidential by City, and if so deemed, 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. The preceding restriction shall not apply to information which is in the public domain, was previously known to Consultant, was acquired by Consultant from others who have no confidential relationship to City with respect to same, or which through no fault of Consultant, comes into the public domain. Consultant shall not be restricted from releasing information, including confidential information, in response to a subpoena, court order, or other legal process. Consultant shall not be required to resist such subpoena, court order, or legal process, but shall promptly notify City in writing of the demand for information before Consultant responds to such demand.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury,



damage, claim, lawsuit, cost, expense, reasonable attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the negligent performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when City requests with respect to a claim, provide a deposit for the defense of City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and expenses of litigation. This indemnity does not include defense, however Consultant shall be responsible for defense costs to the extent such costs are incurred as a result of Consultant's negligence.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly, any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure to (i) pay taxes on amounts received pursuant to this Agreement; (ii) satisfy obligations to any governmental entity, or (iii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation statute or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 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 California Public Employees Retirement System (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.
- 10.6 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 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.

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

11. INSURANCE Without limiting Consultant's indemnification of Agency, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City:

- 11.1 General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).



Consultant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

Umbrella or excess liability insurance. Consultant shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrence of effective dates with primary policies; and
- Policies shall "follow form" to the underlying primary policies.
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

11.2 Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

11.3 Consultant shall procure and maintain Sexual Harassment/unwanted sexual advances liability insurance coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage may be provided as part of Commercial General Liability coverage, Professional Liability coverage, or as a separate policy.

11.4 Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

11.5 Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.

11.6 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.



- 11.7 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.
- 11.8 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 policies required by this Agreement are in effect in the required amounts and naming City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.
- 11.9 Consultant shall provide proof to 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 at least two weeks prior to the expiration of the coverages.
- 11.10 The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.11 The insurance provided by Consultant shall be primary to any other 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.
- 11.12 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.
- 11.13 Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.
- 11.14 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.



12.2 If any claim or action is brought against City relating to Consultant’s performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

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

15. NOTICES

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

If to City:
City of Bradbury
600 Winston Avenue
Bradbury, CA 91008
Attn: Kevin Kearney
Email: kkearney@cityofbradbury.org
Telephone: (626) 358-3218
Facsimile: (626) 303-5154

If to Consultant:

Email: _____
Telephone:
Facsimile:

With courtesy copy to:

Cary S. Reisman, City Attorney
Of Counsel to Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835
Email: csr@jones-mayer.com
Telephone: (714) 446-1400
Facsimile: (714) 446-1448



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 may terminate this Agreement for any reason on five calendar days' written notice to Consultant for any reason. Consultant may only terminate this Agreement for any reason on thirty calendar days' written notice to City and only for cause. 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 for work performed in accordance with the terms and conditions of this agreement 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.

18. GENERAL PROVISIONS

- 18.1. Delegation. 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. Discrimination. 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. Headings. The headings appearing at the commencement of the sections hereof, and in any sub-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 at the head of which it appears, the section or paragraph, and not such heading, shall 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 singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4. Waiver. The waiver by City or Consultant of any breach of any term, covenant or condition of this Agreement 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 of this Agreement. 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 one authorized to bind the party asserted to have consented to the waiver.



- 18.5. Excused performance. Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant. 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 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 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 Consultant. Consultant 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.
- 18.6. 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 (Government Code Section 6250 et seq.). Exceptions to public disclosure may be those documents or information of Consultant that qualify as trade secrets (such as, and including, its private financial statements, financial records and bank account information), as that term is defined in Government Code Section 6254.7, and of which Consultant informs City, trade secret, and records relating to provision of medical aid and assistance to any individual under such individual's State and Federal rights of privacy and the provisions of the Health Insurance Portability and Accountability Act of 1996. City will endeavor to maintain as confidential all information obtained by it that is designated as trade secret or personal health records. City shall not, in any way, be liable for the disclosure of any trade secret or personal health records including, without limitation, those records so marked, if disclosure is deemed to be required by law or by order of the Court.
- 18.7. Conflict of Interest. Consultant and its officers, employees, associates and City-approved subcontractors, 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 City-approved subcontractors 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 City-approved subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.



- 18.8. 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. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all actions to the sole satisfaction of City and to participate in any meeting required with regard to the correction.
- 18.9. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect or for one year thereafter.
- 18.10. 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 Consultant's Proposal.
- 18.11. 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.
- 18.12. 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.
- 18.13. 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.
- 18.14. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement. For amendments affecting administrative business operations not related to overall service levels, compensation or performance standards, those may be approved administratively by the City Administrator. For amendments affecting compensation, performance standards or service levels, those must be approved by the City Council.
- 18.15. 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 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.

- 18.16. Cumulative. 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 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 from 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.
- 18.17. Litigation. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees incurred in such action. The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.18. Interpretation. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. 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.
- 18.19. Applicable Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.20. Complete Agreement. 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 the parties with respect to the transactions contemplated herein. No prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.



- 18.21. 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.
- 18.22. 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.

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 Bradbury

“Consultant”

By: _____
D. Montgomery Lewis, Mayor

By: _____

Date: _____

By: _____

Date: _____

Attest:

Claudia Saldana, City Clerk

Approved as to form:

Cary S. Reisman, City Attorney
City of Bradbury

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