



## City Council Staff Report

Date: March 25, 2009

CONSENT CALENDAR

Subject: APPROVAL TO RELEASE SOQ 14-09 FOR ARCHITECTURAL DESIGN TEAM SERVICES FOR THE RENOVATION AND REPURPOSING OF THE WELWOOD MURRAY MEMORIAL LIBRARY AND JC FREY BUILDINGS

From: David H. Ready, City Manager

Initiated by: Library Services and Procurement

### SUMMARY

The City is supportive of providing library services to the residents of, and visitors to, Palm Springs. To that end when the leases on both the Welwood Murray Memorial Library and the JC Frey building expired, the City desired to use these spaces for expansion of library and visitor services into downtown and additional library space for the main library. Both buildings need significant repair and remodel before they can be repurposed and used by the public.

The Statement of Qualifications (SOQ #14-09) document for Architectural Design Team Services for the renovation of these buildings is complete and staff is requesting approval to proceed with the SOQ process. Approval of this project will allow staff to proceed with this project, and bring forward at a future date a recommendation for award for a contract to the successful firm. The estimated cost (including all soft costs, FF&E and construction) is \$2,358,000 for the Welwood Murray Memorial Library and \$995,500 for the JC Frey Building, for a total estimated project cost of \$3,353,500. Note that of this total, the construction (only) cost estimate for the Welwood is \$1,550,000 and for the JC Frey is \$615,000. See the attached Preliminary budget estimate breakdown.

### RECOMMENDATION:

- 1) Approve the release of SOQ #14-09 for Architectural Design Team Services for the renovation of the Welwood Murray Memorial Library and JC Frey Building.

### STAFF ANALYSIS:

One of the major goals of the City Council is Downtown Revitalization. The corner of Palm Canyon Drive and Tahquitz Canyon Way is the heart of downtown. The current Welwood Memorial Library, built in 1940, has been an under-utilized facility since 1992

ITEM NO. Z.N.

when it was closed as a City library branch. Since the land on which the building was constructed was donated by George Welwood Murray and Cornelia White for the sole, and forever, purpose of holding a public library, the City has decided to make the building part of its Downtown Revitalization efforts. In order for a reopened library to succeed both as a library and an economic development generator, the building must be both renovated and repurposed into an attractive, safe, and high tech and high interest library/information facility that will be a draw to the walking public. This will include complete renovation of all systems (electrical, plumbing, HVAC) roof, windows, doors, and possible removal of lead and/or asbestos. In addition, the interior will have to be gutted to allow for re-spacing and repurposing of the facility.

The JC Frey building was originally constructed as a Jaycees card hall in 1965. Over the last 6+ years it has been leased by the City to a non-profit group, Well in the Desert, as a homeless resource and feeding center. It is adjacent to the main Library and shares the parking lot. The main library is currently too small to accommodate 21<sup>st</sup> century library services and functions. Funding for a costly expansion to the building was not feasible, so since the lease on the building has expired and a new homeless resource center will be open soon, the Library will use this space to help alleviate the current space shortage in the main building. As with the Welwood Murray Memorial Library, the building needs to be completely rehabbed and repurposed into a high tech Teen Library/Homework center in addition to housing literacy, the Friends of the Palm Springs Library and some small meeting rooms.

The estimated total cost for this project is \$3,353,500. Approval of the recommended action will allow staff to proceed with releasing the SOQ for architectural services for this important project.

**FISCAL IMPACT:**

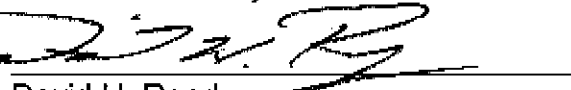
This project will be funded from the following sources:


Bond funds= \$2,260,000, Measure Y funds= \$500,000, Library endowment funds= \$300,000 and Friends of the Library= \$300,000 (total is \$3,360,000).

Submitted:

  
Barbara Roberts  
Director of Library Services

  
Craig Gladders  
Procurement & Contracting Manager

  
David H. Ready  
City Manager

  
Thomas J. Wilson  
Assistant City Manager

Attachments:

1. Preliminary Budget
2. SOQ #14-09 document

**WELWOOD MURRAY LIBRARY/J.J FREY BLDG REMODELS**

Preliminary Budget March 9, 2009

	<b><u>WELWOOD</u></b>	<b><u>JC FREY</u></b>
<b><u>Soft Costs</u></b>		
Building Condition Report	15,000	8,000
Hazardous Material Report	15,000	2,000
Architectural Fees	200,000	95,000
Planning Fees	1,500	1,000
Plan Check Fees	2,500	1,500
Advertising	1,000	1,000
Blueprinting	6,000	5,000
Admin/Owners Rep.	87,000	47,000
Special Inspection and Testing	<u>20,000</u>	<u>10,000</u>
<b>Sub Total Soft Cost</b>	<b>348,000</b>	<b>170,500</b>
<b><u>Other Costs</u></b>		
FF&E	350,000	150,000
Security System	50,000	25,000
Closed Circuit TV	<u>60,000</u>	<u>35,000</u>
<b>Sub Total Other Costs</b>	<b>460,000</b>	<b>210,000</b>
<b><u>Construction Costs</u></b>		
Hazardous Material Removal	200,000	15,000
Construction Budget	1,000,000	500,000
Restrooms	100,000	0
Landscape/Patios	100,000	50,000
Contingency	<u>150,000</u>	<u>50,000</u>
<b>Total Construction Costs</b>	<b>1,550,000</b>	<b>615,000</b>
<b><u>Total Project Costs</u></b>	<b><u>2,358,000</u></b>	<b><u>995,500</u></b>
<b><u>Grand Total</u></b>	<b><u>3,353,500</u></b>	
<b><u>Funding Sources</u></b>		
Redevelopment Bond Proceeds	2,260,000	
Measure "Y"	500,000	
Friends	300,000	
Trust Fund	<u>300,000</u>	
<b>Total Available</b>	<b>3,360,000</b>	



**CITY OF PALM SPRINGS, CALIFORNIA**

**REQUEST FOR**

**STATEMENTS OF QUALIFICATIONS (SOQ) # 14-09**

**FOR**

**ARCHITECTURAL DESIGN TEAM SERVICES FOR THE RENOVATION AND  
REPURPOSING OF THE  
WELWOOD MURRAY MEMORIAL LIBRARY AND JC FREY BUILDING**

**MARCH 2009**

**City of Palm Springs  
Procurement and Contracting Division  
3200 East Tahquitz Canyon Way  
P.O. Box 2743  
Palm Springs, CA 92263-2743  
(760) 322-8373**

**CITY OF PALM SPRINGS  
STATEMENTS OF QUALIFICATIONS (SOQ) #14-09**

**For  
ARCHITECTURAL DESIGN TEAM SERVICES FOR THE WELWOOD MURRAY MEMORIAL  
LIBRARY AND JC FREY BUILDING**

Statements of Qualifications (SOQ 14-09), for providing Architectural Design Team services for the renovation and repurposing of the Welwood Murray Memorial Library and JC Frey building for the City of Palm Springs, CA will be received at the Office of Procurement & Contracting, 3200 East Tahquitz Canyon Way, Palm Springs, California, until **2:00 P.M. LOCAL TIME, xxxx, xxxx x, 2009**. It is the responsibility of the Proposer to see that any submittal sent through the mail shall have sufficient time to be received by this specified date and time. The receiving time in the Procurement Office will be the governing time for acceptability of submittals. Telegraphic, telephonic, faxed or emailed submittals will not be accepted. Late submittals will be returned unopened.

**SCHEDULE:**

Notice for Request for Statements of Qualifications posted and issued .....	March xx, 2009
<b>Deadline for receipt of Questions</b> .....	<b>2:00 P.M., xxx, xxxx xx, 2009</b>
<b>Deadline for receipt of Qualifications</b> .....	<b>2:00 P.M., xxx, xxx xx, 2009</b>
Short List / Interviews ( <i>*if desired by City</i> ).....	TBD
Contract awarded .....	TBD

**1. PURPOSE:** The City of Palm Springs is soliciting statements of qualifications from qualified architectural firms with expertise in the renovation of historic buildings, and renovation and repurposing of existing buildings. The services shall include a professional full service Architectural team including Mechanical, Electrical, Plumbing and Structural engineering, Landscape Architecture, Interior Design and Independent Cost Estimating services required to design and develop construction documents for the renovation of the Welwood Murray Memorial Library (*referred to as "The Welwood Library" in this document*) and the JC Frey building within the existing walls/footprint of each structure.

**2. BACKGROUND:** Palm Springs lies on the western edge of the Coachella Valley in central Riverside County approximately 107 miles east of Los Angeles. Palm Springs covers a geographical area of 96 square miles with well-established neighborhoods. Recently there has been a fascination with mid-century modern architecture - something Palm Springs is proud to have as part of its mix of eclectic design styles.

Because it is only a two-hour drive from Los Angeles, Orange and San Diego counties, there are a large number of second homes in Palm Springs. The permanent population is 53,347 as of 2007, with another 27,000 to 30,000 people living in the City in the winter, bringing the total population to almost 83,000 residents during the winter season.

This RFP will encompass two completely different types of buildings. One, the Welwood Library, is a 1940 "V" shaped A1 historical building (*\*exterior shell only*) which was the original public library in the heart of downtown Palm Springs. Since 1992, it has been operated by volunteers as a private reading room and now needs to be converted to a high tech branch library of the City library system. The other, the JC Frey building, was built in the 1960s as a Jaycees card hall, currently being used as a homeless resource center, that needs to be converted to an public annex of the main library in Palm Springs, which is adjacent across the parking lot.

The Welwood Library, the first permanent public library, was opened in 1940 on historic Palm Canyon Drive, and has been a much loved point of pride for the City ever since. As the City grew, the library system grew, and in the late 1980s there were four library facilities. However, by 1992 all branches were closed because of the state's fiscal crisis, leaving the current Library Center building on Sunrise Way as the City's only library building.

The 4,933 sq. ft. Welwood Library building is located on the southeast corner of the intersection of Palm Canyon Drive and Tahquitz Canyon Way. It holds center stage on the busiest and most visible corner in the downtown core. Since it was closed as an official City library branch in 1992, it has had only limited basic maintenance with the exception of the installation of a rear entrance disability ramp in the early 2000s. The building exterior was given A1 historical designation in October, 1984.

The JC Frey building is located just east of the main library across the parking lot at 1911 E. Baristo Road, just east of Sunrise Way. Built in 1965, the building is T-shaped with 3,490 sq. ft. In the late 1990s, the City of Palm Springs granted the non-profit organization, Well in the Desert, use of the building as a location to provide a hot meal to the homeless and nearly homeless. Services provided in the building have increased over the years and now include, breakfast and lunch as well as counseling and social services. With the completion of the new west valley homeless resource center north of I-10, this building will be taken back by the City to be used as much needed additional space by the current main library.

The Library is a department within the City of Palm Springs. The City Council appoints the five member administrative Board of Trustees who operate under the Education Code of the State of California. The Board of Trustees and the City Manager appoint the City Librarian.

Operating statistics from Fiscal Year 2007-2008 for the Library Center are as follows:

- Staff – 23.45 FTE
- Total book collection – 126,243
  - Children's – 28,486
  - Young adult – 3,006
- Serials – 2,520
- CDs, DVDs, Books on CD, Books on Tape – 21,983
- Spanish language collection – 6,552
- School age program attendance – 1,715
- Pre-school age program attendance – 2,706
- Adult program attendance – 3,067
- Total patron visits – 300,000

The newly completed Strategic Services Plan for the Palm Springs Library stresses the following services:

- Cultural Diversity – promoting appreciation and understanding of one's own heritage and the heritage of others in the community.
- Community Gathering Place – residents will have safe and welcoming physical places to meet and interact with others or to sit quietly and read, and will have open and accessible virtual spaces that support social networking and interaction.
- Connecting to the online world – residents will have high-speed access to the digital world with no unnecessary restrictions enduring that everyone can take advantage of the

ever-growing resources and services available through the Internet and other emerging technologies

- Early Literacy – Children from birth to age five will have programs and services designed to ensure that they will enter school ready to learn to read, write and listen.
- Current Topics and Titles – reading, viewing and listening for pleasure
- Lifelong learning – providing information and resources that satisfy curiosity and support self-directed personal growth and development opportunities for the community and for the Library organization.

The demographics of Palm Springs has changed over the years. While still a tourist destination, the resident base has changed from predominantly wealthy and retired Caucasian to middle and low income residents, 31% of whom are Hispanic. The average age is 45, yet young people under the age of 18 account for only 19% of the population. There is a large influx of gay residents and two income households with no children. The senior population, those residents over age 65, is about 22% of the resident population.

Thus the focus of the Palm Springs Public Library is changing to meet the needs of this very diverse community. To achieve the goals set for the service responses of the Strategic Services Plan, the current Library building's space needs to augmented with a branch in downtown and expansion space in the current JC Frey building.

It is the intention of the City to hire a team that is led by an Architectural firm that has demonstrated experience in the renovation of historic buildings, and renovation and repurposing of existing buildings. Furthermore, the City seeks a multi-disciplined full service Architectural team that includes mechanical, electrical, plumbing, and structural engineering services as well as landscape and interior design services (FF&E) and third party cost estimating though-out the design process.

**3. SCOPE OF WORK:** The successful design team will be asked to develop a design and working drawings/bid documents for the renovation of both buildings. The team will be expected to be multi-disciplined in that the renovation of the buildings as well as the necessary on-site improvements will be designed by the team, including mechanical, electrical, structural, landscaping and interior design (FF&E), while also providing independent cost estimating at Conceptual Design/Design Development/Construction Documents phases. The City shall provide to the successful firm a report on the current physical condition of each building including a structural, mechanical, electrical and independent hazardous materials analysis. This analysis is in process and not yet available. The estimated construction cost for the Welwood Library is \$1,550,000, and \$615,000 for the JC Frey Building, for a total construction estimate of \$2,165,000.

Resources that will be available for use for this project include, but are not limited to: some floorplans and site plans of the Welwood Library, a floor plan of the JC Frey building, the Library's Strategic Service Plan 2009-2013, staff availability for meetings and brainstorming, and City Planning Department personnel.

#### **SITE AND BUILDING INVESTIGATION**

The City shall provide for both the Welwood Library building and the JC Frey building a complete building inspection report including, but not limited to:

- structural review
- mechanical review (plumbing, HVAC, fire suppression)
- electrical review (lighting, receptacles, data, telephone, fire alarm)
- hazardous materials review

The successful architectural firm shall utilize the information provided and then conduct an architectural review (interior and exterior) of both buildings for the potential of the repurposing of both buildings (within their existing walls). Programming and square footage assignments for both buildings will be a key element of the architectural services to be provided.

### **PLAN ALTERNATIVES**

The work will include: exterior renderings; conceptual sketches; bubble designs for program spaces and square footage assignments; site plans; interior design plans (FF&E) and final architectural drawings with costing of all options available. These plans will meet all requirements of building and local community codes. The City does not have access to the original architectural plans for either building, therefore "As-Builts" will have to be developed by the design team for both buildings. In the case of the Welwood Library, there is an existing exterior patio that, depending on the easements, may be incorporated into this scope of work, as well as a review of the restroom facilities on-site as well as a review of restroom facilities in an adjacent privately owned office/retail structure. The City is currently researching and shall provide further guidance to the successful firm regarding the status of the patio and adjacent restroom facilities.

The successful design team will be expected to engage with and respond to the feedback provided by the steering committee (stakeholders from the Library, downtown, Friends of the Library, Library Board of Trustees, and other community members) to ensure that the design is representative of the needs of the community. The team will be expected to make presentations to the various interest groups, the Historic Preservation Board (*for any modification to the exterior of the Welwood Library*), the Architectural Advisory committee, the Planning Commission and the City Council as required for various approvals.

The architectural work will use the following visions for each building:

#### **Welwood Murray Memorial Library**

The NEW Welwood Interactive Library will be the downtown intersection, literally and figuratively, between residents, businesses and visitors. Its mission will be to appeal to the client base of downtown area residents, the business community, tourists, and culture seekers by representing:

- The larger, comprehensive Library Center
- The Business Improvement District
- Main Street merchants
- Art Museum
- Bureau of Tourism

The concept is based on overlapping and complimentary high technology and seating areas throughout the building:



- **Library**
  - computer connection to Library catalog to search for materials and place holds
  - on-line library card registration
  - collection of best sellers, new books, DVDs, CDs
  - staff information kiosk
  - self-service check out, holds pick-up
  
- **Tourist information**
  - Microsoft surface multi-touch screen containing map of the City with major attractions. Touch to enlarge the map.
  - online access to area restaurant menus
  - hotel, inn, resort information
  - event information
- **Social networking**
  - PC computer access for express email
  - wireless access for laptop email
  - Skype enabled PC for visual computer communication
- **Computing**
  - PC and wireless access to the Internet
  - PC access to word processing
- **News**
  - local, national and international newspapers available in hardcopy and online
  - plasma screen TV with streaming CNN news coverage and stock report feeds
  - current high interest periodicals
- **Sound and vision**
  - CD listening stations
  - DVD viewing stations
  - downloadable audio station
- **Interactive technology**
  - Wii games, Nintendo Wii
  - Kindle and Sony ebook readers
  - Sony electronic mind games
- **Community**
  - space for exhibits in collaboration with the Art Museum, author or business lectures, downtown group meetings, library programs, etc.

The Library will stress access, relaxation, self-service, and connectivity to information and people. Covered beverages and simple snacks will be welcome. High-tech, hip and happening!

### **JC Frey Building**

This building will need to serve as an exciting, yet practical addition of space for the main Library, while being visually connected to the main Library.

Functions to be housed in this building include:

- Relocation of the current Teen Zone located in a small space in the Main Library. The new space will contain:
  - Internet accessible computers
  - homework center
  - teen materials (books, DVDs, CDs, magazines)
  - lounging area with access to music and vending machines
- Friends of the Library work area to sort books, store materials, and provide office space
- Deep storage for the main Library
- Small meeting rooms for the public that can be used for literacy tutoring
- Wireless capability

**4. SELECTION PROCESS:** The City of Palm Springs is utilizing a Qualifications Based Selection process to select a firm to provide the services covered by this solicitation. A firm may be selected from the initial qualification statements as requested in this phase of the SOQ, or if deemed necessary, a limited number of firms may be invited to make a formal presentation. If undertaken, the format, selection criteria and date of the presentation will be established at the time of short listing. Participation in any presentation is at the sole expense of the proposer.

**5. PROPOSAL EVALUATION CRITERIA:** This solicitation has been developed in the request for "Statement of Qualifications" format. Accordingly, Teams should take note that the City will consider multiple factors in selecting a successful Team. **Price is NOT sought at this time nor will price be accepted or evaluated as part of the ranking criteria.** The highest ranked team will be asked to submit a cost proposal and detailed scope of work at a later date which the City may use as a basis for negotiating a contract with the team. Should successful negotiations not occur with the highest ranked team, the City may, at its sole discretion, choose to enter into negotiations with the second highest ranked team, and so on.

A Qualifications Evaluation Committee, using the following evaluation criteria totaling 100 points, will evaluate all responsive submittals to this SOQ. If the Evaluation Committee requests formal presentations or interviews of short listed firms, the format and presentation evaluation criteria shall be provided at the time of short listing. Teams are requested to submit their qualifications submittals so that they correspond to and are identified with the following specific evaluation criteria:

- A. Team Qualifications, Qualifications of Personnel Assigned to the Project – including the Lead Designer/Project Manager (35 points)
- B. Proposed Design Process (30 points)
- C. References and Experience with Projects of Similar Size and Scope (30 points)
- D. Local Expertise Demonstrated on the Team (up to 5 points awarded to firms that qualify as a Local Business and submit a valid business license as more fully set forth in Section D.1 below, pursuant to the City of Palm Springs Local Preference Ordinance 1756).

**6. PROPOSAL CONTENTS:** Teams are requested to format their submittals so that responses correspond directly to, and are identified with, the specific evaluation criteria stated in Section 5 above. **The submittals must be in an 8 ½ X 11 format, may be no more than a total of thirty (30) pages (sheets of paper, double sided),** 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. Interested teams shall **submit EIGHT (8) (one original plus seven copies)** of its submittal by the deadline.

All submittals shall be sealed within one envelope and be clearly marked, "SOQ #14-09, STATEMENT OF QUALIFICATIONS FOR ARCHITECTURAL DESIGN TEAM SERVICES FOR THE RENOVATION OF THE WELWOOD MURRAY MEMORIAL LIBRARY AND JC FREY BUILDING". **Submittals not meeting the above criteria may be found to be non-responsive.** At a minimum, teams must provide the information identified below. All such information shall be presented in a form that directly corresponds to the numbering scheme identified below.

#### **SECTION A: TEAM QUALIFICATIONS, QUALIFICATIONS OF PERSONNEL ASSIGNED TO THE PROJECT (including the Lead Designer/Project Manager) AND EXPERIENCE WITH PROJECTS OF SIMILAR SIZE AND SCOPE**

A.1 State your firm's complete name, type of firm (individual, partnership, corporation or other), telephone number, FAX number, contact person and E-mail address. If a corporation, indicate the state the corporation was organized under.

A.2. State the name and title of the firm's principal officer with the authority to bind your company in a contractual agreement.

A.3 Describe your firm's background and qualifications in the type of design effort that this project will require, specifically identifying experience with the renovation of historic buildings (in this case Class A-1 exterior shell only).

A.4 List the name and qualifications of the key staff members that will be assigned to this project. Provide detailed qualifications of the Lead Designer/Project Manager that will be assigned to this project, including representations of the Lead Designer/Project Manager's work.

A.5 Indicate the name of sub-consultant firms that will be utilized to make up your team. Describe each sub-consultant's background and specific expertise that they bring to this project, including sample representations of both landscaping and interior design projects.

A.6 Indicate your firm's background and experience with high efficiency building systems /envelope development within in a remodel/renovation project.

#### **SECTION B: PROPOSED DESIGN PROCESS**

B.1 Describe in detail the steps that your Team would follow, including the incorporation of user group participation, in renovating these two buildings for the City.

B.2 Assuming that as the successful team you are given a contract for the design work, please provide a typical schedule that you would follow from as-built, schematic design, design development, interior design, etc. through completion of bid documents.

B.3 Describe the type of presentation materials/processes/systems that your firm/team would typically utilize in a project like this.

#### **SECTION C: REFERENCES**

C.1 Describe a minimum of three (3) successful projects you have completed of similar size, scope or complexity as this project. Provide contact information, including full name and a current phone number, for each project identified.

C.2 For the representative successful projects completed, explain what design issues/challenges you faced and how you solved them. Also, please comment on your design philosophy and process for each.

#### **SECTION D: LOCAL EXPERTISE DEMONSTRATED ON THE TEAM**

D.1 Pursuant to the City of Palm Springs Local Preference Ordinance 1756, in awarding contracts for services, including consultant services, preference to a Local Business shall be given whenever practicable and to the extent consistent with the law and interests of the public. The term "Local Business" is defined as a vendor, contractor, or consultant who has a valid physical business address located within the Coachella Valley, at least six months prior to bid or proposal opening date, from which the vendor, contractor, or consultant operates or performs business on a day-to-day basis, and holds a valid business license by a jurisdiction located in the Coachella Valley. "Coachella Valley" is defined as the area between the Salton Sea on the south, the San Jacinto and Santa Rosa Mountains on the west, and the Little San Bernardino Mountains on the east and north. For the purposes of this definition, "Coachella Valley" includes the cities of Beaumont and Banning and the unincorporated areas between Banning and the City of Palm Springs. Post office boxes are not verifiable and shall not be used for the purpose of establishing such physical address.

The contractor or consultant will also, to the extent legally possible, solicit applications for employment and proposals for subcontractors and subconsultants for work associated with the proposed contract from local residents and firms as opportunities occur and hire qualified local residents and firms whenever feasible.

The full local preference will be awarded to a Local Business. 1, 2 or 3 points may be awarded to a non-local business that employs or retains local residents and firms for this project.

In order for a business to be eligible to claim the preference, the business **MUST request the preference in the Solicitation response and provide a copy of its current business license (or of those it employs for this project) from a jurisdiction in the Coachella Valley.**

D.2 List all team members with local expertise. Clearly define their role in the overall design process.

D.3 Discuss the availability of and access to the Lead Designer/Project Manager to discuss and review the preparation of a plan and the implementation of a final plan from design through preparation of final plans and specifications, award of construction bid, and oversight of installation, administration of change orders and interpretations, and acceptance of project.

**DEADLINE FOR SUBMISSION OF SOQs:** All submittals must be received in the City of Palm Springs, Office of Procurement and Contracting by **2:00 P.M., LOCAL TIME, xxx, xxxx x, 2009.** Proof of receipt before the deadline is a City of Palm Springs, Office of Procurement and Contracting time/date stamp. It is the responsibility of the Proposer to see that any submittal sent through the mail shall have sufficient time to be received by the Procurement Office prior to the proposal due date and time. Late submittals will be returned to the Proposer unopened. **Submittals 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 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 SOQ other than as directed below. Contact with anyone other than as directed below will be cause for rejection of a submittal.

Any questions, technical or otherwise, pertaining to this request for Statements of Qualifications **must be submitted IN WRITING and directed ONLY to:**

Craig 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](mailto: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 SOQ. **The deadline for all questions is 2:00 P.M., Local Time, xxxx, xxxx xx, 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.

**FORM OF AGREEMENT:** 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 sample standard Professional Architectural Services Agreement provided in Attachment "B" hereto. Please note that the Exhibits are intentionally not complete in the attached sample document. These exhibits will be negotiated with the selected firm and will appear in the final Agreement executed between the parties.

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.

**AWARD OF CONTRACT:** It is the City's intent to award a contract to the firm that can provide all of the services identified in the SOQ document. However, the City reserves the right to award a contract to multiple Respondents or to a single Respondent, 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 team to be recommended for award and a contract has been negotiated and agendized for consideration. The decision of the City Council will be final.

**RESPONSIBILITY OF OFFEROR:** All offerors shall be responsible. If it is found that an offeror is irresponsible (e.g., has not paid taxes, is not a legal entity, submitted an SOQ without an authorized signature, falsified any information in the submittal package, etc.), the submittal shall be rejected.

**PUBLIC RECORD:** All documents submitted are subject to the California Code Section 6250 et seq., commonly known as the Public Records Act. Information contained in the documents and other SOQ materials 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 SUBMITTAL PREPARATION:** The City will NOT be responsible for any costs incurred by any offeror in the preparation of their submittal or participation in any presentation if requested.

**BUSINESS LICENSE:** The successful team 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".

**SUBMITTAL INFORMALITIES OR DEFECTS:** The City of Palm Springs reserves the right to waive any informality or technical defect in an SOQ submittal and to accept or reject, in whole or in part, any or all submittals and to seek new SOQ's, 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 offeror to perform the Work and the offeror 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 submittal if the evidence submitted by or investigation of such offeror fails to satisfy the City that such offeror is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated therein.

**SIGNED SUBMITTAL AND EXCEPTIONS:** Submission of a signed submittal 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 Statements of Qualifications, and any attached sample agreement. Exceptions to any of the language in either the SOQ documents or attached sample agreement, including the insurance requirements, must be included in the submittal and clearly defined. Exceptions to the City's SOQ document or standard boilerplate language, insurance requirements, terms or conditions may be considered in the evaluation process.

ATTACHMENT "A"

**\*NOTE: THIS FORM MUST BE COMPLETED AND INCLUDED WITH YOUR SUBMITTAL\***

**STATEMENTS OF QUALIFICATIONS (SOQ) # 14-09  
FOR**

**ARCHITECTURAL DESIGN TEAM SERVICES FOR THE RENOVATION OF THE  
WELWOOD MURRAY MEMORIAL LIBRARY AND JC FREY BUILDING**

**SIGNATURE AUTHORIZATION**

PROPOSER:

\_\_\_\_\_

- A. I hereby certify that I have the authority to submit this Statement of Qualifications 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 submittal.

\_\_\_\_\_  
SIGNATURE

- 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 SOQ is required by including the acknowledgment with your proposal. Failure to acknowledge the Addenda issued may result in your submittal 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**

***AGREEMENT FOR PROFESSIONAL ARCHITECT SERVICES***

This Agreement for Architect Services ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Palm Springs, a California charter city ("City") and xxxxxxx, Inc., a xxxxxxx corporation ("Architect"). The City and Architect are sometimes collectively referred to in this Agreement as the "Parties."

***RECITALS***

A. The City desires to renovate, repurpose and operate the Welwood Murray Memorial Library and JC Frey building (the "Project"). The Project is located at 100 S. Palm Canyon Drive (Welwood Murray Memorial Library) and 1911 E. Baristo Road (JC Frey building) . A map of the Sites is attached as Exhibit "A" to this Agreement.

B. The City desires to have the Project designed and developed in an integrated, functional, and attractive way so that the operational goals of the City can be achieved while ensuring that the Project will be an environmental, cultural, social, and governmental benefit to the City.

C. The City desires the services of a professional, highly qualified, and expert architectural and/or engineering firm or team of firms, to act as the City's Architect in the design and development of the Project, consistent with the City's desires.

D. The Architect is ready, willing, and able to provide the services the City desires, perform all professional architectural, landscape architectural, interior design, engineering, and essential facilities design services necessary for the Project, and meet the City's expectations as described in these Recitals and in the City's Statement of Qualifications, dated March xx, 2009 ("SOQ").

E. The Architect represents that it is regularly and appropriately licensed to practice architecture and/or engineering in the State of California and is qualified and expert in all respects to provide the required and desired services and that its officers and employees are sufficient in number and posses the knowledge, experience, and character necessary to qualify them individually as expert for the particular duties they are to perform.

Whereas, the City and Architect agree as follows:

***AGREEMENT***

**Article I. THE ARCHITECT'S BASIC SERVICES**



The Architect shall perform all "Basic Services," defined as all services set forth in this Article I of the Agreement. The Architect's compensation for Basic Services shall be as set forth in Article IV, Section A below.

**A. Definitions**

1. "Architect" means (name of Architect), and its officers, employees, and consultants including the persons identified in Exhibit "E" to this Agreement.
2. "City" means the City of Palm Springs, California.
3. "Construction Budget" means the budget for the construction of the Project as approved by the City including contingencies, and as may be amended by the City.
4. "Construction Documents" means the detailed drawings and specifications necessary for the construction of the Project, including the Deliverables specifically described in Exhibit "B."
5. "Contractor" means one of the "Various Contractors."
6. "Deliverables" means each of the documents, plans, and other items identified on Exhibit "B" to this Agreement.
7. "Design Documents" means the final fully approved drawings, plans, and specifications for the Project and certified as complete by the Architect.
8. "Estimated Construction Budget" means the estimate of the Project's total construction cost as estimated by the Architect at the conclusion of the Construction Document Phase as described in Section E of Article I of this Agreement.
9. "Governmental Authorities" means all federal, state, and local government agencies or bodies having jurisdiction over the Project.
10. "Governmental Regulations" means all requirements of all Government Authorities including all laws, codes, rules, ordinances, and regulations.
11. "Master Budget" means an estimate of costs of all components of the work related to the Project and as further described and itemized in the Master Schedule, including an allowance for reimburseable expenses and such other additional costs as may be determined necessary by the City to facilitate the review, approval, construction, and completion of the Project.
12. "Master Project Plan" means a general and overall concept approach, including alternatives for scheduling and management, consistent with the City's schedule, cost expectations, and general design requirements for the Project.

13. "Master Schedule" means the comprehensive schedule of work for the Architect and the Various Contractors as generally prepared or revised by the Project Manager. (See Exhibit "F")

14. "Project" means the renovation and repurposing of the Welwood Library and JC Frey building on the Sites.

15. "Project Manager" means the City Manager or the City Manager's designee.

16. "Reimbursable costs" means those costs incurred in producing special models and renderings which have not been identified in Exhibit "B" and producing copies of documents above the quantity of documents specified in Exhibit "B" as authorized and approved by the City.

17. "SOQ" means the City's Request for Statements of Qualifications for Architect Services, dated March xx, 2009.

18. "Services" means all of the duties and responsibilities described in Article I of this Agreement, including without limitation Sections B, C, D, E, F, and G thereof, and providing the Deliverables as described in Exhibit "B".

19. "Site" means the Welwood Library located at 100 S. Palm Canyon Drive and the JC Frey building located at 1911 E. Baristo Road and is graphically depicted on Attachment "A" to this Agreement.

20. "Various Contracts" means the agreements between the Various Contractors and the City.

21. "Various Contractors" means all persons who have entered into an agreement with the City to perform work on the Project or to perform services related to the completion of the Project. For the purpose of this Agreement, the term "Various Contractors" does not include the Project Manager or the Architect.

## **B. General Responsibilities**

1. General Statement. The Architect shall prepare all plans, specifications, and estimates for the Project, and observe the work of construction to ensure the work is performed in compliance with the plans, specifications, and estimates. The Architect shall ensure that the Project is designed and constructed in strict accordance with Governmental Regulations.

2. Employees and Consultants. The Architect shall retain, at its sole cost and expense, personnel who are properly skilled in various aspects of the design and construction of the Project, including employees and third party engineers, consultants, and technicians. The Architect shall retain personnel to perform, among other services, structural engineering, mechanical engineering (including both HVAC and plumbing), electrical engineering, landscape architecture, communications, essential facilities design, and such other specialized engineering and consulting services as are required for the design and construction of the Project.

3. Performance Standard. Architect agrees to perform all services under this Agreement (i) in an expeditious, expert, and professional manner; (ii) in accordance with the highest and best standards of professional skill; and (iii) in accordance with Governmental Regulations of Governmental Authorities. Except as may be otherwise expressly provided in this Agreement, City and Architect agree that Architect shall not be exonerated or relieved from liability or responsibility by reason of the fact that City has reviewed, approved, or accepted any design or specifications prepared or recommended by Architect in connection with the design of Project.

4. Correction of Errors. The Architect at its own expense shall provide such services as may be necessary to correct errors, omissions, or conflicts which may occur in the design documents prepared by the Architect or in the performance of services under this Agreement and which are the fault or responsibility of the Architect or Architect's Consultants, of every tier.

5. Accuracy of Plan. The Architect expressly warrants all plans, drawings, specifications, and other design documents furnished for the Project are fully sufficient, complete, and accurate in all respects and warrants that such plans, drawings, and specifications will fulfill and be fit in all respects for the purpose for which they are intended by the City.

6. City Acceptance. Any and all consents, approvals, or acceptances of the City which may be required under this Agreement must be in writing in order to be effective. Architect acknowledges that the City and its elected officials, employees and staff are not experts or professionals in the fields of architecture, engineering, and design and that the City will be relying entirely upon the expertise and professional abilities of the Architect to prepare fully accurate and complete plans, drawings, and specifications for the Project. City consents, approvals, and acceptances shall not be construed as a finding or determination by the City that the plans, drawings, and specifications or any part thereof are accurate or complete, nor shall such consents, approvals, and acceptances be construed as a release or waiver of the obligation of the Architect to provide accurate and complete plans, drawings, and specifications in accordance with the highest and best professional skill, consistent with its obligations pursuant to this Agreement, including without limitation the provisions of Paragraphs 3, 5, and 7 of this Section B of Article I of the Agreement.

7. Responsible for Quality and Accuracy. The Architect shall be responsible for the professional quality, technical accuracy, and the coordination and adequacy of all designs, drawings, specifications and other services furnished under this Agreement. The Architect shall, without additional compensation, correct or revise any errors or deficiencies in such designs, drawings, specifications, and other services. The Architect shall be fully responsible for any and all costs, including any delay damages, incurred by the City as a result of any error or omission in the designs, drawings, and specifications for the Project. The City's review, approval, acceptance of, or payment for, the services required under this Agreement shall not be construed to operate as a waiver of any action arising out of the performance of this Agreement. The Architect shall be and remains liable to the City in accordance with this Agreement and all applicable laws for any and all damages to the City caused by the unsatisfactory or negligent performance of any of the services furnished under this Agreement. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies

provided by law. If the Architect is comprised of more than one legal entity, each such entity shall be jointly and severally liable thereunder.

8. Changes In Plans and Specifications. In the event that competitive bids based on the Final Plans exceed the Master Budget by more than two and one half (2.5%) percent, the Architect shall, at no cost to the City above the Basic Fee as defined in Article IV, Section A below, make any changes in approved plans and specifications as are necessary to secure a new construction bid which does not exceed cost estimates approved by the City and ensure that the Project is completed pursuant to the Master Schedule. In addition, the Architect shall, at no cost to the City above the Basic Fee, make any other revisions in the approved plans and specifications as may be necessary or desirable as long as those revisions do not constitute a significant or material change in the direction and scope of the Project.

9. Public Agency Approvals. The Architect shall assist and cooperate with the City's Project Manager in applying for and securing all required approvals from public agencies having jurisdiction over the Project. The Architect shall provide in a timely manner all documentation, drawings, plans, and specifications and such other materials as the City or Project Manager may request to secure such approvals.

10. Cooperation. Architect agrees to cooperate with, and coordinate Architect's and Architect's consultants' services with those services provided by the City's Project Manager.

11. Designation of Representative of Consultant. Architect has furnished to the City a list of the names of the principal persons employed or retained by the Architect in discharging its obligations under this Agreement, stating the position and function of each such person. This list is attached to this Agreement as Attachment "C". It is expressly understood that the experience, knowledge, capability, and reputation of the foregoing persons are substantial inducement for the City to enter into this Agreement. The foregoing persons shall be responsible during the term of this Agreement for directing or performing all activities of the Architect and devoting sufficient time to personally supervise the Services required pursuant to this Agreement. No change in such staffing shall occur without the prior approval of the City, except that in the event any of these named persons should leave the Architect for any reason, Architect may propose to the City a substitution and such substitution shall be subject to the approval of the City. Architect is engaged by the City for its unique and expert qualifications and abilities. Architect may not, therefore, delegate any of its duties under this Agreement, except to the extent that delegation of work to City's employees is contemplated. No work shall be subcontracted without the written consent of the City.

### **C. Needs Assessment and Programming Phase**

1. Programmatic Documents. The Architect shall be responsible to conduct a facility needs assessment as described in Exhibit "B" and which will include a visit to the existing building sites, careful review of the facilities and operations, and interviews of the library staff, user-group and other related city staff and meetings with affected and interested groups as may be identified and recommended by the Program Manager, including without limitation the Library Board of Trustees and board of the Friends of the Library. The deliverable under this phase shall be a complete profile of the needs of the proposed buildings, including without limitation recommendations for each building that

includes: public computer areas, lounging/reading areas, materials shelving or display areas, active social engagement spaces, storage, staff work spaces, study/meeting rooms, and functional traffic patterns. The deliverable shall also include a listing of each room or space, its use, and the proposed square footage.

2. As-Builts. It shall be the design team's responsibility to develop the necessary as-built floor plans and other drawing that will be needed by the team to design this project.

#### **D. Schematic Design/Planning Submittal Phase**

1. Schematic Design Documents. The Architect shall review the program, schedule, and budget furnished by the City to ascertain the requirements of the Project and shall meet with the City and the Project Manager to ascertain the requirements of the Project and the Architect in order to understand the requirements of the City. The Architect shall review with the City and the Project Manager proposed site use and improvements, selection of materials, building systems and equipment, methods of Project delivery, and alternative approaches to design and construction of the Project.

2. The Architect shall perform all services required to prepare preliminary studies, schematic drawings, a preliminary project schedule, and site utilization plans, including onsite and offsite facilities necessary for the Project, including any alternatives as the City may request. The schematic drawings and site utilization plans shall show the ultimate development of the Site and the proposed architectural concept of the Project. The Architect shall actively solicit oral and written commentary from the City, attend public meetings as required by the City, and consider comments from members of the public and appropriate consultants prior to or as the documents are produced and delivered.

The Architect shall deliver to the City all documents, drawings, sketches, surveys, models and other materials prepared during the schematic design phase in appropriate increments, as the documents are completed, on a daily and weekly basis, for City's review and approval. The Architect shall perform all services required to prepare architectural representation drawings for the Project that are suitable for reproduction. The Architect shall furnish to the Project Manager the Deliverables as specified in Exhibit "B". After corrections have been made, the drawings and specifications shall be submitted for the City's final approval.

3. Schematic Design Phase Cost Estimate. The Architect shall prepare a preliminary estimate of the total construction cost of the Project based on the documents developed during the Schematic Design Phase. The Architect shall prepare the estimate on a square foot/unit cost basis, or more detailed computation if requested by the City, considering prevailing construction costs and including all work for which bids will be received.

4. Schematic Design Phase Schedule. The Architect shall complete all obligations set forth in this Section D - Schematic Design Phase no later than the time frame specified in the Master Schedule, Exhibit "F".

## **E. Design Development Phase**

1. Design Development Plans. Once the City has approved the Architect's services performed during the Schematic Design Phase and has provided the Architect with written notice to proceed, the Architect shall prepare Design Development Plans for the Project. Such Design Development Plans shall consist of structural, mechanical and electrical systems, telecommunications systems, floor plans, elevations, and other drawings and specifications illustrating the size and nature of the entire Project. The Design Development Plans shall specify the materials, quantities, structures, categories of work and other work to be performed as part of the Project. The Design Development Plans shall also include architectural presentation drawings to assist in presentation to the City for approval and public review. The Architect shall actively solicit oral and written commentary from the City, attend public meetings as required by the City, and consider comments from members of the public and appropriate consultants as the documents are produced and delivered.

The Architect shall deliver to the City all documents, drawings, sketches, models and other materials prepared during the Design Development phase in appropriate increments, as the documents are completed, on a daily and weekly basis or as requested by the City. The Architect shall furnish to the Project Manager the Deliverables as specified in Exhibit "B", including all modifications approved by the City, including outline specifications, plans, sections, elevations, or perspective sketches to the City for approval. One (1) set of such drawings will be returned to the Architect with changes and corrections noted by the City. When final corrections are completed, the Architect shall furnish the Project Manager with record sets as described in Exhibit "B."

2. Design Development Phase Estimate. During the Design Development Phase, the Architect shall revise the preliminary estimate of the Project's total construction cost as may be necessary in light of the Preliminary Plans.

3. Design Development Phase Schedule. The Architect shall complete all obligations set forth in this Section E - Design Development Phase no later than the time frame specified in the Master Schedule, Exhibit "F".

## **F. Construction Document Phase**

1. Construction Documents. Once the City has approved the Architect's services performed during the Design Development Phase and has provided the Architect with written notice to proceed, the Architect shall prepare Construction Documents for the Project. The Construction Documents shall consist of working drawings, specifications, details, plans, elevations and schedules fully dimensioned, noted and coordinated, setting forth in detail the work, materials, workmanship, finishes and equipment required for the Project, including but not limited to the architectural, structural, mechanical, electrical, and telecommunication service connected equipment. The Architect shall ensure that the Construction Documents are consistent with the Schematic Design Documents and the Design Development Plans. The Architect shall prepare the Construction Documents in such a manner as to minimize substitution of materials or products and requests for alternatives.

The Construction Documents shall be in such form as will enable the City to: (1) Secure any required approvals and permits for the construction of the Project; (2) Obtain by open and competitive bidding a responsible bid that does not exceed the City's proposed budget for the Project; and (3) Permit any qualified, licensed contractor to perform the construction of the Project. The Architect shall also prepare reproducible working drawings and prepare specifications by an acceptable photo reproduction process. The Construction Documents shall also be stored or replicated in a suitable electronic and/or digital format or formats as determined by the City so that the Construction Documents may be easily transmitted, accessed, and duplicated over the internet, through the City's or Project Manager's web sites, or via other accepted electronic means.

The Architect shall submit to the City a copy of all calculations, including, but not limited to, drainage, structural, mechanical, electrical, acoustical, and sanitary design calculations, prior to the City's final acceptance of the Final Plans. The Final Plans shall be drawn legibly and be of such quality and workmanship that clear and legible duplicate transparencies or prints, uniform in size, may be obtained. Final specifications shall be typed using paper 8 ½ x 11 inches in size and shall be reproduced using a clearly legible duplicating process. Before delivery to the City, the Deliverables as required pursuant to Exhibit "B" shall be assembled with heavy stock covers or comparable form, and shall be checked, verified, and approved as complete and accurate by the Architect.

When, in the opinion of the Architect, final drawings and specifications are complete, they shall be submitted to the City for its review and approval. The Architect shall make all City, State or other public agency-requested changes, additions, deletions, and corrections in the final working drawings and specifications so long as they are not in conflict with the requirements of public agencies having jurisdiction or previous approval.

2. Interior Design: In submitting the Construction Documents to the City for review and approval, the team's Interior Designer shall provide selections of furniture, colors, textures, finishes, and other matters involving aesthetic decisions. The Architect shall submit these selections to the City sufficiently in advance of any deadline so that the City can make selections without causing delay. In no event shall the Architect submit selections less than 30 days prior to the time that work requiring such selections commences. Note that separate specifications shall be prepared for the furniture and equipment as the City will bid this separately and not thru the general contractor. The general contractor will be responsible for coordinating the delivery of such City purchased furniture and equipment.

3. Construction Document Phase Estimate. At the conclusion of the Construction Document Phase, the Architect shall revise its estimate of the Project's total construction cost as may be necessary in light of the Final Plans.

4. Construction Document Phase Schedule. The Architect shall complete all obligations set forth in this Section F - Construction Document Phase no later than the time frame specified in the Master Schedule, Exhibit "F".

#### **G. Bidding Phase**

1. Bidding Process Services. The Architect shall prepare and submit to the City all documents necessary to obtain bids for the construction project. These documents include, but are not limited to, bid proposals, instructions to bidders, general and supplementary conditions, advertisement for bids, bonds, and bid tabulation forms. These documents shall be in the format utilized by the City for its standard public works projects. Prints shall be of the same size as the tracings from which the prints are made. Upon the City's approval of the bidding documents, the Architect shall assist the City as required in obtaining bids from qualified Contractors. During the period of bidding, the Architect shall be available to interpret the drawings and specifications and to prepare any addenda required before bids are received. After bids are taken, the Architect shall assist in the interpretation of bids received, including the various alternates, if any. The Architect shall aid in investigating and evaluating the responsiveness and responsibility of the bidders. The Architect shall cooperate with and assist the City in preparing bid tabulations and bid analyses as required by the City. When approved and directed by the City, the Architect shall provide working drawings and specifications which include alternate bids as deemed advisable by the Authority to bring the construction of the Project within allowable cost and budget limits.

2. Bidding Phase Schedule. The Architect shall complete all obligations set forth in this Section G - Bidding Phase no later than the time frame specified in the Master Schedule, Exhibit "F".

#### **H. Construction Phase/Contract Administration Service**

1. Administration of Construction Contracts. The Architect shall cooperate with the City and the Project Manager in the administration of the construction contract and assist the City and the Project Manager in assuring the proper performance of all work by the Contractor and subcontractors under the construction contract and subcontracts. The Architect shall attend all meetings at the site as scheduled by the City or Project Manager and shall be onsite at all times during construction, except when excused by the Project Manager and City, to observe and determine the quality of the Contractor's performance as the work progresses. The Architect shall keep the Project Manager and City advised as to the progress of the Project. The Architect shall promptly review Contractor submittals, respond to requests for information, and, in cooperation with the Project Manager, resolve questions from the Contractor. The Architect's actions shall be taken with such reasonable promptness and in accordance with any time requirements set for in the construction contract so as to cause no delay in the construction of the Project, while allowing sufficient time in the Architect's professional judgment to permit adequate review.

The Architect shall provide prompt written notice to the Project Manager and City of any fault or defect in the Project or any material nonconformance with the Project Plans. In observing the work, the Architect shall comply with the highest and best standard of care customarily exercised by architects and engineers in performing services for projects such as that covered by this Agreement. The Architect, with the Project Manager's concurrence, shall reject work which does not conform with the terms and intent of the Final Plans.

2. Schedule, Delays, and Progress Reports. The Architect shall cooperate with and assist the Project Manager in ensuring that the Contractor prepares and maintains adequate records of construction progress and time schedules. The Architect



shall advise the Project Manager and City of any deviations from time schedules which will prevent completion within the contract period.

3. Tests. The Architect shall specify, review, and interpret all investigation and testing necessary for the completion of the Project and submit its findings and determinations to the Project Manager. The Architect shall ensure that conditions reflected in such testing and investigation do not conflict with contract requirements. The Architect shall promptly inform the Project Manager and City of any deficiencies or problems reflected in such testing and investigation, and make recommendations for correction of those deficiencies and problems.

4. Shop Drawings and Equipment Lists. The Architect shall review Contractor's submittals, shop drawings, material lists, and equipment lists for compliance with contract documents. The Architect shall reject those which do not comply, or indicate no exception to those which do comply. The Architect shall not make any changes to the approved contract documents at any time without prior written approval from the Project Manager and the City. The Architect shall submit reviewed shop drawings as specified in Exhibit "B" for the City's file and advise the Project Manager in writing of the results of such review.

5. Substitution of Materials and Products. The Architect shall review any proposed substitution of materials or products from that required by the terms of the specifications. The Architect shall recommend in writing approving or rejecting each substitution. The Architect shall record all such substitutions in the final record drawings described in subsection 14 of this Article.

6. Changes. The Architect shall promptly (1) review any proposed changes that alter the function, quality, appearance, cost, or time of completion of a finished item of work; (2) discuss any such proposed changes with the Project Manager; and (3) recommend to the Project Manager whether any proposed change should be approved. The Architect shall prepare in an expeditious and timely manner all necessary drawings, specifications and other design or engineering documentation and supporting calculations if required by such changes in accordance with any required time-frames set forth in the construction contract. Changes shall not be commenced until the Architect has received a written change order approved by the City and signed by the Contractor. Where construction schedules require that the work be commenced prior to the receipt of a change order, the Architect may direct the commencement of work upon written approval of the Project Manager and the City.

7. Plans and Reports to Governmental Authorities. The Architect shall furnish all prints, specifications, and other necessary papers, and make reports to the Governmental Authorities.

8. Certificates for Payment.

a. The Project Manager will assemble a Project Application for Payment by combining the Contractor's applications with similar applications for progress payments from other Contractors and, after certifying the amounts due on such applications, forward them to the Architect within seven days.

b. Within seven days after the Architect's receipt of the Project Application for Payment, the Project Manager and Architect will either issue to

the City a Project Certificate for Payment, with a copy to the Contractor, for such amount as the Project Manager and Architect determine is properly due, or notify the Contractor and City in writing of the Project Manager's and Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 8c. Such notification will be forwarded to the Contractor by the Project Manager.

c. The Project Manager or Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City, if in the Project Manager's or Architect's opinion the representations to the City required by Subparagraph 8b cannot be made. If the Project Manager or Architect is unable to certify payment in the amount of the Application, the Project Manager or Architect will notify the Contractor and City as provided in Subparagraph 8b. If the Contractor, Project Manager, and Architect cannot agree on a revised amount, the Project Manager and Architect will promptly issued a Certificate for Payment for the amount for which the Project Manager and Architect are able to make such representations to the Authority. The Project Manager or Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Project Manager's or Architect's opinion to protect the City from loss because of:

- i. defective Work not remedied;
- ii. third party claims filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment.
- iv. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- v. damage to the City or another Contractor;
- vi. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- vii. persistent failure to carry out the Work in accordance with the Contract Documents.

When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9. Description Drawings and Interpretations. The Architect shall furnish all details or incidental services necessary for the proper execution of the work, to include all large scale or full size supplemental drawings required to describe the work for the Project. The Architect shall complete these details and deliver them to the Project Manager to prevent delay to the Contractor's operations. Tracings of all supplemental drawings shall be furnished to the City and shall bear the approvals required of public agencies having jurisdiction. If, during the construction, any dispute shall arise regarding the true meaning of the drawings and/or specifications, the Architect shall render a prompt interpretation.

10. Substantial Completion. In cooperation with the Project Manager, the

Architect shall make an inspection at such time as the Project Manager shall determine that the Project is substantially completed. On the basis of the inspection, the Architect, in cooperation with the Project Manager, shall prepare and forward to the Contractor and to the City a list of all deficiencies, including a list of those of a minor nature, commonly called a "punch list," and notify the Contractor in a written notice accompanying the list that all of the deficiencies must be corrected prior to acceptance of the Project.

11. Certificate of Completion. In conjunction with the Project Manager and the Contractor, the Architect shall make a final inspection and, when satisfied, inform the City upon completion of the Project that all provisions of the contract drawings and specifications have been complied with and no changes in the work have been made except as authorized in writing by the City and the Project Manager and as approved by the applicable public agencies.

During the period of construction, the Architect shall cause its consulting engineers to make or cause to be made all respective tests and inspections necessary to secure the completion of various types of work falling under their respective division of the work, and upon completion of the Project, the Architect shall cause each consulting engineer to issue or cause to be issued a certificate stating that the work falling under his or her administration has been performed in accordance with the drawings and specifications and contract requirements.

12. Completion of Lien Time. At the completion of the lien period, the Architect in conjunction with the Project Manager shall approve the final certificate of payment to the Various Contractors.

13. Guarantees. The Architect shall cooperate with and assist the Project Manager and the Various Contractors in securing in proper form and transmitting to the City the necessary guarantees, instruction books, diagrams, operating manuals, and documents to be furnished by the Various Contractors.

14. Record Drawings. The Architect shall consult with the Project Manager and/or the Various Contractors in the compilation of information necessary for the preparation of the record drawings required by this subsection.

a. Not later than the time specified in Exhibit "B" the Architect shall review and forward the final working drawings and specifications, indicating on them all changes made by change orders or otherwise under the construction contract and all information called for on the specifications, and, in conjunction with each Contractor, provide a "record" set of final working drawings which will show, among other things, the location of all concealed pipe, buried conduit runs, and other similar service elements within the Project, if applicable. The Architect shall review and certify that the drawings are a correct representation of the information supplied to it by the City and each Contractor and shall obtain the certificate of the City and the Contractor that the drawings are correct.

b. On approval by the City of the completed "record" drawings, the Architect, in conjunction with each Contractor, shall forward to the City the complete set of original drawings corrected to "record" condition or a complete set of reproducible duplicate drawings. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

c. Prior to the receipt of Architect's final payment, the Architect, in

conjunction with each Contractor, shall forward to the City one (1) clear and legible set of reproductions of the computations, the original copy of the specifications, the "record" drawings and the Architect's Certificate of Completion.

15. Inspection Services. The Architect shall cooperate with and assist the Project Manager and any inspector retained by the Project Manager in the performance of any required or desired inspection services on the Site or related to the Project.

## **Article II. THE CITY'S RESPONSIBILITIES**

### **A. Provision of Information**

The City shall, at the Architect's request, provide information regarding the Project's requirements that is readily available to the City, including the overall objectives, schedule requirements, budget information, space requirements, expansion plans, special equipment, systems and site requirements.

### **B. Designated Representative**

The City shall designate a representative to act on behalf of the City with respect to all matters relating to this Agreement. The City representative shall render decisions in a timely manner relating to the Architect's documents in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

### **C. Surveys**

The City shall furnish the Architect, at the City's expense, with all existing building floor plans and surveys of the Project sites in the possession of the City depicting boundaries, physical characteristics, easements, rights-of-way, legal limitations, and utility locations. In addition, the City shall provide information regarding the restroom facilities in the Welwood Library-adjacent (Wessman) property and to what extent, if any, these facilities may be utilized in this project.

### **D. Legal Services**

The City shall furnish such legal services as may be necessary for the Project, except that the City shall not furnish the Architect with legal services in connection with any legal action that may be filed in any court of law or in the event of a dispute between the City or the Project Manager, on the one hand, and the Architect, on the other, or between the Architect and any of its employees, consultants or Contractors.

### **F. Notice of Completion**

When the Project is completed to the satisfaction of the Project Manager, the City, and the Architect, and upon recommendation of the Architect, the Project Manager shall recommend to the City that it accept the Project and authorize the Architect to record a Notice of Completion. During the Contractor's guarantee period, the City shall notify Architect in writing of any apparent deficiencies in materials or workmanship.

**Article III. COMPENSATION, PROGRESS PAYMENTS AND EXPENSES**

**A. Compensation for Services**

1. Compensation for Needs Assessment and Programming Phase. The total compensation to be paid for the Architect's Services and all related expenses for the Needs Assessment and Programming Phase (Section I. C. and Exhibit "B" of this Agreement) is on a Not to Exceed Basis. The City shall pay no more than xxxxxxxxxxxxxxxxxxxx (\$xx) Dollars for such Services and related expenses. The City shall not be liable or responsible for any amounts for the Services and expenses above the amount of xxxxxxxxxxxxxxxxxxxx (\$xx) Dollars. The Services shall be billed to the City and paid based upon an hourly rate basis. Each monthly invoice shall be reviewed and approved by the Project Manager and, if approved, paid within 60 days of receipt of the invoice.

THE MAXIMUM AMOUNT OF THE CITY'S OBLIGATION UNDER THIS SECTION III. A. 1. IS THE AMOUNT SPECIFIED HEREIN. IF THE CITY'S MAXIMUM OBLIGATION IS REACHED BEFORE THE ARCHITECT'S SERVICES UNDER THIS SECTION ARE COMPLETED, ARCHITECT WILL NEVERTHELESS COMPLETE THE SERVICES WITHOUT LIABILITY ON THE CITY'S PART FOR FURTHER PAYMENT BEYOND THE MAXIMUM AMOUNT.

2. Compensation for Schematic Design/Planning Submittal Phase. The total compensation to be paid for the Architect's Services and all related expenses for the Schematic Design/Planning Submittal Phase (Section I. D. and Exhibit "B" of this Agreement) is on a Not to Exceed Basis. The City shall pay no more than xxxxxxxxxxxxxxxxxxxx (\$xx) for such Services and related expenses. The City shall not be liable or responsible for any amounts for the Services and expenses above the amount of xxxxxxxxxxxxxxxxxxxx (\$xx). The Services shall be billed to the City and paid based upon an hourly rate basis. Each monthly invoice shall be reviewed and approved by the Project Manager and, if approved, paid within 60 days of receipt of the invoice.

THE MAXIMUM AMOUNT OF THE CITY'S OBLIGATION UNDER THIS SECTION III. A. 2. IS THE AMOUNT SPECIFIED HEREIN. IF THE CITY'S MAXIMUM OBLIGATION IS REACHED BEFORE THE ARCHITECT'S SERVICES UNDER THIS SECTION ARE COMPLETED, ARCHITECT WILL NEVERTHELESS COMPLETE THE SERVICES WITHOUT LIABILITY ON THE CITY'S PART FOR FURTHER PAYMENT BEYOND THE MAXIMUM AMOUNT.

3. Compensation for Design Development Phase. The total compensation to be paid for the Architect's Services and all related expenses for the Design Development Phase (Section I. E. and Exhibit "B" of this Agreement) is on a Not to Exceed Basis. The City shall pay no more than xxxxxxxxxxxxxxxxxxxx (\$xx) for such Services and related expenses. The City shall not be liable or responsible for any amounts for the Services and expenses above the amount of xxxxxxxxxxxxxxxxxxxx (\$xx). The Services shall be billed to the City and paid based upon an hourly rate basis. Each monthly invoice shall be reviewed and approved by the Project Manager and, if approved, paid within 60 days of receipt of the invoice.

THE MAXIMUM AMOUNT OF THE CITY'S OBLIGATION UNDER THIS SECTION III. A. 3. IS THE AMOUNT SPECIFIED HEREIN. IF THE CITY'S MAXIMUM OBLIGATION IS REACHED BEFORE THE ARCHITECT'S SERVICES UNDER THIS SECTION ARE COMPLETED, ARCHITECT WILL NEVERTHELESS COMPLETE THE SERVICES WITHOUT LIABILITY ON THE CITY'S PART FOR FURTHER PAYMENT BEYOND THE MAXIMUM AMOUNT.

4. Compensation for Construction Document Phase. The total compensation to be paid for the Architect's Services and all related expenses for the Construction Document Phase (Section I. F. and Exhibit "B" of this Agreement) is on a Not to Exceed Basis. The City shall pay no more than xxxxxxxxxxxxxxxxxxxxxxxxxx (\$xx) for such Services and related expenses. The City shall not be liable or responsible for any amounts for the Services and expenses above the amount of xxxxxxxxxxxxxxxxxxxxxxxxxx (\$xx). The Services shall be billed to the City and paid based upon an hourly rate basis. Each monthly invoice shall be reviewed and approved by the Project Manager and, if approved, paid within 60 days of receipt of the invoice.

THE MAXIMUM AMOUNT OF THE CITY'S OBLIGATION UNDER THIS SECTION III. A. 4. IS THE AMOUNT SPECIFIED HEREIN. IF THE CITY'S MAXIMUM OBLIGATION IS REACHED BEFORE THE ARCHITECT'S SERVICES UNDER THIS SECTION ARE COMPLETED, ARCHITECT WILL NEVERTHELESS COMPLETE THE SERVICES WITHOUT LIABILITY ON THE CITY'S PART FOR FURTHER PAYMENT BEYOND THE MAXIMUM AMOUNT.

5. Compensation for Bidding Phase. The total compensation to be paid for the Architect's Services and all related expenses for the Bidding Phase (Section I. G. and Exhibit "B" of this Agreement) is on a Not to Exceed Basis. The City shall pay no more than xxxxxxxxxxxxxxxxxxxxxxxxxx (\$xx) for such Services and related expenses. The City shall not be liable or responsible for any amounts for the Services and expenses above the amount of xxxxxxxxxxxxxxxxxxxxxxxxxx (\$xx). The Services shall be billed to the City and paid based upon an hourly rate basis. Each monthly invoice shall be reviewed and approved by the Project Manager and, if approved, paid within 60 days of receipt of the invoice.

THE MAXIMUM AMOUNT OF THE CITY'S OBLIGATION UNDER THIS SECTION III. A.5. IS THE AMOUNT SPECIFIED HEREIN. IF THE CITY'S MAXIMUM OBLIGATION IS REACHED BEFORE THE ARCHITECT'S SERVICES UNDER THIS SECTION ARE COMPLETED, ARCHITECT WILL NEVERTHELESS COMPLETE THE SERVICES WITHOUT LIABILITY ON THE CITY'S PART FOR FURTHER PAYMENT BEYOND THE MAXIMUM AMOUNT.

6. Compensation for Construction Phase/Contract Administration Phase. The total compensation to be paid for the Architect's Services and all related expenses for the Construction Phase/Contract Administration Phase (Section I. H. and Exhibit "B" of this Agreement) is on a Not to Exceed Basis. The City shall pay no more than xxxxxxxxxxxxxxxxxxxxxxxxxx (\$xx) for such Services and related expenses. The City shall not be liable or responsible for any amounts for the Services and expenses above the amount of xxxxxxxxxxxxxxxxxxxxxxxxxx (\$xx). The Services shall be billed to the City and paid based upon an hourly rate basis. Each monthly invoice shall be reviewed and approved by the Project Manager and, if approved, paid within 60 days of receipt of the invoice.

THE MAXIMUM AMOUNT OF THE CITY'S OBLIGATION UNDER THIS SECTION III. A.5. IS THE AMOUNT SPECIFIED HEREIN. IF THE CITY'S MAXIMUM OBLIGATION IS REACHED BEFORE THE ARCHITECT'S SERVICES UNDER THIS SECTION ARE COMPLETED, ARCHITECT WILL NEVERTHELESS COMPLETE THE SERVICES WITHOUT LIABILITY ON THE CITY'S PART FOR FURTHER PAYMENT BEYOND THE MAXIMUM AMOUNT.

**B. Payments Withheld**

Notwithstanding any other provision of this Agreement, the City shall not be obligated to make any payment to the Architect if one or more of the following conditions exist: (a) the Architect is in default of any of its obligations under this Agreement and fails to cure such default prior to the date on which payment is due; (b) payment is attributable to services which have not been performed in accordance with the terms of this Agreement; or (c) the Architect has failed to make payments promptly to consultants or other third parties in connection with the services for which the Authority has made payment to the Architect.

**Article IV. TERMINATION AND SUSPENSION OF THE AGREEMENT**

**A. The City's Right to Terminate the Agreement**

1. Termination Without Cause. The City, in its sole and absolute discretion, may terminate this Agreement without cause by giving the Architect written notice thereof.

2. Termination Based on Abandonment of the Project. The City may terminate this Agreement in whole or in part if the City, in its sole and absolute discretion, determines to abandon the Project in whole or in part for any reason whatsoever.

3. Termination for Cause. The City, in its sole and absolute discretion, may terminate this Agreement for cause in the event that (1) the Architect fails to properly perform its services under this Agreement; (2) the Architect fails to perform its services according to the schedule set forth in this Agreement; (3) the Architect fails to perform its services according to the terms and conditions of this Agreement; (4) the Architect fails to provide prompt, efficient and thorough service to the City; or (5) the City determines that it is not satisfied with its working relationship with the Architect. If the City waives any breach of this Agreement, such waiver shall not be deemed a waiver of any other preceding or succeeding breach of the same or any other provision of this Agreement.

4. Written Notice of Termination. If the City determines to terminate this Agreement for any reason, the City shall provide written notice of termination to the Architect. The termination shall be effective upon the Architect's receipt of the written notice.

**B. The City's Right to Suspend the Agreement**

The City, in its sole and absolute discretion, may suspend the Architect's services under this Agreement in whole or in part at any time and for any reason. If the City determines to suspend the Architect's services, it shall provide written notice of the suspension to the Architect. The suspension shall be effective upon the Architect's receipt of the written notice.

**C. The Architect's Compensation in the Event of Termination or Suspension**

1. Termination Without Cause, Abandonment or Suspension. If the City terminates the Agreement without cause, for abandonment or suspends the Agreement, the City shall pay to the Architect, within thirty (30) days of the effective date of the termination or suspension, a sum of money sufficient to increase the total amount paid to the Architect on the Basic Fee to an amount which bears the same ratio to the total Basic Fee as the amount of services satisfactorily completed by the Architect prior to termination or suspension bears to the entire services that Architect is required to perform for the Project under this Agreement. For example, if the City terminates or suspends this Agreement after the Architect has satisfactorily completed fifty percent (50%) of its services under this Agreement, the City shall pay the Architect a sum of money sufficient to increase the total amount paid to the Architect on the Basic Fee to fifty percent (50%) of the Architect's total basic fee. In the event that the City resumes the design or construction process under the Agreement after a period of suspension, the Architect shall not be entitled to any additional compensation based on any additional expense involved in resuming the project after a period of suspension.

2. Termination for Cause. If the City terminates the Agreement for cause, the Architect shall be liable for all costs associated with said termination, including but not limited to, the increased costs occasioned by the re-procurement of services by the City to complete the Architect's scope of work. The City reserves its right to withhold said costs from any monies due and owing to Architect.

**D. Delivery of Documents in the Event of Termination or Suspension**

Upon receiving written notice of termination or suspension, the Architect shall promptly deliver to the City all documents in the Architect's possession, custody or control that were prepared under this Agreement, including but not limited to all preliminary studies, sketches, working drawings, specifications, cost estimates and computations.

**Article V. INSURANCE AND INDEMNITY**

**A. Insurance**

1. Comprehensive General Liability and Automobile Liability Insurance. Architect shall maintain, at its sole cost and expense, an insurance policy providing comprehensive general liability coverage covering the Architect as named insured with a limit of not less than Two Million (\$2,000,000.00) Dollars and automobile liability insurance covering the Architect as named insured with a limit of not less than One Million (\$1,000,000.00) Dollars. The comprehensive general liability policy and the



automobile liability insurance shall be endorsed to (1) name the City as additional named insured, and (2) insure the obligation of the Architect to indemnify and hold harmless the City and its officers, agents, employees, and consultants as set forth in Section V.B. below.

2. Professional Liability Insurance. Architect shall maintain in full force and effect throughout the term of this Agreement, professional negligence errors and omissions insurance coverage in an amount not less than Two Million Dollars (\$2,000,000.00) covering the Project only. The professional liability policy shall be endorsed to insure the obligation of the Architect to indemnify and hold harmless the City and the Project Manager and their respective officers and employees as set forth in Section V.C. below.

If the policy of insurance is written on a "claims made" basis, said 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 after the date of the completion of the Services. In the event of termination of said policy during this period, Architect shall obtain continuing insurance coverage for the prior acts or omissions of Architect during the course of performing services under the terms of this Agreement. Said coverage shall be evidenced by either a new policy evidencing no gap in coverage, or to obtain separate extended "tail" coverage with the present or new carrier.

In the event the present policy of insurance is written on an "occurrence" basis, said 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 said policy during this period, new coverage shall be obtained for the required period to insure for the prior acts of Architect during the course of performing services under the terms of this Agreement.

3. Worker's Compensation. Architect shall maintain, at its sole cost and expense, an insurance policy providing protecting the Architect from claims under Worker's Compensation Acts.

4. Insurance of Architects' Consultants. Architect shall ensure that all sub-consultants hired by Architect to perform services in connection with this Agreement shall maintain, at their sole cost and expense, insurance policies providing professional liability coverage of all claims in a minimum aggregate amount of Two Million (\$2,000,000.00) Dollars.

5. Valuable Document Insurance. Architect shall carry adequate insurance on all drawings and specifications as may be required to protect the City in the amount of its full equity in those drawings and specifications.

6. Insurance Certificates. Architect shall promptly furnish certificates and endorsements to the City showing the insurance coverage required by this Section V.A.

7. Insurance Standards. All insurance required in this Section A of Article V of the Agreement shall provide that coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to the City. All insurance shall be primary and not contributory with regard to other available insurance to the City. All insurance shall be written by companies with a BEST

Guide rating of A VII or better. Certificates of insurance (or copies of policies, if required by the City) shall be furnished to the City in a form approved by the City, and such policies shall include the City and its officers, employees, and agents, and the Project Manager and its officers and employees as additional insured's and contain a waiver of subrogation. The additional insured requirement applies to all coverages except Workers' Compensation and Professional Liability. The waiver of subrogation applies to all coverages. All required evidence of insurance shall be filed with the City prior to commencement of the Architect's services.

## **B. Indemnification**

1. General Requirement. Architect shall defend (if required by the City and with counsel selected by the City), indemnify, and hold harmless the City and its officers, elected officials, employees, and agents, including the City's Project Manager and its officers and employees, from and against any and all claims, demands, suits, judgments, losses, or expenses of any nature whatsoever (including attorneys' fees) arising directly or indirectly from or out of the Architect's negligence, recklessness, or willful misconduct.

2. Indemnification Remains in Effect. The defense, indemnification, and hold harmless obligations under this Agreement shall remain in effect notwithstanding shall not be limited by any insurance requirement or by the failure by Architect or any third party to purchase and maintain required insurance coverages. The defense, indemnification, and hold harmless obligations under this agreement shall extend to claims occurring after the Agreement has terminated as well as while the Agreement is in force.

## **Article VI. CONFLICTS OF INTEREST AND DISCRIMINATION**

### **A. General Requirement**

Architect covenants that Architect, its officers, principles, and employees presently have no interest and during the term of this Agreement will not acquire any interest, direct or indirect, which might conflict in any manner or degree with the performance of the Architect's Services under this agreement.

### **B. Specific Requirement**

Neither Architect nor any firm of which any officer, director, supervisory employee, or principal stockholder of Architect is an officer, director, supervisory employee, or principal stockholder or owner, or of which Architect is a principal stockholder or owner shall, during the term of this Agreement and until final payment for the services provided for herein is made by City, make or cause to be made, without the prior written approval of City, any bid for any work in any capacity on the Project except as Architect pursuant to this Agreement. For purposes of this provision, the term "*principal stockholder or owner*" shall mean any stockholder holding one percent (1%) or more of the capital stock of such corporation in his or her or its own name or that is held directly or indirectly for his or her or its accountant or a one percent (1%) or more ownership of or interest in any firm either in his or her or its own name or directly or indirectly for his or her or its accountant. Architect shall promptly disclose to the City the

name and relationship of each bidder, proposer, contractor, or any other person performing work on the Project who works with the Architect on any other job or project. Architect shall provide such other information regarding any such relationship as the City may require.

**C. Discrimination**

During the performances of this Agreement, Architect shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Architect shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination.

**D. Non-Liability of Authority Officers and Employees**

No officer or employee of the City, including members of the City Council, shall be personally liable to the Architect, 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 Architect or its successor, or for any breach of any obligation of the terms of this Agreement.

**Article VII. ENFORCEMENT OF AGREEMENT**

**A. California Law**

This Agreement shall be construed and interpreted both as to validity and 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 Architect covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

**B. Disputes**

1. Notice. In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefor. The injured party shall continue performing its obligations under this Agreement so long as the injuring party cures any default within (30) days after service of notice; provided that the City may take immediate action under Section 3 of Article 4 of this Agreement. Compliance with this section shall be a condition precedent to any legal action and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

2. Resolution of Disputes. The Architect and the City, and such additional persons as the Parties believe may be helpful in the resolution of any dispute, shall meet and confer in an effort to resolve each dispute in an amicable manner before prior to the initiation of any legal proceeding to enforce any of the terms of this Agreement.

**C. Waiver**

No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent, approval, or acceptance of City or the City's Project Manager shall be deemed to waive or render unnecessary City's consent, approval, or acceptance of any subsequent act of the Architect. Any waiver by either party of any default must be in writing and shall not be a waiver or any other default concerning the same or any other provision of this Agreement.

**D. Rights and Remedies are 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.

**E. 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 injunctive relief, a declaratory judgment or any other remedy consistent with the purposes of this Agreement.

**Article VIII. MISCELLANEOUS PROVISIONS**

**A. Time of the Essence**

The Parties agree that time is of the essence of this Agreement with respect to the deadlines set forth in Article I. The Architect must adhere to all deadlines set forth in this Agreement and otherwise established by the City in writing under this Agreement unless such deadlines are extended in writing by the City.

**B. Ownership of Documents**

All rights worldwide with respect to any and all intellectual property or other property of any nature produced, created, or suggested by the Architect during the term of this Agreement or resulting from the Architect's services shall be deemed a work made for hire and shall be the sole and exclusive property of the City. Without limiting the generality of the foregoing, title to all drawings, plans, ideas, concepts, specifications, models, or other tangible work product produced by the Architect pursuant to this Agreement shall become the property of the City when produced. The City shall own the worldwide right, title and interest in such work product. Architect shall deliver all such original work product to the City upon the completion or sooner termination of the Architect services under this Agreement but may retain copies thereof for its permanent records so long as the same are not used without the City's prior express written consent.

**C. Independent Contractor Status**

In performing its services under this Agreement, the Architect shall act as an independent Contractor and not as an officer or employee of the City. Architect will be solely responsible for the control and direct performance of the details of the services performed by the Architect, its employees and consultants.

**D. Accounting Records**

The Architect shall keep accounting records of the time spent by the Architect's personnel and consultants. These accounting records shall be kept on a generally recognized accounting basis and shall be made available to the City on request, on reasonable notice and at mutually convenient times. Such records shall be kept for at least five (5) years from and after the completion of services under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement or Project, in which case the Architect agrees to maintain the same until the City, or any of its duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

**E. Statutes of Limitation**

Causes of action between the Parties to this Agreement relating to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, not earlier than the date that the injured party discovers such acts or failures to act.

**F. Consequential Damages**

In the event that the City pursues any legal cause of action against the Architect based on the Architect's default in contractual obligations, acts, failures to act, or negligence, the City shall be entitled to all actual and consequential damages associated with any claim, including losses for delay. This provision shall not serve to limit any rights or remedies that the City has at law or equity.

**G. Reproduction of Documents**

The Architect shall provide, at no expense to the City, all required copies of Deliverables as specified in Attachment "B" to be submitted to the City and Governmental Authorities for the review and approval. The Architect shall cooperate with and assist the Project Manager in providing copies of construction documents necessary for bidding and construction purposes.

## **H. Entire Agreement**

This Agreement constitutes the entire understanding of the Parties with respect to its subject matter. All prior and contemporaneous conversations, negotiations, possible or alleged agreements, covenants, releases, representations and warranties in respect of the subject matter of this Agreement are integrated herein and superseded by this Agreement.

## **I. Agreement Negotiated**

The text of this Agreement is the product of negotiation among the Parties, each of whom had the opportunity to have it reviewed by counsel of their choice, and is not to be construed as having been prepared by one party or the other.

## **J. Successors and Assigns**

1. General Obligation. The City and Architect respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to the covenants, agreements and obligations contained in this Agreement. Architect shall not assign the Agreement without written consent of the City. If Architect attempts to make such an assignment without such consent, Architect shall nevertheless remain legally responsible for all obligations under the Agreement.

2. Assignment. Architect assigns to the City all of its rights under all agreements, contracts, subcontracts, and other commitments entered into by Architect for performance of the Work; provided, however, that such assignment is contingent upon City's acceptance except as provided in the following paragraph.

3. Assumption of Rights. In the event this Agreement is terminated by the Architect or City, the City shall have the right, but not the responsibility, to assume at its sole discretion the rights and responsibilities of the Architect under all or some of the Architect's agreements, contracts, subcontracts, or other commitments (contracts). All such contracts entered into by the Architect shall reserve to the City its rights under subparagraphs 1 and 2. Architect, upon request from the City, shall promptly execute and deliver to the City written assignments of such contracts which the City so chooses to take by assignment.

## **K. Notices**

Any notice, demand, request, consent, approval, acceptance, or communication either party desires or is required to give the other party or any other person shall be in writing and either served personally or sent by pre-paid, first class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

To the City: David H. Ready, City Manger  
P.O. Box 2743  
Palm Springs, California 92263

To the Architect: xxxxxxxxxxxxxxxxxxxxxxxxxxxx  
Awarded vendor/firm address

Notwithstanding the foregoing, any notice sent to the last designated address of the party to whom a notice may be or is required to be delivered hereunder shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the party to whom the notice is directed or the failure or refusal of such party to accept delivery of the notice.

**L. Execution of the Agreement**

The Parties covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Agreement. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original.

**M. Audit and Inspection of Records**

The Architect shall provide the City, or other agents of the City, such access to Architect's accounting books, records, payroll documents and facilities of the Architect which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. The City's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors and the Architect shall ensure that this language is inserted in all subcontracts with first-tier subcontractors. The Architect shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**"ARCHITECT"**

a California corporation

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

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

**"CITY"**

City of Palm Springs, a municipal

corporation and charter city

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
City Manager

**ATTEST:**

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

DATED: \_\_\_\_\_

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
City Attorney

DATED: \_\_\_\_\_



**EXHIBIT "A"**

**\*SITE PLAN TO BE INCLUDED IN FINAL AGREEMENT\***

**EXHIBIT "B"  
SCOPE OF SERVICES**

**\*THIS WILL BE DEFINED IN THE FINAL AGREEMENT PURSUANT TO THE  
NEGOTIATIONS\***

**EXHIBIT "C"**

Not Used

**EXHIBIT "D"**

Not Used – Compensation to be defined in Article III of agreement

**EXHIBIT "E"**

**Architect**

**\*Officers, Employees, Consultants – to be completed in final contract\***

<b><u>Architect</u></b>	<b><u>Associated Architect</u></b>
<b><u>Landscape Architect</u></b>	<b><u>Electrical Engineer</u></b>
<b><u>Interior Design</u></b>	<b><u>Structural Engineer</u></b>
<b><u>Mechanical &amp; Plumbing Engineers</u></b>	<b><u>Cost Estimator</u></b>

**EXHIBIT "F"**

**MASTER SCHEDULE**

**\*To be defined in final agreement during negotiations\***