



## City Council Staff Report

Date: January 02, 2013

CONSENT CALENDAR

Subject: APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH DMC DESIGN GROUP, INC. FOR THE MESQUITE AVENUE WIDENING (WEST OF BELARDO ROAD) PROJECT, CITY PROJECT 12-01

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

---

### SUMMARY

The Tribe has allocated \$500,000 from its Indian Reservation Roads (IRR) Program to the City to design and construct the widening of Mesquite Avenue, west of Belardo Road, which is to include a parking area for the Lykken Trailhead. The City solicited proposals from consultants for environmental and civil engineering design services for this project. After a competitive consultant selection process, the City selected DMC Design Group, Inc., and negotiated the proposed professional services agreement.

1

- 1) Approve Agreement No. \_\_\_\_\_ with DMC Design Group, Inc., in the amount of \$78,991.00 for environmental and civil engineering design services related to the widening of Mesquite Avenue, west of Belardo Road, City Project 12-01; and
- 2) Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

On January 18, 2012, City Council approved an Intergovernmental Memorandum of Understanding by and between the Agua Caliente Band of Cahuilla Indians (Tribe) and the City of Palm Springs regarding Indian Reservation Road Program Funding for the Mesquite Avenue Improvements Project; and a Subcontractor Services Agreement by and between the Agua Caliente Band of Cahuilla Indians and the City of Palm Springs. The Tribe has determine to allocate to the City up to \$500,000 from its IRR funds to design, acquire rights-of-way, and construct a project to widen Mesquite Avenue, west of Belardo Road, which is to include parking and associated improvements for the Lykken Trail at the west end of Mesquite Avenue. Tribal and City staff have determined that these additional improvements will be a benefit to the Tribe and City.

This project requires the services of a professional firm to perform the required environmental analysis and prepare the environmental documents, and to prepare the plans and specifications for construction of the improvements. Staff prepared a Request for Proposals (RFP) to solicit environmental and civil engineering design services for this project. On April 17, 2012, the RFP was published and made available to firms through the City's Division of Procurement and Contracting, and by the May 17, 2012, deadline, proposals from the following 6 firms were received:

Albert A. Webb Associates, Inc.; Palm Desert, CA  
DMC Design Group, Inc.; Corona, CA  
Engineering Resources of Southern California, Inc.; San Bernardino, CA  
Terra Nova Planning & Research, Inc; Palm Desert, CA  
Transtech Engineers, Inc.; San Bernardino, CA  
Urban Logic Consultants, Inc.; Temecula, CA

Following review of the proposals by a Selection Committee, a clear consensus of DMC Design Group, Inc., as the top ranked firm was made. The Selection Committee, in accordance with federal rules regarding the consultant selection process, determined that final interviews were not necessary based on its clear determination of a top ranked firm. The selection was based on DMC Design Group's thorough understanding of the project area, federal processes related to environmental clearances, and their recent experience coordinating federally funded projects.

### **Local Business Preference Compliance**

Section 7.09.030 of the Palm Springs Municipal Code, "Local Business Preference Program," requires consultants to use good faith efforts to solicit applications for employment and proposals for sub-consultants for work associated with the proposed contract from local residents and firms as opportunities occur and hire qualified local residents and firms whenever feasible. However, in accordance with the exceptions in the Code, as the City is a sub-recipient of federal-aid funds for this project from the Federal Highway Administration ("FHWA") via the Tribe, local preferences are generally not allowed in the awarding of this contract. Therefore, the provisions of the City's Local Business Preference Program were not included in the RFP.<sup>1</sup>

---

<sup>1</sup> The primary basis behind the prohibition of local hiring preferences is that they are inconsistent with the principles of free and open competition, which is required in the federal-aid program pursuant to federal law found at 23 USC 112, "Letting of Contracts". Also, 23 CFR 635.117 (b) states: *No procedures or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.* This provision is generally applied to any City contracts funded in part by federal-aid funds the City receives as a sub-recipient from FHWA.

However, nondiscrimination provisions apply to all programs and activities of federal-aid recipients, sub-recipients, and contractors, regardless of tier (49 CFR 21). Pursuant to Caltrans regulations, Disadvantaged Business Enterprise (DBE) requirements must be satisfied with this project. Per new DBE requirements established by FHWA beginning July 1, 2012, the recalculated DBE is 2.74%. Consultant will meet this requirement per the contract or fill out the necessary forms to attempt to meet this goal in good faith.

FISCAL IMPACT:

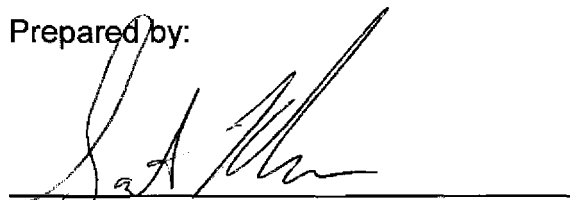
Funding for the environmental engineering, right of way, and construction of this project will come entirely from the \$500,000 allocated by the Tribe from the IRR Program. The total costs of this project will not exceed \$500,000; therefore, there will be no City funding required.

Funding for this contract will be budgeted as follows:

\$78,991.00 from account 261-4491-50302

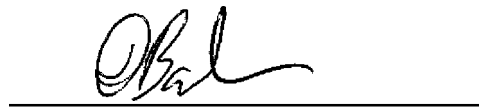
SUBMITTED:

Prepared by:



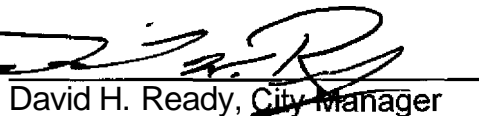
Savat Khamphou  
Assistant Director of Public Works

Recommended by:



David J. Barakian  
Director of Public Works/City Engineer

Approved by:

  
Thomas J. Wilson, Asst. City Manager  
David H. Ready, City Manager

ATTACHMENTS:

- - Agreement

**CITY OF PALM SPRINGS  
PROFESSIONAL SERVICES AGREEMENT  
MESQUITE AVENUE WIDENING (WEST OF BELARDO ROAD)  
CITY PROJECT NO. 12-01**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF PALM SPRINGS, a California charter city and municipal corporation, (hereinafter referred to as "City") and DMC Design Group, (hereinafter referred to as "Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has determined that there is a need for environmental, civil engineering design, and construction administration services for the widening of Mesquite Avenue Widening, west of Belardo Road, City Project No. 12-01, (hereinafter the "Project").

B. Consultant has submitted to City a proposal to provide environmental, civil engineering design, right-of-way, and construction administration services to City for the Project pursuant to the terms of this Agreement.

C. Consultant is qualified by virtue of its experience, training, education, reputation, and expertise to provide these services and has agreed to provide such services as provided herein.

D. City desires to retain Consultant to provide such professional services.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1.0 SERVICES OF CONTRACTOR**

■ **Scope of Services.** In compliance with all terms and conditions of this Agreement, Consultant agrees to perform the professional services set forth in the Scope of Services described in Exhibit "A," which is attached hereto and is incorporated herein by reference (hereinafter referred to as the "Services" or "Work"). As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and professional services and that Consultant is experienced in performing the Work and Services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the Work and Services required hereunder. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized as high quality among well-qualified and experienced professionals performing similar work under similar circumstances.

**1.2 Contract Documents.** The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Scope of Services; (3) the City's Request for Proposals;

and, (4) the Consultant's signed, original proposal submitted to the City ("Consultant's Proposal"), which shall all be referred to collectively hereinafter as the "Contract Documents." The City's Request for Proposals and the Consultant's Proposal, which are both attached hereto as Exhibits "C" and "D," respectively, are hereby incorporated by reference and are made a part of this Agreement. The Scope of Services shall include the Consultant's Proposal. All provisions of the Scope of Services, the City's Request for Proposals, and the Consultant's Proposal shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1<sup>st</sup>) the provisions of the Scope of Services (Exhibit "A"); (2<sup>nd</sup>) the provisions of the City's Request for Proposals (Exhibit "C"); (3<sup>rd</sup>) the terms of this Agreement; and, (4<sup>th</sup>) the provisions of the Consultant's Proposal (Exhibit "D").

**1.3 Compliance with Law.** Consultant warrants that all Services rendered hereunder shall be performed in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

**1.4 Licenses, Permits, Fees and Assessments.** Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Consultant to perform the Work and Services under this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the Work and Services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes penalties, or interest levied, assessed, or imposed against City hereunder.

**1.5 Familiarity with Work.** By executing this Agreement, Consultant warrants that Consultant (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the Services should be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services hereunder. Should the Consultant discover any latent or unknown conditions that will materially affect the performance of the Services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City.

**1.6 Care of Work.** Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by the City, except such losses or damages as may be caused by City's own negligence.

**1.7 Further Responsibilities of Parties.** Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

**1.8 Additional Services.** City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to twenty-five percent (25%) of the Maximum Contract Amount or \$25,000, whichever is less, or in the time to perform of up to thirty (30) days, may be approved by the City Manager, or his designee, as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the Palm Springs City Council. It is expressly understood by Consultant that the provisions of this section shall not apply to the services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or materials required to complete any work or service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

**1.9 Special Requirements.** Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions in Exhibit "B" shall govern.

## **2.0 COMPENSATION**

**2.1 Maximum Contract Amount.** For the Services rendered pursuant to this Agreement, Consultant shall be compensated by City in accordance with the Schedule of Compensation, which is attached hereto as Exhibit "E" and is incorporated herein by reference, but not exceeding the maximum contract amount of Seventy Eight Thousand Nine Hundred and Ninety-One Dollars, (\$78,991 ) (hereinafter referred to as the "Maximum Contract Amount"), except as may be provided pursuant to Section 1.8 above. The method of compensation shall be as set forth in Exhibit "E". Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the Contract Officer designated pursuant to Section 4.2 and will only be approved if such expenses are also specified in the Schedule of Compensation. The Maximum Contract Amount shall include the attendance of Consultant at all Project meetings reasonably deemed necessary by the City. Consultant shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Consultant hereby acknowledges that it accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Consultant anticipates, that Consultant shall not be entitled to additional compensation therefore, and that the provisions of Section 1.8 shall not be applicable to the services identified in the Scope of Services. The maximum amount of city's payment obligation under this section is the amount specified herein. If the City's maximum payment obligation is reached before the Consultant's Services under this Agreement are completed,

consultant shall nevertheless complete the Work without liability on the City's part for further payment beyond the Maximum Contract Amount.

**2.2 Method of Payment.** Unless some other method of payment is specified in the Schedule of Compensation (Exhibit "E"), in any month in which Consultant wishes to receive payment, no later than the tenth (10) working day of such month, Consultant shall submit to the City, in a form approved by the City's Finance Director, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Consultant and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Consultant within forty-five (45) days after receipt of the invoice or a soon thereafter as is reasonably practical. There shall be a maximum of one payment per month.

**2.3 Changes in Scope.** In the event any change or changes in the Scope of Services is requested by the City, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional professional fees. An amendment may be entered into: (a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

**2.4 Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefore by the Palm Springs City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the City.

### 3. SCHEDULE OF PERFORMANCE

**3.1 ~~Time of Essence.~~ Time is of the essence in the performance of this Agreement.** The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the Work of this Agreement according to the agreed upon Schedule of Performance (Exhibit "F").

**3.2 ~~Schedule of Performance.~~** Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in the Schedule of Performance, which is attached hereto as Exhibit "F" and is incorporated herein by reference. When requested by Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer, but such extensions shall not exceed one hundred eighty (180) days cumulatively; however, the City shall not be obligated to grant such an extension.

**3.3 ~~Force Majeure.~~** The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics,

quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

**3.4 Term.** Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall commence upon the effective date of this Agreement and continue in full force and effect until completion of the Services but not exceeding three (3) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "F") and pursuant to Section 3.2 above, unless extended by mutual written agreement of the Parties.

#### **4. COORDINATION OF WORK**

**4.1 Representative of Consultant.** The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the Services to be performed under this Agreement and make all decisions in connection therewith: David M. Cospers. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services performed hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

**4.2 Contract Officer.** The Contract Officer shall be such person as may be designated by the City Manager of City, and is subject to change by the City Manager. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

**4.3 Prohibition Against Subcontracting or Assignments.** The experience, knowledge, capability, expertise, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City. Consultant shall not contract with any other entity to perform the Services required under this Agreement without the prior written consent of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of



Consultant. City will deal directly with and will make all payments to Consultant. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written consent of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Consultant or any surety of Consultant from any liability hereunder without the express written consent of City.

#### **4.4 Independent Contractor.**

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, **employees**, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Consultant's employees, **servants**, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall pay **all wages**, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports **and** obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

~~B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.~~

C. No City benefits shall be **available** to **Consultant**, its officers, employees, or agents in connection with any performance under this Agreement. Except for professional fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City **shall** not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing Services hereunder. If for any reason any **court** or governmental agency determines that the City has financial obligations, other than pursuant to Section 2 and Subsection 1.8 herein, of any nature relating to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for **all** such financial obligations.

## **5. INSURANCE**

**5.1 Types of Insurance.** Consultant shall procure **and** maintain, at its **sole** cost and expense, in a form and content satisfactory to City, the insurance described herein for the

duration of this Agreement, including any extension thereof, or as otherwise specified herein, against claims which may arise from or in connection with the performance of the Work hereunder by Consultant, its agents, representatives, or employees. In the event the City Manager determines that the Work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager or his designee. Consultant shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein. Except as otherwise authorized below for professional liability (errors and omissions) insurance, all insurance provided pursuant to this Agreement shall be on an occurrence basis. The minimum amount of insurance required hereunder shall be as follows:

A. Errors and Omissions Insurance. Consultant shall obtain and maintain in full force and effect throughout the term of this Agreement, standard industry form professional liability (errors and omissions) insurance coverage in an amount of not less than one million dollars (\$1,000,000.00) per occurrence and two-million dollars (\$2,000,000.00) annual aggregate, in accordance with the provisions of this section.

Consultant shall either: (a) certify in writing to the City that Consultant is unaware of any professional liability claims made against Consultant and is unaware of any facts which may lead to such a claim against Consultant; or (b) if Consultant does not provide the certification pursuant to (a), Consultant shall procure from the professional liability insurer an endorsement providing that the required limits of the policy shall apply separately to claims arising from errors and omissions in the rendition of services pursuant to this Agreement.

(2) If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City Manager.

(3) In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall immediately be obtained to ensure coverage during the entire course of performing the Services under the terms of this Agreement.

B. Workers' Compensation Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, workers' compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Consultant agrees to waive and obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City and to require each of its

subcontractors, if any, to do likewise under their workers' compensation insurance policies. If Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

C. Commercial General Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

D. Business Automobile Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of one million dollars (\$1,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased, and hired cars.

E. Employer Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of employer liability insurance written on a per occurrence basis with a policy limit of at least one million dollars (\$1,000,000.00) for bodily injury or disease.

**5.2 Deductibles and Self-Insured Retentions**. Any deductibles or self-insured retentions must be declared to and approved by the City Manager prior to commencing any work or services under this Agreement. Consultant guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured retentions in excess of \$10,000, and the City Manager may require evidence of pending claims and claims history as well as evidence of Consultant's ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of \$10,000.

~~**5.3 Other Insurance Requirements**. The following provisions shall apply to the insurance policies required of Consultant pursuant to this Agreement:~~

5.3.1 For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects City and its officers, council members, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

5.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.

5.3.3 All insurance coverage and limits provided by Consultant and available or ~~applicable to this Agreement are intended to apply to each insured, including~~ additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other

agreement relating to the City or its operations shall limit the application of such insurance coverage.

5.3.4 None of the insurance coverages required herein will be in compliance with these requirements if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Manager and approved in writing.

5.3.5 Consultant agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.

5.3.6 Consultant agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage 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 subcontractors and others engaged in the Project will be submitted to the City for review.

5.3.7 Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights hereunder in this or any other regard.

5.3.8 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Agreement applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.

5.3.9 Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. 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 limiting or all-inclusive.

5.3.10 The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.

5.3.11 Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the Work performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.

5.3.12 Consultant agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages resulting from the Consultant's activities or the activities of any person or person for which the Consultant is otherwise responsible.

**5.4 Sufficiency of Insurers.** Insurance required herein shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or **better**, unless such requirements are waived in writing by the City Manager or his designee due to unique circumstances.

**5.5 Verification of Coverage.** Consultant shall furnish City with both certificates of insurance and endorsements, **including** additional insured endorsements, affecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

~~Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:~~

1. ***"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..."*** ("as respects City of Palm Springs Contract N o . " or "for any and all work performed with the City" may be included in this statement).

2. ***"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..."*** ("as respects City of Palm Springs Contract N o . " or "for any and all work performed with the City" may be included in this statement).

3. ***"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named."*** Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and **must** be crossed out.

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies. All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Consultant's obligation to provide them.

## 6. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its **officers**, council members, officials, employees, agents and volunteers and all other public agencies whose approval of the Project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders, and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless, or willful performance of or failure to perform any term, provision, covenant, or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness, or willful misconduct of the City, its **officers**, council members, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs, and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant shall defend with legal counsel reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim "may arise out of, pertain to, or relate to Indemnified Claims" shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the Parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness, or willful misconduct of Consultant to any extent, then City shall reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs, and expenses that were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This prohibition is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

## 7. REPORTS AND RECORDS

7.1 Accounting Records. Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City Is greatly concerned about the cost of the Work and Services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or **will materially** increase or decrease the cost of the Work or Services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of such fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed ~~documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant,~~ and the City shall indemnify the Consultant for all damages resulting therefrom. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. Consultant shall ensure that all its subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization.

~~7.5 Audit and Inspection of Records. After receipt of reasonable notice and during~~ the regular business hours of City, Consultant shall provide City, or other agents of City, such access to Consultant's books, records, payroll documents, and facilities as City deems

necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Consultant's performance under this Agreement. Consultant shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

## 8. ENFORCEMENT OF AGREEMENT

**8.1 California Law and Venue.** This Agreement shall be construed and interpreted both as to validity and as to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such County, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

**8.2 Interpretation.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes **only** and shall not be deemed to **limit**, expand, or define the contents of **the** respective sections or paragraphs.

**8.3 Termination.** City may **terminate** this Agreement for its convenience at any time, without cause, in whole or in **part**, upon giving Consultant thirty (30) days written notice. **Upon** such notice, City shall pay Consultant for Services **performed** through the date of **termination**. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides **otherwise**. Thereafter, Consultant shall have no further **claims against the City under this Agreement. Upon termination of the Agreement pursuant to** this section, Consultant shall submit to the City an invoice for work and services performed prior to the date of termination. In addition, the Consultant reserves the right to **terminate** this Agreement at any time, with or without cause, upon sixty (60) days written notice to the City, except that where **termination** is due to material default by the City, the period of notice may be such shorter time as the Consultant may determine.

### **8.4 Default of Consultant.**

A. Consultant's failure to comply with any provision of this Agreement shall constitute a default.

B. **If** the City Manager, or his designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, **he/she** shall notify Consultant in writing of such default. Consultant shall have ten (**10**) days, or such **longer** period as City may designate, to cure the default by rendering satisfactory performance. **In the event Consultant fails to cure its default within such period of time, City shall have the right,** notwithstanding any other provision of this Agreement, to terminate this Agreement without



further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.3.

**C.** If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.4.B, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the Maximum Contract Amount (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Consultant shall not limit Consultant's liability for completion of the Services as provided herein.

**8.5 Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

**8.6 Rights and Remedies Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

**8.7 Legal Action.** In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

**8.8 Attorney Fees.** In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

## **9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

**9.1 Non-liability of City Officers and Employees.** No officer or employee of the City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

**9.2 Conflict of Interest.** No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested in violation of any state statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

**9.3 Covenant Against Discrimination.** In connection with its performance under this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, or national origin. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## **10. MISCELLANEOUS PROVISIONS**

### **0 Patent and Copyright Infringement.**

**A.** To the fullest extent permissible under law, and in lieu of any other warranty by City or Consultant against patent or **copyright** infringement, statutory or otherwise, it is agreed that Consultant shall defend at its expense any claim or suit against City on account of ~~any allegation that any item furnished under this Agreement, or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently~~ existing U.S. letters patent or copyright and Consultant shall pay all **costs** and damages finally awarded in any such suit or claim, provided that Consultant is promptly notified in writing of the suit or claim and given authority, **information** and assistance at Consultant's expense for the defense of same, and provided such suit or claim arises out of, pertains to, or is related to the negligence, recklessness or willful misconduct of **Consultant**. However, **Consultant will not** indemnify City if the suit or claim results from: **(1)** City's **alteration** of a deliverable, such that City's alteration of such deliverable created the infringement **upon any presently** existing U.S. **letters** patent or copyright; or **(2)** the use of a deliverable in combination with other material not provided by Consultant when it is such use in combination which infringes upon an existing U.S. letters patent or **copyright**.

**B.** Consultant shall have sole control of the defense of any such claim or suit and **all** negotiations for settlement thereof, Consultant shall not be obligated to indemnify City under any settlement made without Consultant's consent or in the event City fails to cooperate ~~in the defense of any suit or claim, provided, however, that such-defense shall be at~~ **Consultant's expense**. ~~If the use or sale of such item is enjoined as a result of the suit or~~ **claim**, Consultant, at no expense to City, shall obtain for City the right to use **and sell** the item,

or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

10.2 **Notices.** All notices or other communications required or permitted hereunder shall be ~~in~~ writing, and shall be personally delivered, sent by pre-paid First Class U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

To City: City of Palm springs  
Attention: City Manager & City Clerk  
3200 E. Tahquitz Canyon Way  
Palm springs, California 92262  
Telephone: (760) 323-8204  
Facsimile: (760) 323-8332

To Consultant: DMC Design Group, Inc.  
140 North Maple Street, Suite 104  
Corona, CA 92880  
Attention: David M. Coper, PE  
Telephone: (951) 549-8100  
Facsimile: (951) 549-8102

**10.3 Entire Agreement.** ~~This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.~~

10.4 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under **applicable law**, but if any provision of this Agreement shall be determined to be **invalid** by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or **invalidity**, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

**10.5 Successors in Interest.** ~~This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assigns.~~

**10.6 Third Party Beneficiary.** Except as may be expressly provided for herein,

nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

**10.7 Recitals.** The above-referenced Recitals are hereby incorporated into the Agreement as though **fully** set forth herein and each Party acknowledges and agrees that such Party is bound, for **purposes** of this Agreement, by the same.

**10.8. Corporate Authority.** Each of the undersigned represents and warrants that (i) the Party for which he or she is executing this Agreement is duly authorized and existing, (ii) he or she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing, (iii) by so executing this Agreement, the Party for which he or she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he or she is signing is bound.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the City and the Consultant have caused this Agreement to be executed the day and year first above written.

**ATTEST:  
CITY OF PALM SPRINGS, CA**

**CONTENTS APPROVED:**

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

By \_\_\_\_\_  
City Manager

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

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

By \_\_\_\_\_  
City Engineer

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

**APPROVED AS TO FORM:**

**APPROVED BY CITY COUNCIL:**

By \_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_ Agreement No. \_\_\_\_\_

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

**CONSULTANT**

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

Check one:  Individual Partnership Corporation

~~Corporations require two notarized signatures: One signature must be from Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.~~

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Signature (notarized)

By: \_\_\_\_\_  
Signature (notarized)

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of \_\_\_\_\_ }  
 \_\_\_\_\_ }

On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

wha proved to me an the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their a \_\_\_\_\_ capacity(ies), and § by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature \_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

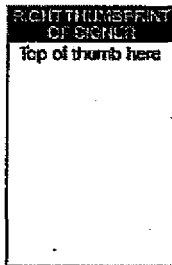
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

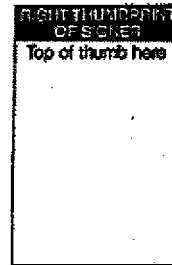
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

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

**SCOPE OF SERVICES FOLLOWS THIS PAGE**

**MANAGEMENT PLAN**

DMC's project approach is based upon a proactive Project Management Plan that originates with our Proposal and is finalized with the initiation of the Notice to Proceed by the City. In summary, our Management Plan will communicate to each member of the Consultant Team the organization and communication procedures, task descriptions and assignments, schedule requirements, cost and resource budgets, project data and design guidelines. One of the key steps in preparing a useful Management Plan is the development of a detailed Project Work Plan. To develop this plan, a series of interface meetings will take place among the members of the Consultant Team to clearly identify the multiple activities required to complete this project. These activities will include not only specific project tasks, but also agency reviews and approvals, quality control processes and milestones for deliverables. Assignment of responsibilities for each activity will also be designated, as generally shown on the proposed Organizational Chart for this project. Whenever necessary, modifications to the Organizational Chart will be made in order to strengthen the Consultant Team's ability to meet changing project needs and as specific requirements are identified. In developing this detailed Project Work Plan, many of the potential project constraints are identified, ways to expedite the project are developed, and the avenue of communication among team members are enhanced at this initial stage of this project.

The ability to clearly communicate information, such as scope, cost, schedules and technical matters, is a vital element of any project. A coordinated effort among the various team members is required to achieve an integrated program that, in turn, is necessary to deliver quality services within strict budgetary and time constraints. Coordination requires effective and frequent communication among Consultant Team members.

Key to the entire Management Plan and subsequent success of this project is the role of the Project Manager. The Project Manager is responsible for oversight and coordination of all project activities, meshing the technical requirements through a proactive, hands-on management approach. The Project Manager is the sole contact person between DMC and the City, interfacing with all City departments, as well as with outside utility agencies. The Project Manager will be responsible for project documentation including scheduling, preparation of agendas and meeting notes, and assignment of action items for meetings between City staff, subconsultants and other agencies.

**QUALITY CONTROL**

Once the final work plan is completed and final Project Team assignments communicated to each Project Team Member, DMC will develop a defined Quality Control (QC) Plan specific to this project. The QC Plan will guide the Project Team in the management and implementation of quality throughout the life of this project, not merely "just checking it" at the end of each task. The preparation and implementation of the QC Plan will be integrated into the work plan as a specific task and will be applied continuously and at strategic points in the work process by Project Team Members. The QC Plan will include procedures for both administrative and technical controls, such as project files, routing of correspondence, checking and back checking procedures, design notebooks, check lists, etc.

DMC intends to assign Mr. Christopher Wiberg, P.E. as the Quality Control Manager for this project. As the Quality Control Manager, he will be responsible for the development and implementation of a Project Quality Control Plan that ensures the following:



- A high standard of quality and accuracy of all project surveys, design reports, correspondence, right-of-way documents and maps, PS&E's, and other applicable documents pertinent to the construction of the proposed improvements;
- Compliance with applicable codes, regulations and design standards;
- A detailed independent review of the PS&E package, with numerous in-depth field reviews emphasizing project biddability, constructability and claims avoidance.

As the Quality Control Manager, Mr. Wiberg, will be responsible for the development, implementation and management of specific quality control measures applicable to this project, including the review of plans prepared by DMC and the preparation of technical reports, specifications and construction cost/quantity estimates from draft and final plans.

#### **WORKPLAN**

Based upon our current understanding of the project, DMC anticipates the project will be completed in the following four (4) phases:

- Phase 1 – Environmental Approval/Project Development
- Phase 2 – Engineering Design (Plans, Specifications and Estimates)
- Phase 3 – Right-of-Way Services

#### **Phase 1 – Environmental Approval/Project Development**

**Task 1.01 Project Research** – DMC will research all available City, utility company and other agency and developer records, as necessary, to secure all relevant information required to identify, locate and accurately lay out all improvements, utilities and easements, centerlines, right-of-way limits and private property lines.

**Task 1.02 Initial Site Visit** – Existing conditions and supporting improvements, such as pavement surface areas, curb, gutter, sidewalks and driveways, access ramps, fences, structures and existing landscaping/irrigation system improvements will be inventoried within the project limits. Pictures/videos will be taken of the entire project area to confirm existing conditions.

**Task 1.03 Topographic Survey** – DMC will coordinate with the City to obtain known survey data for this site. DMC will complete an accurate topographic survey of the project site, including the horizontal and vertical control of all existing culture, overhead and underground utilities, curb, gutters, ramps, medians and driveways. DMC will establish one (1) temporary bench mark at or near the intersection of Mesquite Avenue and Belardo Road, and at the westerly terminus of Mesquite Avenue for use during construction.

**Task 1.04 Base Map Development** – Utilizing research documents and field survey data, DMC will develop a project area base map of the project segment of Mesquite Avenue at a scale of 1" = 20' (max.), accurately showing the vertical and horizontal locations (where possible) of all existing right-of-way lines, property lines, site culture, utilities and other potential obstruction of the project site.

**Task 1.05 Initial Utility** Coordination – DMC will identify and officially notify all affected utility companies providing services within the limits of the project intersections and request copies of utility maps, plans, and records of existing facilities. Field reviews will be conducted to locate and verify all surface evidence of existing sub-surface and overhead installations within the limits of this project. All utility information obtained from its research effort and field reviews will be plotted on the Base Map. DMC will initiate the development of a Utility Log of all future correspondence with the affected utilities.

**Task 1.06 Environmental Clearance** – DMC, through PMC World (PMC), will complete the following environmental clearance activities based upon the project being a categorically exempt project from CEQA and a categorically excluded project from NEPA. It is understood and assumed:

- ❑ The City of Palm Springs will be the lead agency with regard to CEQA;
- ❑ The FHWA will be the lead agency with regard to NEPA;
- ❑ Any environmental analysis and studies prepared by DMC/PMC for the City for CEQA clearance will be used by the Tribe to coordinate NEPA approval through the FHWA;
- ❑ Any coordination with the Federal Highway Administration will be coordinated through the Tribe;
- ❑ PMC, through DMC, will coordinate, as necessary, with the Tribe to successfully implement the Project through all phases of the project.

*The following is a detailed project scope broken down by task to complete services for the environmental process up to the start of project construction with the assumptions and understanding discussed above.*

PMC will prepare a draft Notice of Exemption that will serve as the CEQA documentation for this project. After incorporating any City comments to the Draft NOE, PMC will submit a PDF of the signed NOE for the City to file at the Riverside County Recorder's office. Once the NOE is stamped by the County Recorder's office, PMC will file the stamped notice with the State Clearinghouse. Note that our scope and budget does not include the cost of the Fish and Game or Riverside County Clerk filing fees.

**Task 1.07 Concept Development** – Using topographic and mapping information developed in previous tasks, DMC will develop alternative concept exhibits of the proposed improvements to the project segment of Mesquite Avenue and the South Lykken Trailhead parking lot for presentation to the City and Tribe. The concept exhibits will be prepared in a single strip format with aerial backdrop of a sufficient scale to understand existing conditions and project impacts. In addition to showing the limits of existing and proposed improvements, the alternative concept exhibits will also clearly demonstrate right-of-way limits, utility locations and other culture in the immediate project area that may be impacted by the proposed improvements, such as adjacent grades, driveway accesses, drainage improvements, existing sidewalk improvements, ramps, street trees, fencing, mailboxes, and so on. DMC will develop concept level estimates of construction quantities and costs for each alternative concept for both Mesquite Avenue and the proposed parking area. DMC will prepare a Preliminary Design Report summarizing project issues and will include concept plans and costs to 35% complete level of the recommended

concepts after presentation to the City. Three (3) copies of the draft Preliminary Design Report with all exhibits, including the concept plans and costs, will be submitted to the City for review and approval. The report will be revised, as necessary, until approved by the City. Three (3) copies of the final report will be submitted to the City. The final report will be **used** as a reference document during the next phase of this project.

### ***Phase 2 – Engineering Design (Plans, Specifications and Estimates)***

**Task 2.01 Utility Coordination** – DMC will continue to coordinate with the affected utilities companies by completing the following activities:

- Maintain the Utility Log of all correspondence with **utilities**;
- Identify potential conflicts;
- As potential conflicts are identified throughout the design phase, coordinate with the affected utility agencies until the conflict is resolved;
- Provide notification letters with copies of the plans to be sent, via return certified receipt, to the all affected utility agencies at the 80% complete, 100% complete and final stages.

**Task 2.02 Geotechnical Investigation** Hilltop Geotechnical Services, Inc. (HGS) will provide all geotechnical support services for this project, including AC surface reconnaissance, subsurface exploration, acquisition of representative soil samples for testing, laboratory testing, analysis of field and laboratory data, and preparation of a formal report. Specifically, HGS will provide the following services:

- Excavate four (4) exploratory borings to a depth of five (5) feet adjacent to Mesquite Road and one (1) additional boring to a depth of five (5) feet below the existing ground surface in the proposed trashhead parking lot;
- Core Mesquite Avenue pavement in two (2) locations to determine the existing pavement section;
- Evaluate by laboratory testing, the engineering properties of the various strata which may influence the proposed pavement design. This includes in situ dry density and moisture content, soil gradation (-#200 sieve size), maximum dry density / optimum moisture content determinations, and resistance (R-Value);

Develop alternative pavement sections and rehabilitation alternatives appropriate for the design Traffic Index for Mesquite Avenue (It is **assumed that the Traffic Index for each street will be provided by the City of Palm Springs**);

HGS will summarize its **findings and** recommendations into a report that will include, in addition to conclusions and recommendations, a plot plan, exploration logs, recommendations regarding pavement rehabilitation and structural sections for roadway and parking lot sections, grading recommendations within the parkway **and** summary of laboratory test results.

**Task 2.03 Plans, Specifications and Estimates (PS&E's)** – DMC will prepare clear, concise and accurate PS&E's of the proposed roadway improvements. In general, the PS&E's will conform to the City of Palm Spring's standards and practices.

**Task 2.03.01 Plans** – DMC will design and prepare construction plans that will be **required** for the proposed roadway and parking lot improvements. Based upon our current understanding of the project, DMC will **prepare** the following plan sheets:

<u>Description</u>	<u>No. of Sheets</u>
Title Sheet	1
General Note Sheet	1
• Detail Sheets	2
• Demolition/Removal Plan	1
• Roadway Improvement Plan and Profile Sheets	2
• On-Site Parking Lot Pavement and Drainage Plan	
• Striping and Signs Plan Sheet	
• Final Sheets	

Plans will be submitted to the City and all affected utilities for review at the 80% complete, 100% complete stage and final screen check stage. DMC will submit four (4) sets of blueprints with each submit, along with the previous red-lined check prints. Comments received from the City will be incorporated into the plans. Final plans will be submitted to the City on Mylar, wet stamped by the Project Engineer.

**Task 2.03.02 Technical Specifications** – DMC will prepare the following documents for this project:

- Detailed Project Description;
- Bid Schedule;
- Bid Item Descriptions;
- Payment Methods;
- Special Provisions;
- Technical Specifications.

The documents will be prepared in Microsoft Word in Green Book format and submitted to the City for review at the 80% complete, 100% complete stage and final screen check stage.

**2.03.03 Estimates** – DMC will prepare a comprehensive list of bid items, their quantities and unit costs, and the probable cost of construction that will be submitted to the City for review. The final construction cost estimate shall be based upon and in agreement with the final estimated quantities shown on the bid sheet. The estimates will be prepared in Excel format and submitted to the City for review at the 100% complete stage and final screen check stage.

**Task 2.04 Storm Water Pollution Prevention Plan (SWPPP)** – DMC will prepare a project specific SWPPP plan, including the following tasks:

1. File a Notice of Intent (NOI) with the State (if required);
2. Prepare a Plan that meets the following objectives:
  - Identify all pollutant sources including sediment that may negatively affect quality of storm water discharge;
  - Recommend implementation of cost-effective Best Management Practices (BMPs) to reduce or eliminate pollutants in storm water (and authorized non-stormwater) discharges from the project site;
  - Develop a maintenance schedule for BMPs to be deployed for the wet and dry weather months;
  - Create a site-specific water pollution control drawing detailing sediment and erosion control BMPs to be included in the SWPPP;
  - If NOI is filed upon completion of this project, transfer ownership, file all applicable forms such as Change of Information (COI) or Notice of Termination (NOT).

**Task 2.05 Site Visit (2)** – DMC will complete the following site visits during this phase of this project:

- *First Site Visit* – The first site visit will be conducted prior to the submittal of the 80% complete PS&E's to the City. The purpose of the site visit is to check field conditions with information shown on the plans.

*Second Site Visit* – The second site visit will be complete prior to submittal of the 100% complete PS&E's. The purpose of the second site visit is to conduct a constructability review and to confirm that all issues have been addressed in the plans.

**Task 2.06 Project Specific WQMP** – Because the proposed parking lot is over 500 sf in surface area, DMC will prepare a WQMP for the proposed parking lot improvements in compliance with the State of California and the County of Riverside Flood Control and Water Conservation District for review and approval by the City of Palm Springs.

**Task 2.07 Bid Support** – DMC will assist the City during the bidding process by addressing questions regarding the plans and specifications with written responses (when required), the preparation and issuance of Project addendums, attendance at the pre-bid meeting to address

questions by bidders, and attendance at the City Council meeting to award the contract to address questions by Council Members.

**Task 2.08 Construction Support** – DMC will assist the City during the construction phase by providing the following services:

- Address design related questions pertinent to the approved plans and specifications through written responses to RFI's and Contractor's request for clarifications;
- Prepare record drawings for the City based on redlines provided by the Contractor.

### *Phase 3 – Right-of-Way Services*

**Task 3.01 Right-of-way Map** – DMC will prepare a right-of-way map centered on Mesquite Avenue, beginning one hundred (100) feet east of Bernardo Road and ending at the terminus of Mesquite Avenue to the west, and will include all affected lots adjacent to this segment of Mesquite Avenue. The Map will be based upon record information and will show right-of-way needs for this project.

**Task 3.02 Acquisition Documents** (2) – DMC will prepare a complete set of acquisition documents (legal description/ plat map) for two (2) partial right-of-way takes required for the construction of the proposed improvements affecting adjacent properties. Additional legal descriptions will be provided to the City with the approved unit cost for each found within the Fee Proposal.

**Task 3.03 Appraisal Report** – Over and Pacific & Cutler Inc. (OPC) will secure vesting deeds, property profile, tax maps, preliminary title reports (to remain valid for six (6) months or until there is an ownership change), and copies of recorded back-up documents as needed. This information will be provided to DMC and the real estate appraisers for their use on this project. Upon review of these documents, OPC will prepare a list of title exceptions to be cleared and confirm that the manner of disposition is consistent with the approved project plan. OPC will then facilitate changes to the preliminary title reports after preparation of the legal descriptions, if necessary, for partial acquisition projects.

One (1) appraisal report will be prepared by a certified appraiser in accordance with the United States Principal and Practices (USAP) Standards and all federal and state laws and requirements in accordance FHWA procedures. The appraisal report shall be performed in a format assuming the potential action is eminent domain (condemnation), including, but not limited to, such considerations as highest and best use as if vacant, damages to the remainder and so forth. Five (5) copies of the appraisal report shall be submitted to the City.

**Task 3.04 Negotiation/Acquisition Services** – OPC will take a lead role in negotiating right-of-way acquisition for the City by making early contact with the affected property owner (APN 513-300-046) and coordinating as-needed meetings between the property owner, appropriate City personnel and the Project Manager/Engineer. OPC will provide escrow services for the transfer of funds for the acquisition of right-of-way.

**Task 3.05 Coordination with Tribe** – DMC and OPC will coordinate with the City and Tribe on all right-of-way issues pertaining to right of way acquisitions on Tribal allotted lands. The City and Tribe will coordinate directly with the BIA.

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**

Add the following to Section 2.0, Compensation:

**Section 2.5, Cost Principles.** The Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. The administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, is hereby included by reference. The provisions of this section shall apply to all subcontracts in excess of \$25,000.

Add the following to Section 2.0, Compensation:

**Section 2.6, General Compliance with Laws and Wage Rates.** Consultant warrants that its cost proposal, approved by City and identified on the Schedule of Compensation as set forth in Exhibit "E", complies with all federal, state and local laws and ordinances applicable to the work, including compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

Add the following to Section 4.0, Coordination of Work:

**Section 4.5, Subcontracts.** Any subcontracts or contractual arrangements ("subcontracts") between the Consultants and other parties ("subcontractors") entered into in the performance of this Agreement to which the City is not named shall include all applicable provisions of this Agreement and the Consultant shall require that its subcontractors thereby comply with all such applicable provisions.

Section 7.5, Audit and Inspection of Records, the following sentence shall be added at the end of the paragraph:

~~Consultant's records shall be available for inspection by City, the state of California Department of Transportation, and the Federal Highway Administration, or their duly authorized representatives. This section shall also apply to all subcontracts in excess of \$25,000.~~

Add the following to Section 10.0, Miscellaneous Provisions:

**Section 10.9, Covenant Against Contingent Fees.** The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, the City shall have the right to annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Add the following to Section 10.0, Miscellaneous Provisions:

**Section 10.10, Patent Rights.** This agreement includes herein by reference applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions.

Add the following to Section 10.0, Miscellaneous Provisions:

**Section 10.11, Endorsement.** The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

Add the Following to Section 10.0, Miscellaneous Provisions:

**Section 10.12, Disadvantaged Business Enterprise (DBE) Requirements.** The City has established a DBE goal for this Agreement of \_\_\_\_\_% .

## 1 TERMS USED IN THIS SECTION

1. The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
2. The term "Agreement" also means "Contract."
3. Agency also means the local entity entering into this contract with the Contractor or Consultant.
4. The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

## 2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

## 3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, a "Local Agency Consultant DBE Commitment" (Exhibit 10-01) form shall be included in the Request for Proposal. After the contract is awarded form "Local Agency Consultant DBE Commitment" (Exhibit 10-02) form shall be included in the contract documents. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal, and all DBE participation shall be collected and reported.



The purpose of the form is to collect data required **under** 49 CFR 26. This form collects all DBE participation. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

#### 4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
  - 2. The proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
  - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- ~~E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.~~
- F. The proposer shall list only one subcontractor for each portion of work as defined in their proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

#### 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies ~~participating in the CUCP. If you believe a firm is certified that cannot be located on the~~

database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.

B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at: <http://www.dot.ca.gov/hq/bep/>.

- Click on the link in the left menu titled Disadvantaged Business Enterprise
- Click on Search for a DBE Firm link
- Click on Access to the DBE Query Form located on the first line in the center of the page
- Searches can be performed by one or more criteria

Follow instructions on the screen

C. How to Obtain a List of Certified DBEs without Internet Access:

DBE Directory - If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered from the Caltrans Publications Unit at (916) 263-0822, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.

## 6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- ~~B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.~~
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBES WILL COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. A DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. A DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

**END OF EXHIBIT "B"**