



**PROFESSIONAL ARCHITECTURE DESIGN SERVICES
FOR
CITY COUNCIL CHAMBER INTERIOR IMPROVEMENTS**

**CITY OF PALM DESERT
DEPARTMENT OF PUBLIC WORKS**

A handwritten signature in black ink, appearing to read 'Tom Garcia', is written over a horizontal line.

Tom García, P.E., Director of Public Works

**73-510 Fred Waring Drive
Palm Desert, CA 92260-2578
(760) 776-6450**

Key RFP Dates

RFP Issued:	February 2, 2019
Pre-Proposal Meeting and Job Walk	2:00 PM on February 11, 2019
Submit Written Questions:	By 2:00 PM on February 14, 2019
Submit Proposals:	By 2:00 PM on February 25, 2019

Table of Contents

NOTICE INVITING PROPOSALS.....	i
SECTION I – INSTRUCTIONS TO CONSULTANTS.....	1
SECTION II – PROPOSAL CONTENT AND FORMS.....	6
SECTION III – EVALUATION AND AWARD	10
SECTION IV – SCOPE OF SERVICES/WORK.....	12
SECTION V – PROPOSED DRAFT AGREEMENT.....	15

NOTICE INVITING PROPOSALS

NOTICE INVITING PROPOSALS
PROFESSIONAL ARCHITECTURE DESIGN SERVICES
FOR
CITY COUNCIL CHAMBER INTERIOR IMPROVEMENTS

PUBLIC NOTICE IS HEREBY GIVEN that the City of the Palm Desert, as CITY, invites proposals for the above stated services and will receive such proposals in the offices of the Public Works Department up to the hour of **2:00 PM on February 25, 2019**. Proposals received after this date will be returned unopened. Faxed or electronically submitted proposals will not be accepted.

The services consist of professional architecture design services required to generate plans, specifications, and estimates (PS&E) for the renovations at the City of Palm Desert Council Chamber. The selected Consultant will be required to collaborate with the City and other consultants to complete the design and oversight of the facility.

It is the City's intent that all interested firms obtain the full content of this Request for Proposals (RFP) and any addenda via the City's website located at www.cityofpalmdesert.org. From the home page, click on "Quick Links," and select "Projects Up For Bid". Firms that anticipate submitting a proposal are required to send a letter or e-mail to the City's representative acknowledging receipt of the RFP to the address specified below so that the City can add the firm to its notification list. Please include the following information:

Contact Person, Name of Firm, Address, Telephone, Fax and E-Mail Address.

A copy of this RFP may also be requested by contacting the person below. When requesting the RFP, please include the above information.

City of Palm Desert, Department of Public Works
Attention: Emily Roethler, Project Manager
eroethler@cityofpalmdesert.org
73-510 Fred Waring Drive
Palm Desert, California 92260-2578
P: (760) 776.6459 F: (760) 341.7098

All questions must be put in writing, addressed to Emily Roethler as noted above, and must be received by the City no later than **2:00 PM on February 14, 2019**. Please note that the City will ***not*** be responsible for mailing any addenda. All addenda will be published on the City's website. Consultants are encouraged to check the website regularly since each Consultant will be responsible for downloading the RFP and any addenda. Consultants that have provided contact information will receive notification of any addenda.

A Pre-Proposal Meeting will be held on **February 14, 2019, at 2:00 PM**, in the Public Works Department, City of Palm Desert. While not mandatory, attendance is *highly* recommended.

Tasks governed by the Department of Industrial Relations will be subject to prevailing wage requirements. Any consultant or sub-consultant performing work subject to prevailing wage requirements shall be registered with the Department of Industrial Relations prior to the submittal of a proposal for requested tasks.

The City reserves the right to reject any or all proposals, to waive any irregularity, to accept any proposal or portion thereof, and to take all proposals under advisement for a period of sixty (60) days.

The City reserves the right to select and contract with more than one (1) Consultant for these service.

Palm Desert is committed to inclusion and diversity and welcomes proposals and bids from contractors, consultants, and vendors of all faiths, creeds, ancestries, and ethnicities without regard to disability, gender identity, sexual orientation, or immigration status. The City condemns and will not tolerate prejudice, racism, bigotry, hatred, bullying, or violence towards any group within or outside of our community. By submitting a proposal, proposer agrees that in carrying out its responsibilities under the Contract/Agreement, and in particular, with regard to the employment of persons and subcontractors working on the project, it will not discriminate on the basis of race, color, creed, national origin, religion, sex, gender identity, sexual orientation, age, or disability. In the event any of the work performed by consultant hereunder is subcontracted to another person or firm (if authorized), the subcontract shall contain a similar provision.

At the time of award of proposal, the consultant shall possess all appropriate and valid license(s) required to provide the work being performed.

BY ORDER OF the City Clerk of the City of Palm Desert.

Dated this _____ day of _____ 2019.

RACHELLE D. KLASSEN, CITY CLERK
CITY OF PALM DESERT, CALIFORNIA
73-510 Fred Waring Drive
Palm Desert, CA 92260
(760) 346-0611

SECTION I – INSTRUCTIONS TO CONSULTANTS

SECTION I – INSTRUCTIONS TO CONSULTANTS

A. EXAMINATION OF PROPOSAL DOCUMENTS

By submitting a proposal, the Consultant represents that they have thoroughly examined and become familiar with the work required under this RFP and that it is capable of performing quality work to achieve the City's objectives.

B. ADDENDA

The City reserves the right to revise the RFP documents. Any changes to the requirements will be made by written addenda to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any contract resulting from this RFP. The City will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Consultants shall acknowledge receipt of addenda in their submittal. Failure to acknowledge receipt of all addenda may cause the consultant to be deemed non-responsive to this RFP and be rejected without further evaluation.

C. CITY CONTACT

All questions and/or contacts regarding this RFP are to be directed only to:

City of Palm Desert, Department of Public Works
Emily Roethler, Project Manager
73-510 Fred Waring Drive
Palm Desert, CA 92260-2578
Phone: (760) 776-6490, Fax: (760) 341-7098
E-Mail: eroethler@cityofpalmdesert.org

D. CLARIFICATIONS AND QUESTIONS

1. EXAMINATION OF DOCUMENTS

Consultant is responsible for reviewing the RFP documents prior to the Submittal Due Date and for requesting clarification or interpretation of any discrepancy, deficiency, ambiguity or error, or omission contained in the RFP documents. Consultant shall notify the City, in writing in accordance with Section D.2 below; and, should it be found by the City that the point in question is not clearly and fully set forth, the City will issue a written addendum clarifying the matter, which will be posted on the City's website.

2. SUBMITTING REQUESTS

- a. All questions, including questions posed and responded to at the pre-proposal conference, must be put in writing and must be received by Emily Roethler, Project Manager, no later than **2:00 PM** on **February 14, 2019**.

- b. Requests for clarifications, questions, and comments must be clearly labeled, "**Written Questions: RFP – Professional Architecture Design Services for City Council Chamber Interior Improvements**". The City is not responsible for failure to respond to a request that has not been appropriately labeled, and/or addressed to City of Palm Desert, Department of Public Works, Emily Roethler, Project Manager.
- c. Any of the methods of the City Contact set forth above may be utilized for delivering written questions as long as the questions are directed to Emily Roethler, Project Manager and received no later than the date and time specified above.

US Mail:	City of Palm Desert, Public Works 73-510 Fred Waring Drive, Palm Desert, CA 92260
Personal	City of Palm Desert, Public Works
Courier:	73-510 Fred Waring Drive, Palm Desert, CA 92260
Facsimile:	(760) 341-7098
Email:	eroethler@cityofpalmdesert.org

3. CITY'S RESPONSES

Responses from the City will be posted on the City's website no later than 72 hours prior to the submission deadline. Consultants may download responses from the City's website at www.cityofpalmdesert.org. From the main menu, under "Quick Links," click on "Projects Up For Bid."

E. PRE-PROPOSAL CONFERENCE

A Pre-Proposal Meeting will be held on **February 11, 2019, at 2:00 PM**, in the Public Works Department, City of Palm Desert. While not mandatory, attendance is *highly* recommended.

F. SUBMISSION OF PROPOSALS

1. DATE AND TIME

Proposals must be submitted at or before 2:00 p.m., February 25, 2019.

Submissions received after the specified date and time will be rejected without consideration or evaluation. Submissions may be delivered via U.S. Mail, personal delivery or commercial courier service to the appropriate address specified above. Faxed or electronic submissions will not be accepted.

2. IDENTIFICATION OF PROPOSALS

Consultant shall submit one (1) original unbound and four (4) bound copies of its proposal in a sealed package. The package should be addressed as shown above, bearing the Consultant's name and address and clearly marked as follows:

**“RFP: Professional Architecture Design Services For City Council
Chamber Interior Improvements”**

3. ACCEPTANCE OF PROPOSALS/CITY’S RIGHTS

- a. The City reserves the right to accept or reject any and all submittals, or any item or part thereof, or to waive any informalities or irregularities in the submittals.
- b. The City reserves the right to withdraw or cancel this RFP, or any part hereof at any time without prior notice and the City makes no representations that any contract will be awarded to any Consultant responding to this RFP.
- c. The City reserves the right to issue a new RFP.
- d. The City reserves the right to postpone submittal openings for its own convenience.
- e. The City reserves the right to require confirmation of information furnished by Consultant or for the Consultant to provide additional evidence of qualifications to perform the work or to obtain information from any source that has the potential to improve the understanding and evaluation of the submittals.
- f. Submittals received by City are considered public information and will be made available upon request.
- g. Submittals are not to be copyrighted.

G. PRE-CONTRACTUAL EXPENSES

The City shall not, in any event, be liable for any pre-contractual expenses incurred by Consultant in the preparation of its submittal. In the event of award, Consultant shall not be entitled to charge the City for any pre-contractual expenses.

Pre-contractual expenses are defined as expenses incurred by Consultant in:

- a. Preparing its proposal in response to this RFP;
- b. Submitting proposal to the City;
- c. Negotiating with the City any matter related to this solicitation; or
- d. Any other expenses incurred by Consultant prior to date of award, if any, of the Agreement.

H. JOINT OFFERS

Where two or more firms desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture.

I. CONTRACT TYPE

It is anticipated the agreement resulting from this solicitation, if awarded, will be a not-to-exceed amount type contract.

J. INSURANCE REQUIREMENTS

The Consultant will be required to have insurance coverage acceptable to the City in effect for the duration of the contract. Prior execution of the contract, the consultant will submit to the City insurance certificates naming the City as an additional insured. At a minimum, the Consultant will be required to maintain the following coverage within the specified limits:

General Liability	\$1,000,000 per occurrence; \$2,000,000 general aggregate
Errors and Omissions	\$1,000,000 per claim
Automotive Comprehensive	\$1,000,000 each accident
Worker's Compensation	Statutory Limits

Insurance requirements are further defined in Section V - Proposed Draft Agreement.

K. CONFLICT OF INTEREST

All Consultants responding to this RFP must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships, or contracts, a Consultant is unable, or potentially unable, to render impartial assistance or advice to the City; a Consultant's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or a Consultant has an unfair competitive advantage.

L. COST PROPOSAL

The Consultant shall submit a separate **sealed** cost proposal, with its proposal, for evaluation.

Consultants shall be entirely responsible for any consequences resulting from any inadvertent opening of unsealed or improperly identified envelopes. It is the Consultants' sole responsibility to see that its proposals submittal is received as required.

SECTION II – PROPOSAL CONTENT

SECTION II – PROPOSAL CONTENT AND FORMS

A. PROPOSAL FORMAT AND CONTENT

1. FORMAT

Submittals should be typed, double-spaced and submitted on 8.5-inch x 11-inch paper, single sided, using 12-point font, with a single method of fastening. Charts and schedules may be included in 11" x 17" format. Proposers should not include any unnecessarily elaborate or promotional material. Lengthy narratives are discouraged and presentations should be brief and concise. Submittals should not exceed TWENTY (20) pages in length, excluding any appendices. All pages shall be sequentially numbered and each section should be separately and clearly tabbed. Submittals should include a complete table of contents for the entire document with respective page numbers opposite each topic that is included.

2. LETTER OF TRANSMITTAL

The Letter of Transmittal shall be addressed to Emily Roethler, Project Manager, and must, at a minimum, contain the following:

- a. Identification of Proposer that will have the authorization to commit to the contractual terms and conditions. Identification shall include legal company name, corporate address, telephone, fax number and e-mail address. Include name, title, address, telephone number and e-mail address of the contact person during the proposal evaluation phase.
- b. Identification of proposed subcontractors, including legal company name, contact person's name, address, phone number. Working relationship between Proposer and subcontractors, if applicable.
- c. Acknowledgment of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than sixty (60) days from the date of submittal.
- e. Signature of a person authorized to bind Proposer to the terms of any contract resulting from the submittal.
- f. A statement to the effect that by signing the letter of transmittal, Proposer is attesting that all information submitted with the submittal is true and correct.

3. TECHNICAL PROPOSAL

a. **Qualifications** - Related Experience and References of the Proposer

This section of the proposal should establish the ability of Proposer to satisfactorily perform the required work by evidence of: experience in performing work of a similar nature; demonstrated competence in the services identified in Section IV – Scope of Work; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references.

The Proposer shall:

- Provide a brief profile of the firm, including the types of services offered, the year founded, form of the organization (corporation, partnership, and sole proprietorship), number, size and location of support facilities, equipment used and number of qualified personnel.
- Describe the firm's prior experience in performing work of a similar nature to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to this project.
- Identify subcontractors by company name, address, contact person, telephone number and their function relating to the work under this RFP. Describe Proposer's experience working with each subcontractor.
- Provide as a minimum three (3) references for the projects cited as related experience and furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. The Proposer may also supply references from other work not cited in this section as related experience.

b. **Technical Approach/Work Plan**

Proposer shall provide a narrative that addresses the Scope of Work and shows Proposer's understanding of City's needs and requirements.

The Proposer shall:

- Describe the approach and work plan for completing the tasks specified in the Scope of Work. The work plan shall be of such detail to demonstrate the Proposer's ability to accomplish the project objectives and overall schedule.

- Outline sequentially the activities that would be undertaken in completing the tasks and specify key personnel proposed to perform the work.
- Provide brief descriptions of key personnel, detailing applicable experience.
- Furnish a project schedule for each task and subtask in terms of elapsed weeks from the project commencement date.
- Identify methods that Proposer will use to ensure quality control, as well as budget and schedule control for the project.
- Identify any special issues or problems that are likely to be encountered during the project and how the Proposer would address them.

c. Cost and Price

The Proposer shall submit pricing inclusive of all direct costs, indirect costs and profit. Any costs not stated will not be paid by the City.

The successful Proposer shall submit a cost breakdown identifying items such as quantities, labor categories and rates, material costs, applicable taxes, shipping, storage, and delivery charges.

d. Conflict of Interest

Proposer is to identify any real or apparent organizational conflict of interest relating to this project.

e. Exceptions/Deviations

The Proposer shall state any exceptions to or deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where Proposer wishes to propose alternative approaches to meeting the City's technical or contractual requirements, these should be thoroughly explained.

4. APPENDICES

Information considered by Proposer to be pertinent to this RFP and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief. If Proposer chooses to provide additional information in a separate appendix, Proposer is encouraged to identify, in the appendix, why Proposer believes such information is pertinent to the RFP.

5. DRAFT AGREEMENT – SECTION V

Proposers shall familiarize themselves with the City's Proposed Draft Agreement (Section V) and all the Attachments attached thereto. The City intends to use the attached Draft Agreement as the contract resulting from this RFP. At the time of the proposal submission, should the Proposer have concerns or recommended changes to the Draft Agreement requirements, then those concerns/recommended changes must be included in writing in the submittal. The City may consider or negotiate changes to the Draft Agreement with the successful Proposer only to the extent the changes are provided to the City in writing within the proposal at the time of submission. Changes to the City's Draft Agreement shall be made at the City's sole discretion.

SECTION III – EVALUATION AND AWARD

SECTION III – EVALUATION AND AWARD

A. PROPOSAL EVALUATION CRITERIA

1. QUALIFICATIONS OF THE FIRM 30%

Technical experience in performing work of a similar nature, experience working with other public agencies, specialized experience, and professional competence in areas directly related to this RFP. Strength and stability of the firm, strength, experience, and technical competence of subcontractors, as well as assessment of client references. References will be contacted by a designated committee member and reference form will be provided to the evaluation committee for inclusion in this portion of the scoring.
2. TECHNICAL APPROACH/WORK PLAN 40%

Depth of Proposer's understanding of City requirements and overall quality of the technical approach and work plan; logic, and clarity of work plan; appropriateness of labor distribution among the tasks; ability to meet or better the City draft project schedule; the ability to provide suggested technical or procedural innovations and the identification of special issues and Proposer's response in resolving those issues.
3. COMPLETENESS OF RESPONSE 15%

Overall completeness and thoroughness of response in accordance with RFP instructions; attendance at Pre-Proposal Meeting; exceptions to or deviations from the RFP requirements that the City cannot or will not accommodate; or other relevant factors not considered elsewhere.
4. COST AND PRICE 15%

Fees are an important component of this project and shall be considered during the evaluation process.

B. EVALUATION PROCEDURE AND AWARD

An evaluation committee will be appointed to review all proposals received. The committee will be comprised of City staff and may include outside personnel. The committee members will read the proposals separately then convene to discuss and review the written proposals. Each member of the selection panel will then evaluate each proposal using the criteria identified herein to arrive at a score for each proposal. The references given by the proposed short-listed Proposers will be checked and scored.

At the discretion of the evaluation committee, proposers within a competitive range will be short-listed for interviews based upon the average of the evaluation committee members' score for each proposal and the reference scores. These Proposers will be invited to an oral interview and presentation opportunity. The interview will consist of questions asked of each of the Proposers and a brief presentation by the Proposers.

Based on the proposal submitted, answers to the questions asked at the interview and the oral presentation, the committee will select a Proposer that will best serve the interest of the City and meet its objectives as outlined in the RFP. The City will negotiate a contract with the selected Proposer, however, the City Council has the final authority to approve said contract. The City will be the sole and exclusive judge of quality and compliance with proposal specifications in any of the matters pertaining to this RFP. The City reserves the right to award the contract in any manner it deems to be in the best interest of the City and make the selection based on its sole discretion, including rejection of all proposals.

SECTION IV – SCOPE OF SERVICES/WORK

SECTION IV – SCOPE OF WORK

A. GENERAL INFORMATION

1. INTRODUCTION

The services consist of professional architecture design services required to generate plans, specifications, and estimates (PS&E) for the renovations at the City of Palm Desert Council Chamber. Proposed improvements may include, but not be limited to:

- Remove existing tile at the Council Chamber entrances on the upper tier, and replace with carpet or other sound attenuating flooring
- Remove and replace (or relocate) existing ADA doors
- Relocate existing control room which may include an additional access door or window, furnishings, and electrical outlets
- Review AV Consultant's plans for the new LED wall and wall mounted monitor; This review may include: search potential heat problems, engineering of structural backing, and design a frame/trim
- New podium/desk arrangement
- Remove and replace existing carpet
- Remove and replace public seating

Proposed designs will be required to blend proposed improvements with existing improvements and the surrounding environments.

The Consultant and Sub-Consultant(s) performing work awarded under the RFP, must have, at all times, all appropriate and valid license(s) required to provide the work being performed.

The Scope of Services requested under the RFP include professional services of an architectural nature as well as incidental services that members of those professions, and those under their employment, may logically or justifiably perform, such as hiring a trade to perform investigation or destructive testing under the direction of the Consultant.

B. TASKS AND CONTRACT DELIVERABLES:

In general, project tasks will include, but are not limited to, the following:

1. MEETINGS

Conduct a project kickoff design meeting(s) with City staff and the City selected AV Consultant to refine and clarify the project(s)'s objectives. The

Consultant shall provide an anticipated project schedule at this meeting. City supplied materials will be provided at this time.

2. CONCEPTUAL DESIGN

The City will produce concept plans that will be the basis for as-needed project(s). As part of this task the Consultant shall review the existing conceptual plan and make recommendations for any changes needed. The Consultant shall refine the existing conceptual plan as needed to produce a final conceptual plan. The final concept plan produced by the Consultant shall be the basis for the final design plans.

3. DATA COLLECTION, FIELD REVIEW & BASE MAPPING

The Consultant shall perform the necessary field work and research to assume all responsibility for all the data in the final design. As part of this task the Consultant shall perform all the necessary data collection, field review and base mapping to produce a final design.

4. ESTIMATE OF PROBABLE CONSTRUCTION COSTS

Using the project plans and specifications the consultant shall prepare an estimate of probable construction costs.

5. AUDIO VISUAL DESIGN

The Consultant shall work with a City selected Audio Visual Consultant to produce AV plans, if needed. Using the existing concept plans and the final concept plans, the Audio Visual Consultant will produce the plans and specifications needed for the audio visual enhancements. The Consultant will work closely with the project AV Consultant to create an attractive and complementary interior design.

6. ELECTRICAL DESIGN

The Consultant shall work with its electrical consultant to produce any electrical plans, if needed.

7. DELIVERABLES

The Consultant shall prepare plans and specifications for this project, and shall submit bond copies for City review and comment at the 30% and 60% stage of completeness. Plans are to be at 20 or 40 scale as appropriate on 24" x 36 sheets. The Consultant shall submit the final set of plans on Mylar with a digital copy of all AutoCad plans and documents. The City anticipates the following deliverables:

- Conceptual Design
- Demolition Plans
- Electrical Plans

- Estimate of Probable Construction Costs
- Technical Specifications (Special Provisions-MS Word)

C. DOCUMENTS FURNISHED

To assist the Consultant in fulfilling the terms of this Agreement, the City agrees to furnish the following:

1. Standard maps.
2. Preliminary Concept Plans
3. City standard details.
4. Record drawings.
5. GIS Data.

D. SCHEDULE

Time is of the essence. The City would prefer to expedite services and proceed as soon as the Agreement is signed.

SECTION V – PROPOSED DRAFT AGREEMENT

ARCHITECTURE DESIGN SERVICES

CITY OF PALM DESERT

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 20____, by and between the City of Palm Desert, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 73-510 Fred Waring Drive, Palm Desert, California, 92260 ("City") and **[INSERT NAME OF COMPANY]**, a **[INSERT TYPE OF BUSINESS; I.E., CORPORATION (INCLUDE STATE OF INCORPORATION), LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP, ETC.]**, with its principal place of business at **[INSERT ADDRESS]** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional **ARCHITECTURE DESIGN** consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **ARCHITECTURE DESIGN** consulting services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional **ARCHITECTURE DESIGN** consulting services on an as-needed basis, as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **ARCHITECTURE DESIGN** consulting services necessary for the Project ("Services"). All Services shall be subject to, and performed in accordance with, this Agreement, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **[INSERT DATE]** to **June 30, 2020**, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

Upon the expiration of the initial agreement term, the agreement shall be automatically renewed for an additional one (1) year term.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth by the City. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **[INSERT NAME, TITLE AND LICENSE/CERTIFICATION NUMBER]**.

3.2.5 City's Representative. The City hereby designates **[INSERT NAME AND TITLE]**, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee. City's Representative shall have the

power to act on behalf of the City for review and approval of all products submitted by Consultant, but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which increase the Scope of Work or change the Consultant's total compensation, subject to the provisions contained in Section 3.3 of this Agreement.

3.2.6 Consultant's Representative. Consultant hereby designates **[INSERT NAME, TITLE, AND LICENSE/CERTIFICATION NUMBER]**, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub-consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and sub-consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall

defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

Without limiting Consultant's indemnification of City, 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 that is satisfactory to City.

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. The City's Risk Manager may modify this requirement if it is determined that Consultant will not be utilizing a vehicle in the performance of his/her duties under this agreement.

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.

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 City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City of Palm Desert, its officers, agents, employees and volunteers.

Umbrella or Excess Liability Insurance.

Consultant may opt to utilize umbrella or excess liability insurance in meeting insurance requirements. In such circumstances, 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;
- Concurrency 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.

OTHER PROVISIONS OR REQUIREMENTS

Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of Coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, his/her agents, representatives, employees or subconsultants.

Primary/Non-Contributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications, or is canceled and not replaced, City has the right, but not the duty, to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in

accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City of Palm Desert, its elected or appointed officers, agents, officials, employees and volunteers, or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City of Palm Desert, its elected or appointed officers, agents, officials, employees and volunteers, and shall require similar written express waivers and insurance clauses from each of its sub-contractors.

Enforcement of Contract Provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

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.

Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional Insured Status. General liability, automobile liability, and if applicable, pollution liability and cyber liability, policies shall provide or be endorsed to provide that the City of Palm Desert and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured

against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its sub-consultants, sub-contractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, sub-contractors, and others engaged in the project will be submitted to City for review.

City's Right to Revise Specifications. The City or its Risk Manager reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in *substantial* additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation. If the City reduces the insurance requirements, the change shall go into effect immediately and require no advanced written notice.

Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in the rate sheet provided by the Consultant. The total compensation shall not exceed **[INSERT AMOUNT WRITTEN OUT]** (\$**[INSERT NUMBER]**) without

authorization of the City Council or City Manager, as applicable, per the Palm Desert Municipal Code. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without authorization from the City Council or City Manager, as applicable, per the Palm Desert Municipal Code.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2 of this Agreement, the rate set forth in the rate sheet provided by the Consultant may be adjusted each year at the time of renewal.

3.3.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. **SINCE** the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: **[INSERT BUSINESS NAME]
[INSERT STREET ADDRESS]
[INSERT CITY STATE ZIP]
ATTN: [INSERT NAME AND TITLE]**

City: City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260
ATTN: **Lauri Aylaian, City Manager**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property.

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings and data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

3.5.6.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.6.2 Additional Indemnity Obligations. To the fullest extent permitted by law, Consultant shall defend, with counsel of City's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.6.1 that may be brought or instituted against City or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and sub-consultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any sub-consultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation, or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

CITY OF PALM DESERT

[INSERT NAME]

By: _____
Mayor or City Manager

By: _____
[INSERT NAME AND TITLE]

[If Corporation, TWO SIGNATURES,
President **OR** Vice President **AND**
Secretary OR Treasurer REQUIRED]

ATTEST:

By: _____
Rachelle Klassen
City Clerk

By: _____
[INSERT NAME AND TITLE]

APPROVED AS TO CONTENT:

By: _____
Tom Garcia, P.E.
Director of Public Works

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney