

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
CITY OF DESERT HOT SPRINGS
AND**

This Professional Services Agreement (“Agreement”) is made and entered into this _____ day of _____, 20____, by and between the City of Desert Hot Springs, a municipal corporation located in the County of Riverside, State of California, hereinafter referred to as the “City,” and _____, a _____, hereinafter referred to as “Contractor.”

RECITALS:

WHEREAS, the City desires to utilize the services of Contractor, as an independent contractor, to provide the City with _____ (sometimes hereinafter, the “Services”), as described in more particularity in Exhibit “A,” attached hereto and incorporated by reference as the “Scope of Services”; and

WHEREAS, Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth in full herein.

Section 2. SCOPE OF SERVICES

Contractor shall provide to the City the Services on an as-needed and as-directed basis in a manner satisfactory to the City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions, as described in more detail in the Scope of Services. In the event a conflict exists between this Agreement and the Scope of Services, the former shall supersede. Except where this Agreement specifically provides otherwise, the Contractor is responsible for providing any and all facilities, assets, and resources (including personnel, facilities, equipment, and software) necessary and appropriate for delivery of the Services and to meet the Contractor's obligations under this Agreement. Any City assets to which access is being provided for use by the Contractor (including equipment, software licenses and third party service contracts) are provided on an “as is, where is” basis, and the City does not provide the Contractor any representations or warranties regarding such assets.

Section 3. TERM

This Agreement shall commence as of the date in the opening paragraph of this Agreement and shall remain in force and effect until [DATE], in accordance with Section 7 of this Agreement, subject to the allocation of funds pursuant to a duly approved City budget.

Section 4. COMPENSATION

The City agrees to pay Contractor for and in consideration of the faithful performance of the Services and duties set forth in this Agreement, and Contractor agrees to accept from the City, as and for compensation for the faithful performance of said Services and duties, an amount not to exceed _____ Dollars and _____ Cents (\$_____.____)

Section 5. METHOD OF PAYMENT

a. Contractor shall submit invoices to the City, not more often than once a month, describing the work performed. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. The City shall pay Contractor no later than thirty (30) days after approval of the invoice by City staff provided that the services reflected in the invoice were performed to the reasonable satisfaction of the City in accordance with the terms of this Agreement, that the number of hours of service set forth in the invoice reflect the amount of time ordinarily expended for such service by members of the profession currently practicing in the same locality under similar conditions, and that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of this Agreement. Review and approval of invoice by City staff will occur within thirty (30) calendar days of receipt of invoice via email.

b. The Contractor shall submit invoices under this Agreement to:

City Manager
City of Desert Hot Springs
11999 Palm Drive
Desert Hot Springs, CA 92240
Telephone: (760) 329-6411
Facsimile: (760) 288-3129

Section 6. EXTRA WORK

At any time during the term of this Agreement, the City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform Extra Work without written authorization from the City.

Section 7. TERMINATION

This Agreement may be terminated by the City Manager, in his/her sole discretion, immediately for cause. Either party may terminate this Agreement without cause upon twenty-four hours (24) hours written notice of termination to the other party. Upon termination, Contractor shall be entitled to compensation for services performed up to the effective date of termination, provided that Contractor shall have satisfied all its obligations under this Agreement through and including the effective date of termination and is not otherwise in breach of this Agreement. For clarification, the City Manager in his/her sole discretion shall have the power to terminate this Agreement with or without cause in accordance with this Section.

Section 8. OWNERSHIP OF DOCUMENTS

All plans, studies, documents and other writings, including drafts, prepared by and for Contractor, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Contractor for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Contractor or to any other party. Contractor shall, at its expense, provide such reports, plans, studies, documents and other writings in pdf format to the City upon written request, or such other electronic format as reasonably requested by the City.

Section 9. CONFIDENTIALITY

a. All ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor. Such materials shall not, without prior written consent of the City, be used by Contractor for any purposes other than the performance of the services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Contractor will make all reasonable efforts to keep such information confidential and to limit access only to those who require it for performance, Nothing furnished to Contractor that is otherwise known to Contractor, is generally known in the industry, or has become known to the related industry shall be deemed confidential.

b. Contractor shall not use the City's insignia or photographs relating to Contractor's Services, or any publicity pertaining to the Contractor's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

Section 10. CONTRACTOR'S BOOKS AND RECORDS

a. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City for a

minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

b. Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

d. Where the City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, the City may, by written request of any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained at City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

Section 11. INDEPENDENT CONTRACTOR'S STATUS: NOT AGENT OF THE CITY

Contractor shall at all times during the term of this Agreement remain, as to the City, a wholly independent contractor and shall perform the services described in this Agreement as an independent contractor and further, hereby waives any claims for any compensation or benefits afforded to City employees and not to independent contractors. Neither the City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as herein set forth. Contractor shall be entirely responsible for the compensation and control of any assistants, employees, and subcontractors used by Contractor in providing said services. Nothing contained in this Agreement shall be deemed, construed or represented by the City or Contractor or by any third person to create the relationship of principal and agent and Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. Contractor shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Contractor have any authority, express or implied, to bind the City to any obligation whatsoever.

Section 12. REPRESENTATIONS AND ACKNOWLEDGMENTS REGARDING INDEPENDENT CONTRACTOR'S STATUS OF CONTRACTOR

a. Contractor represents and acknowledges the following:

(1) The City is not required to provide any training or legal counsel to Contractor or its employees for Contractor to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

(3) The services described in this Agreement can be performed without the use of City equipment, materials, tools or facilities.

(4) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Contractor on a continuing basis after termination of this Agreement.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage or other such compensation to any person employed by Contractor to perform the services described in this Agreement.

(6) Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City and will so instruct its officers, employees and/or agents.

b. The City represents and acknowledges the following:

(1) Contractor is not required to comply with daily instructions from City staff with respect to when, where or how Contractor must perform the services set forth in this Agreement.

(2) Contractor is solely responsible for determining who, under the supervision or direction of Contractor, will perform the services set forth in this Agreement.

(3) The City will not hire, supervise or pay any assistants working for Contractor pursuant to this Agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the Contractor must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(5) It is the sole responsibility of Contractor to set the hours in which Contractor performs or plans to perform the services set forth in this Agreement subject to hours of access.

(6) Contractor is not required to devote full time to the business operations of the City to perform the services set forth in this Agreement.

(7) Contractor is not required to perform the services set forth in the Agreement in any particular order or sequence.

(8) Nothing in this Agreement shall be interpreted to preclude Contractor from working for other persons or firms, provided that such work does not create a conflict of interest.

(9) Contractor is not required to perform the Services at City-owned property.

(10) Contractor will perform services that are outside the usual course of the City's business.

Section 13. CIVIL CODE SECTION 1542 WAIVER

Contractor expressly waives any and all rights and benefits conferred upon it by the provisions of section 1542 of the California Civil Code which reads as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, that are known or unknown, or suspected or unsuspected, including, without limitation, claims of entitlements under the California Public Employees' Retirement System ("CalPERS") that are only afforded to employees and not independent contractors. Contractor further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

Initials

Section 14. CONFLICTS OF INTEREST

a. Contractor (including principals, associates and professional employees) covenants and represents that it does not have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source or income, interest in real property or investment which would be affected in any manner or degree by the performance of Contractor's services hereunder. Contractor further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

b. Contractor is not a designated employee within the meaning of the Political Reform Act because Contractor:

(1) Does not make or participate in:

- (i) the making or any governmental decisions regarding approval of a rate, rule, or regulation, the adoption or enforcement of laws;
- (ii) the issuance, denial, suspension or revocation of permits, licenses, applications, certificates, approvals, orders, or similar authorization or entitlement;
- (iii) authorizing the City to enter into, modify, or renew a contract;
- (iv) granting the City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
- (v) granting the City approval to a plan, design, report, study, or similar item; or
- (vi) adopting, or granting City approval of, policies, standards, or guidelines for the City or for any subdivision thereof.

(2) Does not serve in a staff capacity with the City and in that capacity participate in making a governmental decision or otherwise perform the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code under Government Code Section 87302.

c. In the event the City officially determines that Contractor must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Contractor shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk.

Section 15. PROFESSIONAL ABILITY OF CONTRACTOR; WARRANTY; FAMILIARITY WITH WORK; PERMITS AND LICENSES

a. Contractor warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.

b. By executing this Agreement, Contractor warrants that:

- (1) it has thoroughly investigated and considered the work to be performed;
- (2) it has investigated the issues, regarding the scope of services to be provided;

- (3) it has carefully considered how the work should be performed; and
- (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

c. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by the City, it shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the City Manager or appropriate City representative.

d. Contractor represents that it and all of its subcontractors, if any, have obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City business license.

Section 16. COMPLIANCE WITH LAWS

Contractor shall comply with all local, state and federal laws and regulations applicable to the services required hereunder.

Section 17. INDEMNIFICATION

a. Contractor shall defend, indemnify and hold harmless the City, its officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs, expenses and attorneys' fees in connection therewith), arising out of this Agreement, except for any such claim arising out of the sole negligence, recklessness, or willful misconduct of the City, its officials, agents, employees or volunteers.

b. The City does not, and shall not, waive any rights that it may have against Contractor under this Section because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless, indemnification and duty to defend provisions of this Section shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, action, damage, liability, loss, cost or expense described herein.

c. Notwithstanding the provisions of subsections a. and b. of this section, Contractor shall not be responsible for damages or be in default or deemed to be in default by reason of delay caused by strikes, lockouts, accidents, or acts of God, or the failure of the City to furnish timely information or to approve or disapprove Contractor's work promptly, or by reason of delay or faulty performance by the City, construction contractors, or governmental agencies, or by reason of any other delays beyond Contractor's control, or for which Contractor is without fault.

d. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the

City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

e. If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, hold harmless and defend City and each of its officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

f. This Section shall survive termination or expiration of this Agreement.

Section 18. INSURANCE REQUIREMENTS

a. Policies. Contractor, at Contractor's sole cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies:

(1) Worker's Compensation Coverage. Contractor shall maintain Worker's Compensation Insurance and Employers' Liability Insurance for its employees in accordance with the laws of the State of California, of an amount not less than one million dollars (\$1,000,000) per accident and for Employers' Liability Insurance in amounts not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 policy limit for bodily injury by disease, and \$1,000,000 each employee for bodily injury by disease. In addition, Contractor shall require each subcontractor to similarly maintain Worker's Compensation Insurance and Employers' Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. If any class of employees employed by Contractor pursuant to this Agreement is not protected by the California State Worker's Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the City. This provision shall not apply if Contractor has no employees performing work under this Agreement. Contractor agrees to waive its statutory immunity under any worker's compensation or similar statute, as respecting the City, and to require any and all subcontractors and any other person or entity involved in the Services to do the same.

(2) General Liability Coverage. Contractor shall maintain commercial general liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence, combined single limit coverage for bodily injury, personal injury and property damage associated with work contemplated in this Agreement. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Contractor shall provide insurance on an occurrence, not claims-made basis. Contractor acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess coverage, personal and advertising injury coverage shall be triggered by an "offense" while bodily injury and property damage coverage shall be triggered by an "occurrence" during the policy period. The coverage required in this paragraph shall provide at least as much coverage as that provided by ISO form CG 00 01 12 07 or any updated form thereof.

(3) Automobile Liability Coverage. Contractor shall maintain commercial automobile liability insurance covering bodily injury, personal injury and property damage for all activities of the Contractor arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence, and two million dollars (\$2,000,000) in the aggregate. As an alternative, Contractor shall be permitted to obtain a non-owned automobile endorsement to its comprehensive general liability insurance providing the same protection and coverage as though Contractor were to provide separate commercial vehicle liability insurance as set forth in this paragraph. The coverage required in this paragraph shall provide at least as much coverage as that provided by ISO form CA 00 01 or any updated form thereof.

(4) Professional Liability Coverage. Contractor shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Contractor's Services, whether such Services are performed by Contractor or by its employees, subcontractors, or sub-Contractors, to the extent such persons other than Contractor are permitted to perform any of the Services under this Agreement. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim, and two million dollars (\$2,000,000) in the aggregate.

b. Endorsements. Unless otherwise specified hereunder, each insurance policy required herein shall be with insurers possessing an A.M. Best's rating of no less than A:VII and shall be endorsed with the following specific language:

(1) Except as otherwise provided by law, the City, its elected or appointed officers, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work or operations.

(2) This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have shall be considered excess insurance only and shall not contribute with it.

(3) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

(4) The insurer waives all rights of subrogation against the City, its elected or appointed officials, officers, employees or agents.

(5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

(6) The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Contractor shall disclose to and obtain the approval of City for any self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, only upon the prior express written authorization of the City Manager, Contractor may either reduce or eliminate such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Manager may condition approval of any reduction or elimination in deductible or self-insured retention levels with a requirement that Contractor procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

d. Certificates of Insurance. Contractor shall provide certificates of insurance with original endorsements to the City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

e. Imposition of Insurance Requirements. Provided the City gives its written consent for any persons other than Contractor to perform any part of the Services, Contractor agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Contractor enters into contracts or whom Contractor hires or retains pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required herein, at minimum, and name as additional insureds the parties to this Agreement consistent with Section 18b(1) hereof. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that coverage is provided in conformity with the requirements of this Section.

f. Maintain Coverages. In the event this Agreement is terminated for any reason prior to the completion of all obligations and requirements of this Agreement, Contractor agrees to maintain all coverages required herein until the City provides written authorization to terminate the coverages following the City's review and determination that all liability posed under this Agreement has been eliminated.

g. Failure to Obtain Coverages. Contractor agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by it or any subcontractors or others involved in any way with the performance of Services, to the extent such is permissible under this Agreement, Contractor shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the City or its officers, employees, servants, volunteers, agents and independent contractors.

h. Notice of Cancellation or Reduction in Coverage. In the event that any coverage required in this Agreement is canceled, reduced, limited, or materially affected in any other manner, Contractor shall provide written notice to the City either by facsimile and/or via certified mail, at Contractor's earliest possible opportunity and in no case later than fifteen (15) calendar days after Contractor is notified of the change in coverage.

Section 19. NOTICES

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the City: City Manager
City of Desert Hot Springs
11999 Palm Drive
Desert Hot Springs, CA 92240
Telephone: (760) 329-6411
Facsimile: (760) 288-3129

To Contractor: _____

b. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 20. DEFAULT

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default of any party to this Agreement may remain uncured for more than fifteen (15) calendar days following written notice, as provided above, a "material breach" shall be deemed to have occurred. In the event of a material breach, the injured party shall be entitled to seek any appropriate remedy or damages as otherwise set forth herein and by initiating legal proceedings.

Section 21. REMEDIES

If Contractor materially breaches any of the terms of this Agreement, the City's remedies shall include, but shall not be limited to, the following:

- a. Immediately terminate the Agreement;
- b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
- c. Retain a different Contractor to complete the Services that are not finished by Contractor.

Section 22. ENTIRE AGREEMENT

a. This Agreement supersedes any and all other agreements, either oral or written, between the City and Contractor with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

c. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Section 23. MODIFICATIONS AND AMENDMENTS

This Agreement may be modified or amended only by a written instrument signed by all parties.

Section 24. ASSIGNMENT AND SUBCONTRACTING

a. The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this

Agreement. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the written consent of the City.

b. Contractor shall not subcontract any portion of the work to be performed under this Agreement without the advance written consent of the City. If the City consents to such subcontract, Contractor shall be fully responsible to the City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between the City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as required by law.

Section 25. WAIVER

a. No waiver shall be binding, unless executed in writing by the party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

Section 26. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

Section 27. VENUE

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

Section 28. LITIGATION EXPENSES AND ATTORNEYS' FEES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof. In no instance shall the award of costs and expenses under this section exceed the actual costs and expenses of the City.

Section 29. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least a copy hereof shall have been signed by both parties hereto. Electronic and facsimile signatures shall be deemed the same as original signatures. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 30. PROHIBITED INTERESTS

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

Section 31. EQUAL OPPORTUNITY EMPLOYMENT

Contractor represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race; denial of family and medical care leave; religious creed (including religious dress and grooming practices); color; national origin (including language use restrictions); ancestry; physical disability or mental disability (including HIV and AIDS); medical condition (cancer and genetic characteristics); genetic information; military or veteran status; marital status; gender, gender identity, and gender expression; sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding); age or sexual orientation. Unless otherwise permitted under the law, Contractor shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

Section 32. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 33. PRINCIPAL REPRESENTATIVES

a. _____, shall be Contractor's Principal Representative and the person responsible for undertaking, managing and supervising the performance of all of the Services for this Agreement. Contractor's Principal Representative's experience, knowledge, capability and reputation were a substantial inducement for the City to enter into this Agreement, and as such, for the purposes of performing the Services, the duties of Contractor's Principal Representative shall not be reassigned, without the express written consent of both parties.

b. _____, shall be the Principal Representative of the City for purposes of communicating with Contractor on any matter associated with the performance of the services set forth in this Agreement.

Section 34. NON-LIABILITY OF CITY'S OFFICERS AND EMPLOYEES

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

Section 35. INTERPRETATION

This Agreement shall not be interpreted against either party on the grounds that one of the parties was solely responsible for preparing it or caused it to be prepared as both parties were involved in drafting it.

Section 36. PROTECTION AND CORRECTION OF WORK

a. Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work performed by Contractor, and the equipment, materials, papers and other components thereof to prevent losses or damages.

b. The performance of services by Contractor shall not relieve Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the City, when such inaccuracies are due to the fault of Contractor.

Section 37. CAPTIONS AND HEADINGS

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 38. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 39. CUMULATIVE REMEDIES

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.

Section 40. NO THIRD PARTY BENEFICIARIES

The parties do not intend the benefits of this Agreement to inure to any third party, nor shall any provision of this Agreement be so construed.

Section 41. OTHER GOVERNMENTAL REGULATIONS

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

Section 42. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT

a. Each of the parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the parties each purports to represent.

Section 43. SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties hereto.

Section 44. SURVIVAL

All obligations arising prior to any termination of this Agreement and all provisions of this Agreement allocating liability between the City and Contractor shall survive any such termination.

Section 45. USE OF RECYCLED PRODUCTS

Contractor shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

CITY OF DESERT HOT SPRINGS

[Department Head]

Frank Luckino, City Manager

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Tuan-Anh Vu, City Attorney

N:\DH\SO\0001-01 General\Doc\6051

SAMPLE

EXHIBIT "A"
SCOPE OF SERVICES

SAMPLE