



City Council Staff Report

January 21, 2009

CONSENT CALENDAR

Subject: APPROVAL OF A REQUEST FOR PROPOSALS FOR CIVIL ENGINEERING DESIGN SERVICES FOR THE RAMON ROAD WIDENING, SAN LUIS REY DRIVE TO LANDAU BOULEVARD, CITY PROJECT NO. 08-25

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

The City, Cathedral City, and CVAG have coordinated on a new Regional Measure A project to widen Ramon Road to its full 6-lane width, extending from San Luis Rey Drive to Landau Boulevard, including widening of the existing bridge over the Whitewater River. Palm Springs will be the lead agency on this project. The first step in this project is to retain professional civil engineering design services to prepare a Project Study Report for the project. In accordance with 7.04.050 of the Procurement and Contracting Code, selection of a professional services consultant is made with a determination that the consultant is the best qualified based on the evaluation factors set forth in a request for proposals; and contracts for professional services are awarded on the basis of demonstrated competence and qualification for the type of services required. Staff has prepared a Request for Proposals to solicit proposals for the required professional services.

RECOMMENDATION:

Approve release of the Request for Proposals #10-09, Professional Civil Engineering Design Services for the Ramon Road Widening, San Luis Rey Drive to Landau Boulevard, City Project No. 08-25.

STAFF ANALYSIS:

On January 30, 2008, the City of Palm Springs, the City of Cathedral City, and the Agua Caliente Band of Cahuilla Indians submitted a letter to CVAG requesting funding of a Project Study Report (PSR) to identify the project details and overall scope for the widening of Ramon Road to its full 6-lane width, extending from San Luis Rey Drive to Landau Boulevard, including widening of the existing bridge over the Whitewater River.

Item No. **2.N.**

Since the project is listed in the 2005 Transportation Project Prioritization Study (TPPS), as billable project number B0059 and is listed as a backbone project, the CVAG Executive Committee agreed to provide 75% funding of an estimated \$100,000 PSR at their meeting of June 30, 2008. On November 5, 2008, Council approved a reimbursement agreement with CVAG for this project. The City and Cathedral City have subsequently agreed to equally split the 25% local Measure A share for this phase of the project.

The existing Ramon Road bridge over the Whitewater River was recently inspected by the California Department of Transportation ("Caltrans") on November 6, 2007. As a result of Caltrans' inspection, the bridge was determined to be "Structurally Deficient" with a sufficiency rating of 68.4. It is important to note that the term "Structurally Deficient" in no way means that the structure itself is at imminent risk of collapse or represents a risk to public health and safety. The Federal Highway Administration ("FHWA") uses the "Sufficiency Rating" (SR) and a status flag indicating whether a bridge is Structurally Deficient ("SD") or Functionally Obsolete ("FO") to establish eligibility for federal funding under the Highway Bridge Program ("HBP"). Bridges that are SD or FO and the $SR \leq 80$ are considered deficient by FHWA and are compiled into an "Eligible Bridge List" (EBL). This list is used to calculate the State's annual HBP apportionment and for determining eligibility for traditional replacement and rehabilitation projects under the HBP.

Whether or not a bridge is considered SD is based on an evaluation of several factors of the bridge's structure during the Caltrans bi-annual inspection. Identifying bridges as SD or FO creates a process to categorize those bridges requiring maintenance beyond standard routine maintenance, allowing the bridge rehabilitation costs to be eligible for federal funding. Given the criteria for the Ramon Road bridge defined by the Caltrans Bridge Inspection Report, rehabilitating and widening this bridge is eligible under the HBP.

The PSR to be prepared for this project will be the preliminary step to a regionally significant capital improvement project, and will also include preparation of an application for the federal HBP grant that will cover 88.53% of the costs of rehabilitating and widening the Ramon Road bridge.

It is necessary to retain professional civil engineering design services to have the PSR and related documents prepared in this first phase of the project. Staff has prepared a Request for Proposals ("RFP") to solicit proposals for civil engineering design services for this project (see Attachment 1). The requested scope of work as identified in the RFP is generally described as:

Provide professional civil engineering design services to develop Geometric Approval Drawings ("GADs") and a Project Study Report ("PSR") for the widening of Ramon Road from San Luis Rey Drive to Landau Boulevard to a six-lane divided roadway, including a Bridge Advanced Planning Study ("APS") / Type

Selection for the widening of the existing four-lane bridge over the Whitewater River.

Recently, Council has appointed sub-committees to participate in the selection of professional consultants for various projects (no sub-committee has been appointed for this project). Council has also generally discussed a desire to use local preference in the selection of professional services contracts awarded by the City. However, state law and the City's Procurement Ordinance requires that professional services contracts be awarded on the basis of demonstrated competence and qualification for the type of services required. No explicit allowance for the use of local preference as a qualifier in selecting professional services exists.

It can certainly be argued that those professional consultants that have offices locally, "locally" being considered as located within the greater Coachella Valley, have a certain advantage over other consultants by having knowledge of the local area and expertise relative to being aware of the City's particular requirements and expectations. This is particularly true for the more design related projects (i.e. architecture and landscaping projects), where a "local" consultant may be more experienced with the City's architectural review process and knowledgeable of the City's particular architectural history. In this regard, a "local" consultant can certainly be given greater consideration in the general sense of evaluating the consultant's competence and qualification for the type of services required.

The use of local preference as it relates to retaining professional services for a more typical civil engineering public works project similar to this one, wherein "design" (i.e. architectural or landscaping) is not a part, may not be as relevant. In fact, most of our public works projects use state and federal grant funds which have provisions restricting the use of local preferences and require strict application of state and federal regulations regarding consultant selection solely on the basis of qualifications (with the firm's office location not considered a qualifying factor).

As the City currently has no existing policy regarding Council's review and approval of RFPs prior to their release by staff, it is staff's recommendation that this project be used as an opportunity to entertain Council's opinion on when Council should be engaged in review of RFPs and as part of the evaluation of proposals submitted in response to the RFP.

Staff recommends that Council authorize staff to move forward with the Ramon Road Widening project, as outlined in the attached RFP. It is staff's intention to solicit proposals based on the criteria contained in the RFP, with a qualification based preference stated as follows:

The selected consultant must have the requisite training and experience with developing Geometric Approval Drawings ("GADs"), Project Study Reports ("PSRs") and Bridge Advanced Planning Study ("APS") / Type Selection studies.

More importantly, the selected consultant must have demonstrated experience in preparing, submitting and processing applications for Federal funding under the Highway Bridge Program through Caltrans District 8.

In this case, relative experience directly with Caltrans District 8 in obtaining Highway Bridge Program funding as a qualifying factor is more important than the location of the firm's office. However, a local firm who demonstrates the requested relative experience could be given greater consideration than others.

It is staff's intention to assemble an Evaluation Committee comprised of public works and engineering staff from Palm Springs, Cathedral City, and CVAG to review the proposals received and determine the most qualified firm. Given the straightforwardness of this project, staff is not expecting to request Council or members of any Commission to participate in the evaluation of the proposals received, unless directed to do so by Council.

FISCAL IMPACT:

Staff estimates a professional services contract for this phase of the project will not exceed \$100,000. Approval of the RFP does not in itself obligate the City to any expense, and award of a contract would occur as a separate future action. This project is being funded with 75% Regional Measure A funds, with the 25% local share being funded equally by the cities of Palm Springs and Cathedral City through Local Measure A funds.

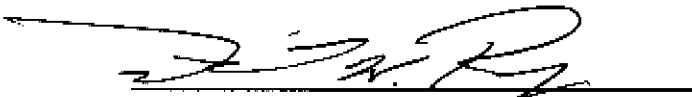
Submitted:



David J. Barakian
Director of Public Works/City Engineer



Thomas J. Wilson
Assistant City Manager



David H. Ready
City Manager

Attachments:

1. Request for Proposals #10-09



CITY OF PALM SPRINGS, CA

REQUEST FOR PROPOSALS # 10-09

**PROFESSIONAL CIVIL ENGINEERING DESIGN SERVICES
RAMON ROAD WIDENING
SAN LUIS REY DRIVE TO LANDAU BOULEVARD**

I. BACKGROUND INFORMATION AND GENERAL DESCRIPTION

The City of Palm Springs, California is requesting proposals from qualified firms or individuals to provide professional civil engineering design services to develop Geometric Approval Drawings ("GADs") and a Project Study Report ("PSR") for the widening of Ramon Road from San Luis Rey Drive to Landau Boulevard to a six-lane divided roadway, including a Bridge Advanced Planning Study ("APS") / Type Selection for the widening of the existing four-lane bridge over the Whitewater River. Ramon Road is an existing five-lane roadway from San Luis Rey Drive to Crossley Road (three lanes eastbound and two lanes westbound), and an existing four-lane roadway from Crossley Road to Landau Boulevard. The proposed roadway widening will occur on the north side of Ramon Road to add a third westbound lane; the proposed bridge widening will occur equally on the north and south sides of the bridge.

This project is located in both the City of Palm Springs and the City of Cathedral City, with the common city limit located along the centerline of Ramon Road. Cathedral City is located north of Ramon Road, and Palm Springs is located south of Ramon Road. The City of Palm Springs will be the lead agency on this project.

The intent of the preparation of the GADs, PSR and APS is to provide an Engineer's Estimate of Cost for the roadway and bridge widening for use in programming future phases of this project.

The existing Ramon Road bridge over the Whitewater River (Bridge 56C0287) was last inspected by the California Department of Transportation ("Caltrans") on November 6, 2007, (see attached copy of the Bridge Inspection Report). The existing bridge has been determined to be "Structurally Deficient" with a sufficiency rating of 68.4. Given these criteria defined by the Caltrans Bridge Inspection Report, rehabilitating and widening this bridge is eligible under the Federally funded Highway Bridge Program ("HBP").

It is the expressed desire of both Cities that, in addition to necessary rehabilitation and retrofit, that widening the Ramon Road bridge over the Whitewater River from four-lanes to six-lanes be federally funded under the HBP. In order to ensure increasing the capacity of the existing bridge is eligible for Federal funded under the HBP, it is necessary to demonstrate to Caltrans and the Federal Highway Administration ("FHWA") that there exist, or will exist, six lanes on both approaches to the Ramon Road bridge.

Using the approved GADs, PSR and APS, the selected consultant will be expected to prepare and submit a complete application for Federal funding under the HBP, in accordance with Chapter 6 of the Caltrans Local Assistance Program Guidelines ("LAPG"), including processing through Caltrans District 8 Division of Local Assistance. The selected consultant will be required to demonstrate qualified experience in preparing HBP applications with Caltrans District 8, and with successfully obtaining Federal funding under the HBP.

It should be understood that upon programming of Federal funding under the HBP for this project, a new solicitation for professional services to provide environmental and civil engineering design services for this project will be required pursuant to Caltrans procedures. The future phases of this project will occur under a separate contract.

II. PROJECT GOALS, SUMMARY AND SCOPE OF SERVICES TO BE PROVIDED

The goal of the proposed project is to develop Geometric Approval Drawings ("GADs") and a Project Study Report ("PSR") for the widening of Ramon Road from San Luis Rey Drive to Landau Boulevard to a six-lane divided roadway, including a Bridge Advanced Planning Study ("APS") / Type Selection for the widening of the existing four-lane bridge over the Whitewater River, all of which is to be used in the preparation of a complete application for Federal funding under the Highway Bridge Program.

This project will require the design consultant to attend various City meetings to discuss and finalize the GADs, PSR and APS. The consultant shall be expected to present preliminary concepts, incorporate comments and revisions, and present final drawings.

The following project coordination shall be expected:

1. Coordinate with City staff, Caltrans, Southern California Edison and Desert Water Agency (DWA) as required to determine project parameters and constraints; collect data and record information.
2. Prepare and present proposed GADs, PSR and APS to City staff, as may be required, using appropriate visual aids, including maps, slides and handouts; revise as required.
3. Perform project management and project schedule maintenance to ensure that the project timeline is adhered to and deadlines are met.
4. Perform all preliminary utility coordination to determine utility conflicts and potential utility relocation requirements for future phases of this project.

A general Scope of Work is described below, a complete detailed Scope of Work shall be included in the submitted Work Proposal.

Project Management
Research and Data Gathering
Surveying
Geometric Approval Drawings ("GADs")
Project Study Report ("PSR")
Bridge Advanced Planning Study ("APS") / Type Selection
Highway Bridge Program Application and Processing

III. SCHEDULE

Notice for Request for Proposals posted and issued	January 23, 2009
Deadline for receipt of Questions	2:00 P.M., Friday, February 13, 2009
Deadline for receipt of Proposals	2:00 P.M., Friday, February 20, 2009
Short List / Interviews (<i>*if desired by City</i>).....	TBD
Contract awarded	TBD

IV. MINIMUM QUALIFICATIONS AND REFERENCE CONTACT INFORMATION

The selected consultant must have the requisite training and experience with developing Geometric Approval Drawings ("GADs"), Project Study Reports ("PSRs") and Bridge Advanced Planning Study ("APS") / Type Selection studies. More importantly, the selected consultant must have demonstrated experience in preparing, submitting and processing applications for Federal funding under the Highway Bridge Program through Caltrans District 8.

The selected consultant must possess current and valid registration in California as a Civil Engineer.

The consultant must have performed similar work on other projects and must include citations for this work in the proposal submitted. Please include a project list with contacts, including full name and current phone numbers, for all similar projects that have been completed in the past five (5) years. Identify the key personnel who worked on the referenced projects and who are expected to work on this project.

V. PROPOSAL REQUIREMENTS

The Consultant's proposal should describe the methodology to be used to accomplish each of the project tasks and services expected as defined in the Scope of Work. The proposal should also describe the work that shall be necessary to satisfactorily complete the tasks and service requirements.

Please note that this Request for Proposal cannot identify each specific, individual task required to successfully and completely implement this project. The City of Palm Springs relies on the professionalism and competence of the Proposing Consultant/Firm to be knowledgeable of the general areas identified in the Scope of Work and of adequate competence to include in its proposal all required tasks and subtasks, personnel commitments, man hours, direct and indirect costs, etc. The City of Palm Springs will not approve addenda to the Consultant's agreement which do not involve a substantial change from the general Scope of Work identified in this Request for Proposal.

The following criteria shall be observed:

- The submittal should not exceed 30 pages (sheets of paper), double sided (8½" by 11"), including an organization chart, staff resumes and appendices, and cover letter. Dividers, Attachment "A" and Addenda acknowledgments do NOT count toward the 30 page limit.
- One (1) unbound original plus Seven (7) bound copies for a total of Eight (8) proposals are required.** Facsimile (fax), email or other electronically transmitted proposals will not be accepted.
- Responses to this Request for Proposal shall be organized into five categories as follows:
 - 1. Information on the Firm.** In this section the respondent shall provide a brief introduction, address the size of the firm, the number of years in business, the availability of the firm to perform the tasks and services requested, and the history of the firm. A brief statement of the respondent's understanding of the work shall be included, along with key contact information (address, phone, fax, and email).
 - 2. Key Personnel.** Provide a brief resume for each of the key persons proposed to work on this project. Credentials of corporate executives or firm principals are not necessary or desired unless these individuals will play an active role in the proposed project. Any key sub-consultants proposed should be identified, and information on their respective role in the project shall be included. Experience with Caltrans District 8 is required.
 - 3. Past Experience/References.** In this section, the respondent should list no less than five (5) previous projects to be used as references. The projects listed should demonstrate specific experience with the proposed scope of services contained in this

RFP. Please highlight areas of special expertise and any unique qualifications. A contact name and current phone number for each reference shall be provided. Experience with Caltrans District 8 is required.

4. Understanding of Scope of Work and Work Proposal. In this section, proposers are requested to demonstrate their understanding of the tasks and services requested in the general Scope of Work, and provide a detailed Work Proposal/Approach to accomplish the tasks, including a timeline.

5. Cost Proposal. In this section, proposers shall include a detailed cost estimate for completion of the scope of services with cost breakdowns by scope element. All professional fees, hourly rates, travel costs, clerical & communications costs, and any other "special" costs must be clearly identified and defined. In addition, an hourly rate for any additional services that were not originally requested in the Scope of Work, but may be added at the discretion of the City, shall also be included. Note that the Cost Proposal, including all fees and compensation shall remain firm for a minimum of 90 days from the proposal submission deadline.

- The prospective Consultant shall designate, by name, the project manager to be employed for this project. Substitution of the project manager by the selected consultant will not be allowed without prior approval by the City of Palm Springs.

- All proposals must be received in the City of Palm Springs, Division of Procurement and Contracting by **2:00 P.M., LOCAL TIME, FRIDAY, FEBRUARY 20, 2009**. Proof of receipt before the deadline is a City of Palm Springs, Division of Procurement and Contracting date stamp. It is the responsibility of the Proposer to see that any proposal sent through the mail shall have sufficient time to be received by the Procurement Office prior to the proposal due date and time. Late proposals will be returned to the Proposer unopened. Proposals shall be clearly marked and identified and must be submitted to:

City of Palm Springs
Division of Procurement and Contracting
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: Craig L. Gladders, C.P.M., Procurement & Contracting Manager

QUESTIONS: Proposers, their representatives, agents or anyone else acting on their behalf are specifically directed **NOT** to contact any city employee, commission member, committee member, council member, or other agency employee or associate for any purpose related to this RFP other than as directed below. Contact with anyone other than as directed below may be cause for rejection of a proposal.

ANY questions, technical or otherwise, pertaining to this Request for Proposal **must be submitted IN WRITING and directed ONLY to:**

Craig L. Gladders, C.P.M.
Procurement & Contracting Manager
3200 East Tahquitz Canyon Way
Palm Springs, CA 92262
via FAX (760) 323-8238
or via EMAIL: Craig.Gladders@palmsprings-ca.gov

Interpretations or clarifications considered necessary in response to such questions will be resolved by the issuance of formal Addenda to the RFP. **The deadline for all questions is 2:00 P.M., Local Time, Friday, February 13, 2009.** Questions received after this date and time may not be answered. Only questions that have been resolved by formal written Addenda via the Division of Procurement and Contracting will be binding. Oral and other interpretations or clarifications will be without legal or contractual effect.

- Each proposal must include two sealed envelopes.

Envelope #1, clearly marked "Work Proposal", shall include the following items:

- Completed Signature authorization and Addenda Acknowledgment (see Attachment A)
- Technical proposal – describe in detail your approach and understanding of all necessary tasks and steps involved in the project; include a list of deliverables
- Related Experience; include relevant experience date, name of agency, and reference name/contact information
- Project schedule, showing various anticipated tasks and steps from preliminary phase, through design, and construction phases.

Envelope #2, clearly marked "Cost Proposal", shall include the following item:

- Cost proposal – The City will use a "Cost Per Unit of Work" method to pay for professional services relating to the Work Proposal. Proposers should include a detailed cost estimate identifying all direct, indirect, and overhead costs associated with each task required. Describe how your firm will control costs and minimize costs for design and construction. Do NOT include Attachment "A" in the Cost Proposal envelope. Attachment "A" is to be included in Envelope #1.

Important Note: The successful Proposer will be required to enter into a contractual agreement, inclusive of insurance requirements, with the City of Palm Springs in accordance with the standard Professional Services Agreement – Attachment "B" hereto. Please note that the Exhibits in the sample contract are intentionally not complete and will be negotiated with the selected firm and will appear in the final Professional Services Agreement executed between the parties. Any exceptions to the language contained in the RFP document, sample agreement, including the Insurance Requirements, MUST be included in the Proposal submitted and clearly defined. Exceptions to the City's standard boilerplate professional services agreement, including the insurance requirements, may be considered in the evaluation process.

Failure or refusal to enter into an Agreement as herein provided or to conform to any of the stipulated requirements in connection therewith shall be just cause for an annulment of the award. If the highest ranked Proposer refuses or fails to execute the Agreement, the City may, at its sole discretion, enter negotiations with and award the Contract to the second highest ranked Proposer, and so on.

VI. RESPONSIBILITY OF PROPOSER

All project proposers shall be responsible. If it is found that a proposer is irresponsible (e.g., has not paid taxes, is not a legal entity, submitted a proposal without an authorized signature, falsified any information in the proposal package, etc.), the proposal shall be rejected.

VII. CONSULTANT SELECTION

- Each proposal will be reviewed by an evaluation committee to determine if it meets the proposal requirements. Failure to meet the requirements for the Request for Proposal may be cause for rejection of the proposal.
- The evaluation committee may, at its sole option, ask for interviews or oral presentations by any proposer(s) participating in this process. Attendance at any such interview will be at the Proposer's expense.
- A final selection of the consultant will be determined following review of all work proposals and/or formal oral presentations. The evaluation committee will make a recommendation of the selected consultant for a contract to be awarded by the City Council.
- The selected consultant will work closely with City staff throughout the duration of the project. A consulting firm will be selected for final negotiation of a contract based upon the following factors:
 - **Project Understanding:** Degree of understanding of the project and familiarity with the area; understanding of similarly highly visible public projects, and related architectural approval processes – (25%).
 - **Scope of Work:** Proposed approach to the project including the expected time commitment of key personnel, technical approach to the project, and the emphasis placed on project phases – (25%).
 - **Project Managers/Staff Qualifications:** Qualifications of the staff assigned to manage and provide services related to the project; experience with similar projects; experience with Caltrans District 8 – (25%).
 - **Firm Qualifications/Consultant References:** Past experience in projects related to the outlined Scope of Work; experience with similar projects; experience with Caltrans District 8 – (15%).
 - **Project Schedule:** Thoroughness and reasonableness of the project schedule; ability to maintain the project within the selected time frame – (10%).
 - **Project Cost:** The project cost will be considered after selection of the best proposals; no weight shall be given to the cost in the selection of the consultant. A contract shall be negotiated with the selected consultant on the basis of the submitted cost proposal, and in consideration of reasonable and mutually agreed project costs and time requirements.
- Award of Contract:** It is the City's intent to award a single contract to the firm that can best meet the requirements of the Request for Proposal document. The City reserves the right to award a contract to multiple firms or a single firm or to make no award, whichever is in the best interest of the City. It is anticipated that award of the contract will occur at the next regularly scheduled City Council meeting after the evaluation committee has made its final selection of the consultant to be recommended for award. The decision of the City Council will be final.
- Public Record:** Proposer's attention is drawn to the fact that all proposal documents submitted are subject to the California Code Section 6250 et seq., commonly known as the Public Records Act. Information contained in the proposals may be made public after the review process has been completed, negotiations have concluded and a recommendation for award has been officially agendized for City Council consideration, and/or following award of contract, if any, by the City Council.

- Cost related to Proposal preparation:** The City will NOT be responsible for any costs incurred by any Proposer in the preparation or submittal of their respective proposal.

- Business License:** The successful proposer will be required to be licensed in accordance with the City of Palm Springs Business License Ordinance, Municipal Code Chapter 3.40 through 3.96, entitled "Business Tax".

- Proposal informalities or defects:** The City of Palm Springs reserves the right to waive any informality or technical defect in a Proposal and to accept or reject, in whole or in part, any or all Proposals and to advertise for new Proposals, as best serves the interests of the City.

- Investigations:** The City reserves the right to make such investigations as it deems necessary to determine the ability of the Proposer to perform the Work and the Proposer shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any Proposal if the evidence submitted by or investigation of such Proposer fails to satisfy the City that such Proposer is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated therein.

- Signed Proposal and Exceptions:** Submission of a signed Proposal will be interpreted to mean that Proposer has hereby agreed to all the terms and conditions set forth in all of the sheets which make up this Request for Proposals, and any attached sample agreement. Exceptions to any of the language in either the RFP documents or attached sample agreement must be submitted with the proposal and clearly defined. Exceptions to the City's RFP document or standard boilerplate language, terms or conditions may be considered in the evaluation process.

ATTACHMENT "A"

RFP 10-09

PROFESSIONAL CIVIL ENGINEERING DESIGN SERVICES
RAMON ROAD WIDENING
SAN LUIS REY DRIVE TO LANDAU BOULEVARD

NOTE: THIS FORM MUST BE COMPLETED AND INCLUDED WITH YOUR PROPOSAL

SIGNATURE AUTHORIZATION

NAME OF PROPOSER/FIRM:

- A. I hereby certify that I have the authority to offer this proposal to the City of Palm Springs for the above listed individual or company. I certify that I have the authority to bind myself/this company in a contract should I be successful in my proposal.

SIGNATURE

PRINT NAME

- B. The following information relates to the legal contractor listed above, whether an individual or a company. Place check marks as appropriate:

- 1. If successful, the contract language should refer to me/my company as:

An individual;
 A partnership, Partners' names: _____

A company;
 A corporation

- 2. My tax identification number is: _____

ADDENDA ACKNOWLEDGMENT:

Acknowledgment of Receipt of any Addenda issued by the City for this RFP is required by including the acknowledgment with your proposal. Failure to acknowledge the Addenda issued may result in your proposal being deemed non-responsive.

In the space provided below, please acknowledge receipt of each Addenda:

Addendum(s) # _____ is/are hereby acknowledged.

ATTACHMENT "B"

SAMPLE AGREEMENT PROFESSIONAL SERVICES AGREEMENT (IDENTIFY BY PROJECT NAME AND/OR CONSULTANT NAME)

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective this _____ day of _____, 200____, by and between the CITY OF PALM SPRINGS, a California charter city and municipal corporation, (hereinafter referred to as "City") and [INSERT FULL NAME OF CONSULTANT, FIRM, OR COMPANY], a [INSERT TYPE OF ENTITY, E.G., A CALIFORNIA CORPORATION, A LIMITED LIABILITY COMPANY, ETC.], (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 [INSERT BRIEF DESCRIPTION OF PROFESSIONAL SERVICES REQUIRED] services for [INSERT BRIEF DESCRIPTION OF PROJECT FOR WHICH PROFESSIONAL SERVICES ARE RELATED] project (the "Project").

B. Consultant has submitted to City a proposal to provide [INSERT TYPE OF PROFESSIONAL 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:

AGREEMENT

1. SERVICES OF CONSULTANT

1.1 **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 "B" and "C," 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: (1st) the provisions of the Scope of Services (Exhibit "A"); (2nd) the provisions of the City's Request for Proposal (Exhibit "B"); (3rd) the terms of this Agreement; and, (4th) the provisions of the Consultant's Proposal (Exhibit "C").

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.

2. 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 "D" and is incorporated herein by reference, but not exceeding the maximum contract amount of [INSERT NOT TO EXCEED CONTRACT AMOUNT] Dollars, (\$) (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 "D." 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 "D"), 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 "E").

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 "E" 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 "E") 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: [INSERT NAME], [INSERT TITLE]. 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.

(1) 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 No. ____" 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 No. ____" 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 provision 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

10.1 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

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.

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

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

By _____
City Clerk

Date: _____

CONTENTS APPROVED:

By _____
City Manager

Date: _____

By _____
City Engineer

Date: _____

APPROVED AS TO FORM:

By _____
City Attorney

Date: _____

APPROVED BY CITY COUNCIL:

Date: _____ Agreement No. _____

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.

CONTRACTOR NAME:

Check one Individual Partnership ___ Corporation

Address

By _____
Signature (Notarized)

By _____
Signature (Notarized)

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))

who proved to me on 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 authorized capacity(ies), and that 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: _____

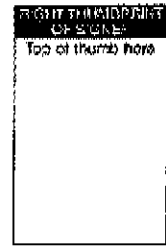
Capacity(ies) Claimed by Signer(s)

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: _____

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EXHIBIT "A"

SCOPE OF SERVICES

EXHIBIT "B"

CITY'S REQUEST FOR PROPOSALS

EXHIBIT "C"

CONSULTANT'S PROPOSAL

EXHIBIT "D"

SCHEDULE OF COMPENSATION

EXHIBIT "E"

SCHEDULE OF PERFORMANCE