



**CITY OF PALM DESERT**

**REQUEST FOR PROPOSALS**

**FOR**

**COMPREHENSIVE USER FEE STUDY**

**AND**

**FULL COST ALLOCATION PLAN**

**ISSUE DATE: February 6, 2019**  
**RFP DUE DATE: March 8, 2019**

**73-510 Fred Waring Drive**  
**Palm Desert, CA 92260**  
**Attn: Christopher Gerry**  
**(760) 776-6335**

*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.*

**CITY OF PALM DESERT  
REQUEST FOR PROPOSALS  
COMPREHENSIVE USER FEE AND FULL COST ALLOCATION PLAN**

**NOTICE IS HEREBY GIVEN** that the City of Palm Desert (City) is soliciting proposals from qualified consultants for preparation of a comprehensive user fee study and full cost allocation plan (Project).

The City proposes to select the most qualified consultant (Consultant) to develop and implement the Project based on the Consultant's ability to meet all criteria established in the Request for Proposals (RFP). The Consultant must demonstrate to the City its experience with similar projects and its ability to deliver a comprehensive user fee study and full cost allocation plan to the City. The plan will ultimately ensure the utilization of comprehensive overhead and user fee rates.

All proposals must contain the requisite information outlined in this RFP. Only one (1) proposal may be submitted by a Consultant. Interested parties may request a copy of the RFP in writing from Christopher Gerry via email at [cgerry@cityofpalmdesert.org](mailto:cgerry@cityofpalmdesert.org).

Consultants desiring to respond to the RFP shall submit an original and three (3) copies and one (1) electronic copy of the proposal in an opaque envelope marked plainly on the outside:

**SEALED PROPOSAL USER FEE AND ALLOCATION PLAN – DO NOT OPEN WITH REGULAR MAIL**

Submit to the attention of: Christopher Gerry, Management Analyst, City of Palm Desert, 73-510 Fred Waring Drive, Palm Desert, CA 92260, prior to the closing of the response period at 5:00 p.m. (PST) on **March 8, 2019**. 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 one-hundred and eighty (180) days. *Proposals sent by telephone, telegram, email, facsimile or other digital means will not be accepted.*

| SCHEDULE FOR RFP                                   | Tentative Dates   |
|--|-------------------|
| RFP Released                                       | February 6, 2019  |
| Deadline for submission of questions regarding RFP | February 22, 2019 |
| Proposals due                                      | March 8, 2019     |

It is the sole responsibility of the Consultant to ensure that its proposal reaches the City Clerk's Office by the time and date specified. Proposals received after the specified time and date shall be returned unopened and considered non-responsive. Consultants are cautioned that if the proposal is delivered by an express mail carrier or by any means, it is the Consultant's responsibility to ensure delivery to the City Clerk's Office at the above address prior to the time and date specified. The City will not be responsible for deliveries made to any place other than the specified office or address.

The City 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.

Dated this 6th day of February 2019, at Palm Desert, California.

  
RACHELLE D. KLASSEN, CITY CLERK  
CITY OF PALM DESERT, CALIFORNIA  
(760) 346-0611

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### Attachments:

- A. Standard Professional Services Agreement

## **1. Introduction**

The City of Palm Desert (City) is requesting sealed proposals for a comprehensive user fee study and cost allocation plan (Project). All proposals must be received by the City no later than 5:00 p.m. on Friday, March 8, 2019. Late proposals will not be considered. One (1) original signed proposal, three (3) copies, and one (1) electronic copy shall be submitted in the sealed packages with the name of the Consultant and proposal clearly marked on the outside of the package.

Proposals must be responsive to the City's request. The City shall determine the most responsive and qualified Consultant providing the best service at the most reasonable cost. Cost alone shall not be the determining factor. The Request for Proposals (RFP) does not obligate the City to award a contract nor complete the Project. The City reserves the right to cancel the solicitation if deemed in its best interest.

## **2. Background**

Palm Desert, a charter city, is located in Riverside County situated in the geographical center of the Coachella Valley and covers approximately 26 square miles. Palm Desert has a population of over 50,000. Under the charter, the City has authority over its own municipal affairs, including bidding and contracting procedures; regulation of parks, libraries, and other facilities; certain fees; imposition of taxes; municipal zoning; salaries of officials and employees; municipal utilities; and election procedures.

The City operates as a "contract city," which includes utilizing agreements with other governmental entities, private firms and individuals to provide many services. The types of contracted services include, but are not limited to, police and fire protection; animal control; road maintenance and construction services; legal services; landscape maintenance; recreation program services, and waste and recycling services.

In March 2004, the City has completed a comprehensive cost of services study. The City is interested in having this plan reviewed and updated accordingly.

## **3. Objectives**

### **3.1. Full Cost Allocation Plan**

The purpose of this Project is to ensure the City has a basis of applying comprehensive overhead rates and accurate accounting for the true cost of providing various services by each department. A cost allocation plan serves to allocate all indirect costs. In addition, a cost allocation plan helps the City appropriately allocate general and administrative costs in its budget; properly identify overhead rates can be used in the calculation of billable hourly rates for federal and state grants, user fees, and reimbursements from other governmental agencies. The cost allocation plan shall align with best practices, accounting standards, and OMB 2 CFR part 225. Finally, the results of the cost allocation plan shall be used to develop the comprehensive user fee study.

### **3.2. Comprehensive User Fee Study**

The City seeks to evaluate all costs of services provided and examine whether a reasonable relationship exists between the costs of providing services and current service fees, while ensuring compliance with Proposition 26, Proposition 218, and other applicable statutory requirements. The City desires to undertake a comprehensive citywide review and evaluation of user fee and rate charges resulting in a cost-based user fee study. The comprehensive user fee study will calculate the full 100% cost of providing certain City services, and provide a recommended fee to be charged for each applicable service. The Consultant shall recommend cost recovery strategies and identify best practices in establishing user fees. These strategies shall take into consideration the complexities and demands of each department and program. The Consultant will provide thorough analysis, development of fee models and recommendations, including identifying and recommending new fees

and revenue sources, if applicable. The City must have a well-documented and defensible cost of service plan that identifies rates to recover billable costs for services and develop compliant user fees.

#### **4. Scope of Services**

Project tasks shall include, but are not limited to, the following sections. If the Consultant believes additional tasks are warranted, it must be clearly identified in the Consultant's proposal. Consultants responding to this RFP shall be prepared to deliver services and perform the work necessary to complete the services no later than six (6) months after the award of the contract. The Project consists all labor, materials, supervision, and travel necessary to complete the tasks outlined below.

If the City does not provide information in a timely manner to the Consultant, additional time maybe granted to complete the Project upon written request. The Consultant's failure to perform the services in such a manner may result in termination of this Project and all related contracts with the City.

##### **4.1. Full Cost Allocation Plan**

Prepare the cost allocation plan, which may include the following elements (if the Consultant believes that additional tasks are warranted, they must be identified in the proposal):

- 4.1.1. Meet with City staff to refine the scope, purpose, uses, and goals of the cost allocation plan to ensure the study will be accurate and appropriate for the City's needs. Review schedule and answer questions pertaining to the development of the study.
- 4.1.2. Meet with City staff and conduct interviews as needed to gain an understanding of the City's processes and operations, which includes determining if certain services and functions are performed together or shared between departments. Costs shall be identified so that they can be allocated to and tracked by the appropriate department.
- 4.1.3. Identify the total cost of providing each City service at the appropriate activity level and in a manner that is consistent with applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, the State Controller's Office Guidelines for Cost Claiming and OMB 2 CFR Part 225 standards.
- 4.1.4. Develop a Cost Allocation Model using the Fiscal Year 2018-19 budget and/or the most recent actual data for calculation of the full costs of providing each City service. The requirements of the model shall allow for:
  - 4.1.4.1. Additions, revisions, or removal of direct and overhead costs so that the cost allocation plan can be easily adapted to a range of activities, both simple and complex.
  - 4.1.4.2. The ability of the City to update the model and full cost allocation plan annually as the organization changes and as costs change.
  - 4.1.4.3. The addition of hypothetical service area information for future service enhancements and the ability to calculate the estimated costs of providing the service under consideration (i.e. ad-hoc analysis). In this manner, the City has the ability to access information and analyze data on an as-needed or requested basis.
- 4.1.5. Report on other matters that come to the Consultant's attention in the course of the evaluation that, in its professional opinion, the City should consider.
- 4.1.6. Present the plan to the City's executive management group and make necessary adjustments as requested.

- 4.1.7. Prepare and deliver presentation to the City Council to facilitate their understanding of the plan and its implications to the City.
- 4.1.8. Work with the Finance Department in developing service provisions, cost categories, and allocation criteria for current and future programs.
- 4.1.9. Provide the City with an electronic copy of the final comprehensive review, including schedules and cost documentation in a format such as Microsoft Word and Excel that can be edited and updated by City staff to accommodate changes in the organization or changes in cost.
- 4.1.10. Prepare a final report and provide three (3) bound color copies, and a PDF file of the cost recovery plan that can be made available to City staff. Models, tables, and graphs shall be provided in Excel. Cost allocation model revisions shall be made available to the City in Excel and PDF formats, providing the ability to add, delete, and/or update information as needed.
- 4.1.11. Consult with City staff should the need arise to defend the cost allocation plan resulting from audits and/or other challenges.

#### 4.2. Comprehensive User Fee Study

Prepare a comprehensive user fee study, which may include the following elements (if the Consultant believes that additional tasks are warranted, they must be identified in the proposal):

- 4.2.1. Meet with City staff to refine the scope, purpose, uses, and goals of the comprehensive user fee study to ensure the study will be accurate and appropriate for the City's needs. Review schedule and answer questions pertaining to the development of the study.
- 4.2.2. Meet with City staff and conduct interviews as needed to gain an understanding of the City's processes and operations. Conduct a comprehensive review of the City's existing fees, rates, and charges.
- 4.2.3. Identify the total cost of providing each City service at the appropriate activity level and in a manner that is consistent with all applicable laws, statutes, rules, and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, Proposition 26 and Proposition 218.
- 4.2.4. Compare service costs with existing recovery levels. This shall include any service areas where the City is currently charging for services, as well as areas where perhaps the City may charge, in light of the City's practices, or the practices of similar or neighboring cities.
- 4.2.5. Recommend potential new fees and charges for services the City currently provides, but does not have any fees and/or charges established or recommend potential lower fees and charges if needed. Recommendations shall be based on practices by surrounding cities that may charge for similar services, industry best practices, or the Consultant's professional opinion.
- 4.2.6. Recommend appropriate fees and charges based on the Consultant's analysis together with the appropriate subsidy percentage for those fees where full cost recovery may be unrealistic.
- 4.2.7. Prepare a report that identifies each fee service, its full cost, recommended and current cost recovery levels. The report shall also identify the direct costs, indirect cost, and overhead cost for each service.
- 4.2.8. Prepare a report that identifies the present fees, recommended fees, percentage change, cost recovery percentage, revenue impact and fee comparison with other Riverside County cities or other comparable California. A report comparing rates and fees with similar cities, and how the fees compare to Coachella Valley cities, is required.

- 4.2.9. Report on other matters that come to the Consultant's attention in the course of the evaluation that, in the Consultant's professional opinion, the City should consider.
- 4.2.10. Prepare and include samples of any reports that accomplish the scope of services, i.e., identification of total costs.
- 4.2.11. Provide a computer based model in Excel for adjusting these fees and charges for the City's current and future needs, and provide the City with an electronic copy of the final comprehensive study, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs. The requirements of the model shall allow for:
  - 4.2.11.1. Additions, revisions, or removal of direct and overhead costs so that the cost allocation plan can be easily adapted to a range of activities, both simple and complex.
  - 4.2.11.2. The ability of the City to update the model and cost allocation plan annually as the organization changes.
  - 4.2.11.3. The addition of hypothetical service area information for future service enhancements and the ability to calculate the estimated costs of providing the service under consideration (i.e., ad-hoc analysis).
- 4.2.12. Present the plan to the City's executive management group and make necessary adjustments as requested.
- 4.2.13. Prepare and deliver a presentation to the City Council to facilitate their understanding of the plan and its implication for the City to make necessary adjustments as requested.
- 4.2.14. Provide onsite training to enable City staff to update fees on an annual basis.
- 4.2.15. Prepare a final report and provide three (3) bound color copies, and a PDF file of the cost recovery plan that can be made available to City staff. Models, tables, and graphs shall be provided in Excel. Cost Allocation Model revisions shall be made available to the City in Excel and PDF formats, providing the ability to add, delete, and/or update information as needed.
- 4.2.16. Consult with City staff should it become necessary to defend the City's comprehensive user fee study resulting from any legal and/or other challenges.

## **5. General Requirements**

The Consultant shall retain all working papers and related supporting documents, including records of professional time spent, for a period of five (5) years after delivery of the required reports, unless notified in writing by the City of the need to extend the retention period. The Consultant further agrees to allow City staff review such documents upon written request at any time during the retention period.

### **5.1. Proposal Format**

All proposals are required to adhere to the formatting requirements below. The City strongly encourages respondents to ensure that RFP submissions are succinct and clearly organized. If the proposal is not in this format or does not include all of the listed items, it may be deemed non-responsive. All responses shall be provided in a standard 8½ x 11" portrait format with binding on the left hand edge. In addition, the proposal shall be provided in an electronic pdf format.

- 5.1.1 **Title Page** showing the subject; the Consultant's name; the name, address, and telephone number of the contact person; and the date of the proposal
- 5.1.2 **Table of Contents** identifying the materials submitted by section and page number
- 5.1.3 **Detailed Proposal** following the order set forth in the proposal content
- 5.1.4 Provide a **timeline** for the comprehensive user fee study and cost allocation plan, indicating dates for completion of the final reports

## 5.2. Proposal Submission Requirements

The Consultant shall be responsible for preparing an effective, clear, and concise proposal. The City is requesting three (3) bound paper color copies of the proposal, which must contain a minimum the following information:

- 5.1.1 Letter of Interest: Include a letter expressing the Consultant's interest in the Project. Include a statement regarding the Consultant's availability to dedicate time, personnel, and resources to this effort. The letter of interest must include a commitment to the availability of the Consultants and all key Project staff during the planning period and a proposed schedule designed to meet the City's needs for the Project.
- 5.1.2 Project Understanding and Approach: Include a statement demonstrating the Consultant's understanding of the Project. Describe the Consultant's approach to completing the Project successfully; methodologies and technologies that would be employed; and key milestones and processes that would be employed. Describe what information is expected from the City.
- 5.1.3 Relevant Experience: Include information describing the Consultant's experience with comprehensive fee studies, including cost allocation plans for public agencies. List a minimum of five (5) specific examples of the Consultant's relevant experience with the development of comprehensive fee studies and cost allocation plans. This list shall include the most recent projects the Consultant has performed similar services of similar size, scope and complexity. Include the name, contact person, address, phone number and/or email of each party for whom the service was provided, and a description of the service performed, the dollar amount of the contract, and the date of performance.
- 5.1.4 Project Manager / Key Staff: Include information regarding relevant experience and billing rates for the proposed Project Manager and all other applicable staff. A Project Manager must be designated and must be the principal contact for the City. Include the Project Manager's experience (on similar projects) and at least two (2) references.
- 5.1.5 Proposed Scope of Services: Provide a proposed scope of services, which is based upon the scope of work contained in this RFP, and discuss any ideas for modifying, clarifying, or improving the City's proposed scope of work. Provide a realistic working schedule with key deliverables, milestones, and tasks.
- 5.1.6 Conflict of Interest Statement: The Consultant shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract. Particular attention shall be paid to comply with Government Code section 1090.
- 5.1.7 Comments on or Requested Changes to Contract: The City's standard professional services contract is included as Attachment A to this RFP and incorporated herein by this reference. The Consultant shall identify any objections to and/or request changes to the standard contract language in this section. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be reason for rejection of the proposal. As such, the Consultant is

directed to carefully review the proposed professional services contract and, in particular, the insurance and indemnification provisions therein.

5.1.8 Certification of Proposal: The Consultant shall include the following statement in its proposal: "The undersigned hereby submits its proposal and, by doing so, agrees to furnish services to the City in accordance with the RFP, and to be bound by the terms and conditions of the RFP."

5.1.9 Cost Proposal: In a **separate envelope** marked "Cost Proposal," provide the total all-inclusive not-to-exceed maximum price. The cost proposal shall contain all pricing information relative to performing the scope of work as described in this RFP. This price shall contain all direct and indirect costs, including all out-of-pocket expenses. Provide a budget for each major milestone for the entire scope of services as well. The proposed budget shall be inclusive of all meetings, conference calls, site visits, and deliverables. The budget shall include a list of anticipated reimbursable expenses with rates charged for each.

### 5.3. Evaluation of Proposals and Selection Process

At least three City staff members will evaluate the proposals. The evaluation team members, in applying the major criteria to the proposals, may consider additional criteria beyond those listed. During the evaluation period, the team may elect to interview some or all of the Consultants. The final selection will be the Consultant, which in the City's opinion, is the most responsive and responsible, meets the City's requirements in providing this service, and will operate in the City's best interest. The City maintains the sole and exclusive right to evaluate the merits of the proposals received. Consultants will be objectively evaluated based on their responses to the Project scope outlined in the RFP. The written proposal shall clearly demonstrate how the Consultant could best satisfy the requirements of the City. Proposals will be evaluated generally on the following criteria:

- 5.2.1 Proper submission of proposal
- 5.2.2 Thoroughness and understanding of the tasks to be completed
- 5.2.3 Background and experience in organizational analysis evaluation
- 5.2.4 Staff expertise and overall experience and qualifications of personnel assigned to the work
- 5.2.5 Time required to accomplish the requested services
- 5.2.6 Responsiveness to requirements of the Project
- 5.2.7 Recent public sector experience, preferably in a municipal setting, conducting similar studies
- 5.2.8 Pricing
- 5.2.9 Reference checks

Although the pricing for services will be an important part of the consideration for award of the Project, the City will consider the Consultant's qualifications, expertise, and level of professional service and advice in the award of the Project.

Upon selection of a Consultant, the City will attempt to negotiate a mutually agreeable professional services agreement. If the City is unable to reach agreement, the City shall proceed, at its sole discretion, to negotiate with the next Consultant selected by the City. After negotiating a proposed agreement that is fair and reasonable, City staff will make the final recommendation to the City Council. The City Council has the final authority to approve or reject the agreement.

## **6. Other Requirements**

### **6.1. Public Records**

All proposals submitted in response to this RFP become the property of the City. Information in the proposal, unless specified as trade protected, may be subject to public review. Any information contained in the proposal that is proprietary must be clearly designated. Marking the entire proposal as proprietary will be neither accepted nor honored. Proprietary information submitted in response to this RFP will be handled in accordance with the California Public Records Act. The Consultant shall indemnify, defend, and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of proprietary information.

### **6.2. Right to Cancel and Amend**

The City reserves the right to cancel, for any or no reason, part or in its entirety, this RFP, including but not limited to, the selection schedule, submittal date, and submittal requirements. If the City cancels or revises the RFP, all Consultants will be notified in writing. In addition, the City is not required to award a contract as a result of this RFP and has the right to take the proposals under advisement for one hundred and eighty (180) days. City reserves the right to negotiate any price or provision, task order or service, accept any part or all of any proposals, waive any irregularities, and to reject any and all, or parts of any and all proposals, whenever, in the sole opinion of City, such action shall serve its best interests and those of the tax-paying public. The City reserves the right to amend the RFP or issue to all Consultants a notice of amendment to answer questions for clarification. A proposal may be considered non-responsive if conditional, incomplete, or if it contains alterations of form, additions not called for, or other irregularities that may constitute a material change to the proposal.

### **6.3. Additional Information**

The City reserves the right to request additional information and/or clarification from Consultants.

### **6.4. Conflict of Interest**

The Consultant covenants that the company, its officers, employees and/or agents presently have no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services requested herein by the City. The Consultant further covenants that, in the performance of any contract or agreement resulting from this RFP, no subcontractor or person having such an interest shall be employed. The Consultant certifies that to the best of its knowledge, no one who has or will have any financial interest under any contract or agreement resulting from this RFP is an officer or employee of the City.

### **6.5. Release of Public Information**

Consultants who respond to this RFP who wish to release information to the public regarding selection, contract award or data provided by the City must receive prior written approval from the City before disclosing such information to the public.

### **6.6. Non-Assignment**

If a contract is awarded, the Consultant shall neither assign, nor delegate, in part or in whole, any duties without the prior written consent of the City.

### **6.7. Collusion**

The Consultant certifies that the company, its officers, employees and/or agents are not a party to any collusive action, fraud, or any action that may be in violation of the Sherman Antitrust Act. The

Consultant certifies that the company, its officers, employees and/or agents have not offered or received any kickbacks or inducements from any other bidding Consultant, supplier, manufacturer, or subcontractor in connection with the proposal, and that the company, its officers, employees and/or agents have not conferred with any public employee having official responsibility for this procurement transaction regarding any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value. Any or all bids shall be rejected if there is any reasons to believe collusion exists among the bidding Consultants.

#### 6.8. Debarment

By submitting a proposal, the Consultant certifies that the company is not currently debarred from submitting proposals and/or bids for contracts issued by any city or political subdivision or agency of the State of California, and that is not an agent of a person or entity that is currently debarred from submitting proposals and/or bids for contracts issued by any City or political subdivision or agency of the State of California.

#### 6.9. Equal Employment Opportunity Compliance

The selected Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Consultant shall ensure that all employees and applicants for employment shall be treated with equality in all aspects of employment processes including, but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age, or physical handicap.

#### 6.10. Right to Audit

The Consultant shall maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. The Consultant shall retain these records for a period of five (5) years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the City or its designees.

#### 6.11. Cost of Proposal

The City will not compensate Consultants for the cost of preparing any proposal, and all materials submitted with a proposal shall become the property of the City. The City will retain all proposals submitted and may use any idea in a proposal regardless of whether that proposal is selected.

#### 6.12. City Contact for RFP; Requests for Clarification

The principal contact for the City regarding this RFP will be Christopher Gerry, Management Analyst, City Manager's Office, (760) 776-6335, [cgerry@cityofpalmdesert.org](mailto:cgerry@cityofpalmdesert.org). Questions, requests for interpretations or clarifications - either administrative or technical - shall be requested in writing and directed to the aforementioned contact. Written questions, if answered, will be answered in writing, conveyed to all interested Consultants via email and/or posted on the City's website. Questions must be received in writing by 5:00 p.m. (PST) February 22, 2019.

**Attachment A**  
**Standard Professional Services Agreement**

**[MODEL - REMOVE THIS TITLE WHEN USED ]**

**CITY OF PALM DESERT  
PROFESSIONAL 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 92260-2578, County of Riverside, State of California ("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 services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **[\*\*\*INSERT TYPE\*\*\*]** 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 services for the **[\*\*\*INSERT NAME OF PROJECT, AND CONTRACT NUMBER, IF APPLICABLE\*\*\*]** project ("Project") 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 **[\*\*\*INSERT TYPE\*\*\*]** consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. **[\*\*\*INSERT IF FEDERAL FUNDS WILL BE USED; OTHERWISE ALWAYS DELETE: Additionally, Consultant shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "A-I" and attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.]**

3.1.2 Term. The term of this Agreement shall be from [\*\*\*INSERT DATE\*\*\*] to [\*\*\*INSERT DATE\*\*\*], unless earlier terminated as provided herein. [\*\*\*INSERT THE FOLLOWING SENTENCE FOR MULTI-YEAR, AUTOMATIC RENEWAL NOT TO EXCEED THREE CONSECUTIVE YEARS; OTHERWISE, ALWAYS DELETE: The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than [INSERT NUMBER] additional one-year terms.\*\*\*] Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### **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 in Exhibit "B" attached hereto and incorporated herein by reference. 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 AND TITLE\*\*\*].

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"). 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 enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **\*\*\*INSERT NAME AND TITLE\*\*\***, 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 reasonable 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 subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants 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 Period of Performance **\*\*\*DELETE "and Liquidated Damages" IF NO LDS INCLUDED** and Liquidated Damages. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to

any such Project Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. **\*\*\*INCLUDE THE FOLLOWING SENTENCE ONLY IF YOU'RE INCLUDING LD'S – DELETE OTHERWISE – DON'T SIMPLY INSERT \$0\*\*\*** Pursuant to Government Code Section 53069.85, Consultant shall pay to the City as fixed and liquidated damages the sum of **\*\*\*INSERT WRITTEN DOLLAR AMOUNT\*\*\* Dollars (\$\*\*\*INSERT NUMERICAL DOLLAR AMOUNT\*\*\*)** per day for each and every calendar day of delay beyond the Performance Time or beyond any Project Milestones established pursuant to this Agreement.

3.2.10 Laws and Regulations; Employee/Labor Certification. 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.

3.2.10.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Consultant shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections

3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, 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. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.10.5 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its sub-consultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.6 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. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.11 Insurance. **\*\*\*CITY RISK MANAGER TO REVIEW PRIOR TO EACH USE IN CASE OTHER COVERAGE IS NEEDED (E.G. CYBER LIABILITY, ETC.)\*\*\***

3.2.11.1 Minimum Requirements. 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.

(A) 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.

(B) 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 Manger 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.

(C) 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.

(D) 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.

(E) 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:

- (1) 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;
- (2) Pay on behalf of wording as opposed to reimbursement;
- (3) Concurrency of effective dates with primary policies; and
- (4) Policies shall "follow form" to the underlying primary policies.
- (5) Insureds under primary policies shall also be insureds under the umbrella or excess policies.

(F) Fidelity Coverage. **(\*\*IF APPLICABLE-CHECK WITH RISK MANAGER)** Consultant shall provide evidence of fidelity coverage on a blanket fidelity bond or other acceptable form. Limits shall be no less than \$1,000,000 per occurrence.

(G) Cyber Liability Insurance. **(\*\*IF APPLICABLE-CHECK WITH RISK MANAGER)** Consultant shall procure and maintain Cyber Liability insurance with limits of \$1,000,000 per occurrence/loss, which shall include the following coverage:

- (1) Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including credit monitoring and regulatory fines arising from such theft, dissemination or use of the confidential information.
- (2) Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.
- (3) Liability arising from the failure of technology products (software) required under the contract for Consultant to properly perform the services intended.
- (4) Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.
- (5) Liability arising from the failure to render professional services

If coverage is maintained on a claims-made basis, Consultant shall maintain such coverage for an additional period of three (3) years following termination of the Contract.

### 3.2.11.2 Other Provisions or Requirements.

(A) 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.

(B) 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.

(C) 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.

(D) 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.

(E) 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.

(F) 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.

(G) 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.

(H) 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.

(I) 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.

(J) 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 with regard to liability and defense of suits or claims arising out of the performance of the Agreement, under such policies. This provision shall also apply to any excess/umbrella liability policies.

(K) 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.

(L) 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.

(M) 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.

(N) City's Right to Revise Specifications. The City or 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.

(O) 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.

(P) 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.

(Q) 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 Services.

### 3.2.12 Water Quality Management and Compliance.

3.2.12.1 Storm Water Management. Storm, surface, nuisance, or other waters may be encountered at various times during the Services. Consultant hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

3.2.12.2 Compliance with Water Quality Laws, Ordinances and Regulations. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

3.2.12.3 Standard of Care. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Section 3.2.12.2 of this Agreement. Consultant further warrants that it, its employees and subcontractors have or will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

3.2.12.4 Liability for Non-compliance.

(A) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Section 3.2.14.2 of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Consultant agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(B) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Consultant's failure to comply with any applicable water quality law, regulation, or policy. Consultant hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(C) Damages: City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in Section 3.2.12.2 of this Agreement, or any other relevant water quality law, regulation, or policy.

### **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 Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **\*\*\*INSERT AMOUNT WRITTEN OUT\*\*\*** (\$**\*\*\*INSERT NUMBER\*\*\***) without written approval of the City Council or City Manager as applicable. 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. Consultant shall submit its final invoice to City within thirty (30) days from the last date of provided Services or termination in accordance with section 3.6.1 and failure by the Consultant to submit a timely invoice may constitute a waiver of its right to final payment.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

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 written authorization from the City.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "C" may be adjusted each year at the time of renewal as set forth in Exhibit "C."

### **3.4 Labor Code Requirements.**

3.4.1 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. If 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. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code

sections to the fullest extent required by law. 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.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.4.3 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 Accounting Records.**

3.5.1 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.

### **3.6 General Provisions.**

#### **3.6.1 Termination of Agreement.**

3.6.1.1 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.

3.6.1.2 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.

3.6.1.3 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.

3.6.2 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: [INSERT NAME AND TITLE]

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.

### 3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1 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 or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available

to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.6.3.2 Subconsultants. 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 its subconsultants, or those provided to Consultant by the City.

3.6.3.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.6.3.4 Indemnification – Proprietary Information. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.6.3.5 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.

3.6.3.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public

Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.6.4 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.

3.6.5 [Reserved]

3.6.6 Indemnification.

3.6.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its 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 acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subconsultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.6.7 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.

3.6.8 Governing Law: Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County. In addition to any and all contract requirements pertaining to notices of and requests for

compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

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

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

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

3.6.12 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.

3.6.13 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 subconsultants 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.

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

3.6.15 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.

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

3.6.17 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.

3.6.18 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.

3.6.19 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.

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

### **3.7 Subcontracting.**

3.7.1 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.

**[SIGNATURES ON NEXT PAGE]**

SIGNATURE PAGE TO

PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF PALM DESERT AND **\*\*\*INSERT NAME\*\*\***

CITY OF PALM DESERT

**\*\*\*INSERT NAME OF CONSULTANT\*\*\***  
**\*\*\*INSERT NAME OF LEGAL ENTITY\*\*\***

By: \_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]

**[IF CORPORATION, TWO SIGNATURES, PRESIDENT OR VICE PRESIDENT AND SECRETARY OR TREASURER REQUIRED]**

By: \_\_\_\_\_

ATTEST:

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
City Clerk

**[DELETE THE FOLLOWING SIGNATURE LINE AND SECOND NOTARY ACKNOWLEDGEMENT IF SECOND SIGNATURE NOT REQUIRED]**

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney



**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**\*\*\*INSERT SCOPE\*\*\***

**EXHIBIT "A-I"**  
**FEDERALLY REQUIRED PROVISIONS FOR SERVICES**

**[\*\*INSERT FEDERALLY REQUIRED PROVISIONS TRIGGERED BY RECEIPT OF  
FEDERAL FUNDS FOR THE SERVICES; OTHERWISE  
ALWAYS DELETE ENTIRE EXHIBIT "A-I"]**

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

**\*\*\*INSERT SCHEDULE\*\*\***

**EXHIBIT "C"  
COMPENSATION**

**\*\*\*INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES\*\*\***

**[INSERT THE FOLLOWING PROVISION IF THE AGREEMENT WILL AUTOMATICALLY RENEW:** In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange Counties.]