

REQUEST FOR PROPOSAL
**PROFESSIONAL ENGINEERING CONSULTING SERVICES FOR
THE DEVELOPMENT AND PREPARATION OF THE
LOCAL ROADWAY SAFETY PLAN (LRSP)**
FEDERAL PROJECT NO.: LRSPL 5384(026)

Issued: April 11, 2022

The City of Desert Hot Springs requests proposals from qualified professional traffic engineering consultants to prepare a Local Roadway Safety Plan (LRSP) for the City of Desert Hot Springs. The proposing Consultant shall have relevant expertise, and an approach that demonstrates their ability to provide the required services. The outcome of this effort is expected to be a comprehensive LRSP that enables the City to identify potential traffic safety projects. The goal is to have an adopted Plan by no later than December 2022.

PURPOSE

As of 2021 Caltrans is requiring any agency applying for Highway Safety Improvement Program funding to have an adopted Local Roadway Safety Plan (LRSP).

The City's LRSP should be prepared through acquiring and analyzing data, identifying partners to review the data, selecting emphasize areas, developing safety strategies and countermeasures, and adopting the final plan. The LRSP will play a critical role in addressing traffic collision risks and may identify specific or unique conditions that contribute to traffic collisions within the City. The LRSP will provide the City with the opportunity to proactively correct high collision or problem locations and prevent local road fatalities and injuries. The final plan will recommend proven countermeasures, provide a structured and realistic set of responses that implement changes over time, will integrate the "4 E's" approach (Education, Enforcement, Emergency Service, and Engineering) in its proposed solution strategies, and identify road safety partners that could sustain a long-term effort.

SERVICES REQUESTED

Working on State funded projects require in depth knowledge of the Caltrans Local Assistance Procedures Manual (LAPM), Local Assistance Program Guidelines (LAPG), and other State requirements. Interested firms shall address in their qualification statements their ability to provide the following services if selected by the City.

The Consultant shall prepare a detailed scope of services for the development of the City's LRSP, in part and at a minimum, on information presented in this request for proposal, and other available information. The Plan shall be customized for improving traffic safety within the City Desert Hot Springs.

The Consultant shall also prepare and provide a comprehensive schedule to reflect the timeframe for each task of the proposed scope of work, preferably utilizing the Microsoft Project. The project schedule shall show the tasks, duration, milestones, assignments, critical paths, and other relevant data.

Services and products to be rendered in performing all work associated with project development shall include, but may not be limited to:

1. Project Management/Administration

The Consultant shall be responsible for project management activities throughout the life of the contract including managing the schedule, budget, setting up meetings, field reviews, and managing the project team. The Consultant must include a kick-off meeting and further appropriate number of follow up meetings with City staff. The Consultant may be required to attend a City Council meeting to present the final plan.

The designated Consultant Project Manager, under the general direction of the City Project Manager, shall be responsible for overseeing all aspects of project development and coordination as follows.

1. Project Kick-Off Meeting: Meeting with representatives of the different City departments to discuss the plan goals, the role of the consultant and stakeholders, communication protocol, progress reporting, scheduling and invoicing, key milestones, and what defines success for this project.
2. Project Team Meetings: Project Team (PT) status meetings will be conducted to maintain a regular and consistent communication on upcoming tasks, identifying potential risks and challenges to success. Consultant shall develop the agenda and prepare a summary of the PT meetings. The meeting notes will include a list of decisions, actions, and responsible party.
3. Optional Public Hearings: Public hearings should be scoped as optional tasks to assist staff in presenting the Safety Plan to the Stakeholders and to City Council. This will also provide opportunities to the public to voice their concerns, objectives, and desired safety measures.
4. Oversee the Plan development and ensure that all measures of the project's scope of services are completed in a timely and professional manner with an emphasis on providing the City with a high-quality product.
5. Ensure that the Safety Plan including all recommended safety measures meet all applicable Federal, State, and local requirements, in anticipation of future grant funding opportunities.
6. Ensure that all appropriate communication, correspondence, and reports are completed on an ongoing basis in a timely manner to the satisfaction of the City.

2. State of the System Review

Consultant shall review existing City transportation plans, supplemental planning documents, policies, programs and institutional alignment with current safety best practices. This task will produce an inventory of opportunity areas for the City to pursue to facilitate safety improvements in any of the four E's.

3. Collision History Assessment

Consultant shall review the previous 5-years of collision data. High collision intersections and roadway segments will be identified. Overall City-wide collision patterns shall be analyzed for trends that indicate areas of particular emphasis for in the City. High collision locations shall be assessed to determine the most likely contributing factors to their high collision activity. Collision activity shall be matched with roadway characteristics such as volume, roadway cross-sections, speed limits, intersection control, and other features that might impact safety outcomes.

4. Countermeasure Development

Consultant shall use the opportunity areas and emphasis factors identified in the previous task and build a safety mitigation toolbox that includes proven, cost-effective measures that will best address the most prevalent safety challenges in the City. Specific mitigations shall be recommended for selected high collision locations, while a programmatic approach shall be identified for implementing safety mitigations City-wide. Countermeasure selection shall be aided by engagement with key stakeholders representing law enforcement, public health, education, and other relevant disciplines.

5. Implementation Program

Consultant shall outline a strategy for implementing safety measures included in the toolbox and a means to monitor safety outcomes to evaluate which mitigation measures are most effective. This shall include identifying potential funding sources, measures that can be included in regular maintenance cycles, and potential updates to City design standard to better align with safety best practices.

6. Local Roadway Safety Plan

Consultant shall create a Local Roadway Safety Plan to document the findings of the previous tasks and to lay out the implementation program for the City to follow and update as projects are completed and new data becomes available.

GENERAL ADMINISTRATIVE INFORMATION

Each respondent understands and agrees that the City, its departments, their officers, employees or agents is not responsible for:

- a. Any costs incurred by a respondent in the preparation, delivery, or presentation of a proposal.
- b. Any costs incurred by a respondent in meeting the criteria as a result of making or submitting a proposal or subsequently in entering into a formal agreement with the City.
- c. Any errors, inaccuracies or misstatements related to the information or data supplied to any consultant by the City. The use of such information or data provided by the City, its officers, employees, or agents is intended to be used at the sole discretion and risk of the firm in the preparation of a proposal pursuant to this Request for Proposal only.

The selected firm shall comply with any and all applicable Federal and State laws pertaining to scope of work. All proposals submitted to the City of Desert Hot Springs in response to this RFP shall become the property of the City and will not be returned and such proposals, after the contract is awarded, are subject to the California Public Records Act.

QUESTIONS

All questions regarding this RFP shall be submitted in writing to: Nicholas Haecker, Public Works Director, via email at NHaecker@cityofdhs.org. Questions shall be submitted by the date and time as set forth in this RFP. Questions with their answers will be posted on the City's website by the date and time set forth in this RFP.

PROPOSAL FORMAT

Proposals (work proposal and cost proposal) are to be submitted in separate envelopes clearly marked with the project name, consultant's name, address and phone number. Only one proposal per consultant shall be considered.

Proposal packages shall be submitted to the City on or before **May 5, 2022 at 2:00 p.m.** Proposals received after the stated deadline shall not be accepted. Proposal packages are to be delivered to:

Nicholas Haecker
Public Works Director
City of Desert Hot Springs
11999 Palm Drive
Desert Hot Springs, CA 92240

The City reserves the right to waive informalities and to reject all proposals at its sole discretion.

Consultants are encouraged to keep their proposals brief and relevant to the specific work required. Proposals shall be limited to ten (10) single-sided pages total. The front and back covers, table of contents, and tab separators will not count as part of the page limit. Similarly, full resumes may be attached along with the client reference list and will not count as part of the limit. Proposals shall include the following items:

I. Work Proposal (Envelope 1) - Submit four (4) copies

A. Cover Letter

- (1) The name, address and phone number of the consultant's contact person for the remainder of the selection process. The project manager must be licensed as a Professional Civil Engineer in the State of California.
- (2) Any qualifying statements or comments regarding the consultant's proposal, the information provided in the RFP or the proposed contract.
- (3) Identification of sub-consultants and their responsibilities.

B. Statement of Qualifications

- (1) Consultant's experience with similar work, including names and current phone numbers of references for listed projects.

C. Project Understanding and Approach

- (1) Provide a description of your understanding of the project, and your approach to managing, staffing, and completing the project.

D. Scope of Work Program

- (1) Provide a description of the tasks, sub-tasks, and deliverables. Scope of Work should be organized in a manner that it can be attached to the final contract.

E. Project Schedule

- (1) A comprehensive Gantt/Critical Path Method (CPM) schedule shall be submitted describing the nature and scheduling of the proposed scope of work.

II. Cost Proposal (Envelope 2) – Submit 1 Copy.

A. Detailed Cost Proposal

- (1) This contract will be reimbursed at Lump Sum. Consultant shall submit a detailed cost proposal for all services and materials anticipated in completing the project. Cost Proposals shall be prepared to follow the order and format of the work objectives listed in the "Scope

of Work Program.” Cost proposals shall, as a minimum, show all anticipated prime and sub-consultant costs by task and sub-task, including personnel by classification, hours, and hourly billing rates. Other direct costs shall be summarized at the project level, rather than by task.

A cost break-down for each project task and/or sub-task shall be defined.

B. Professional Service Rate Sheets

- (1) Include a list of all personnel by classification, and hourly billing rates with effective dates. See Attachment 1 for the required format of the Professional Services Rate Sheet. The rate sheet shall include your audited Indirect Cost Rate (ICR) broken down into rates for fringe benefits, overhead, and general administration. The rate sheet shall also include your proposed fee. The rate sheet shall note if there are any changes, or not, to the proposed rate(s) over time.

SELECTION PROCESS

Work Programs will be reviewed by a consultant selection committee. Consultants will be selected for possible contract negotiations based upon the materials submitted. A copy of the Evaluation Criteria is provided in Attachment 2. The Consultant Selection Committee may choose to interview two or more closely ranked firms but will not expect or schedule time for elaborate presentations. Cost proposals will be opened only after the ranking process is complete.

The City will open contact negotiations with the top ranked firm. The successful consultant will be expected to enter into the City of Desert Hot Springs Standard Design Professional Services Agreement (DPSA). The City’s DPSA is included as Attachment 3. Proposed revisions should be addressed in the cover letter. The City reserves the right to make any revisions to the proposed professional services agreement.

Should negotiations with the top-ranked firm dissolve, the City of Desert Hot Springs will open the Cost Proposal and begin contract negotiations with the second ranked firm, and so forth until an agreement is reached.

The City reserves the right to waive informalities and to reject all proposals at its sole discretion. Consultants are encouraged to keep the proposals brief and relevant to the specific work required.

SCHEDULE

Anticipated consultant selection schedule shall be as follows:

Deadline for receipt of Questions	April 22, 2022
Response to Questions	April 28, 2022
<u>Proposal Due Date</u>	<u>May 5, 2022, 2:00 p.m.</u>
Proposal Review/Evaluation	Week of May 9, 2022
Interview finalists (if needed)	Week of May 9, 2022
Award of Contract	May 19, 2022 (subject to change)

PRE-AWARD AUDIT

In accordance with Caltrans requirements and procedures, the selected consultant’s final, negotiated cost proposal may be subject to a pre-award audit by Caltrans and/or the City of Desert Hot Springs. If

applicable, the pre-award audit must be complete and approved by Caltrans prior to the City awarding a contract to the selected Consultant.

It is recommended that interested consultants be familiar with Caltrans' audit procedures including contract audits, incurred cost audits, financial management system reviews, ICR audits, and risks assessments. The successful firm will be asked to provide a completed ICR schedule, prepared in accordance with applicable CFRs, a completed AASHTO Internal Control Questionnaire (ICQ), and a copy of the prior fiscal year and most recently completed fiscal year ICR schedules and audited reports by an independent CPA. Additionally, the successful firm must provide a CPA audited ICR report and copy of the CPA audited financial statements.

Offerors that have successfully completed a pre-award audit with Caltrans within the past twelve months should indicate such approval in their proposal and include a copy of the audit approval letter. If the City elects to conduct the pre-award audit in-house, and the selected consultant has successfully completed an audit within the past twelve months, the City will expect the Consultant to furnish its auditors with the details of the approved audit.

ACCEPTANCE/REJECTION/MODIFICATION

The City of Desert Hot Springs reserves the right to accept, reject, modify or cancel in whole or in part, this Request for Proposal. The City reserves the right to accept or reject any and all proposals, negotiate modifications to proposals that it deems acceptable, to request and consider additional information from any proposer and to waive minor irregularities and technical defects in this proposal process. The City reserves the right to seek new proposals when it determines that it is in the best interest of the City to do so.

AUTHORITY TO WITHDRAW

The City of Desert Hot Springs reserves the right to withdraw this Request for Proposal (RFP) without prior notice. The City of Desert Hot Springs makes no representation that any agreement will be awarded to any firm as a result of having responded to this request. All proposals submitted to the City of Desert Hot Springs in response to this RFP shall become the property of the City and will not be returned.

ATTACHMENTS

1. Sample Rate Sheet
2. Evaluation Criteria
3. DPSA

EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3

COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Prime Consultant Subconsultant 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
(Project Manager)*	_____	_____	\$ _____	\$ _____
(Sr. Civil Engineer)	_____	_____	\$ _____	\$ _____
(Envir. Scientist)	_____	_____	\$ _____	\$ _____
(Inspector)**	_____	_____	\$ _____	\$ _____

LABOR COSTS

a) Subtotal Direct Labor Costs \$ _____

b) Anticipated Salary Increases (see page 2 for calculation) \$ _____

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]** \$ _____

INDIRECT COSTS

d) Fringe Benefits (Rate: _____%) e) Total Fringe Benefits [(c) x (d)] \$ _____

f) Overhead (Rate: _____%) g) Overhead [(c) x (f)] \$ _____

h) General and Administrative (Rate: _____%) i) Gen & Admin [(c) x (h)] \$ _____

j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]** \$ _____

FIXED FEE

k) **TOTAL FIXED FEE [(c) + (j)] x fixed fee _____%** \$ _____

l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs			\$	\$
Equipment Rental and Supplies			\$	\$
Permit Fees			\$	\$
Plan Sheets			\$	\$
Test			\$	\$

l) **TOTAL OTHER DIRECT COSTS** \$ _____

m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

Subconsultant 1: _____ \$ _____

Subconsultant 2: _____ \$ _____

Subconsultant 3: _____ \$ _____

Subconsultant 4: _____ \$ _____

m) **TOTAL SUBCONSULTANTS' COSTS** \$ _____

n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** \$ _____

TOTAL COST [(c) + (j) + (k) + (n)] \$ _____

NOTES:

- Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3
COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS
(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor <u>Subtotal</u> per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$250,000.00	5000		\$50.00	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$50.00	+	2%	=	\$51.00	Year 2 Avg Hourly Rate
Year 2	\$51.00	+	2%	=	\$52.02	Year 3 Avg Hourly Rate
Year 3	\$52.02	+	2%	=	\$53.06	Year 4 Avg Hourly Rate
Year 4	\$53.06	+	2%	=	\$54.12	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	20.0%	*	5000	=	1000	Estimated Hours Year 1
Year 2	40.0%	*	5000	=	2000	Estimated Hours Year 2
Year 3	15.0%	*	5000	=	750	Estimated Hours Year 3
Year 4	15.0%	*	5000	=	750	Estimated Hours Year 4
Year 5	10.0%	*	5000	=	500	Estimated Hours Year 5
Total	100%		Total	=	5000	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$50.00	*	1000	=	\$50,000.00	Estimated Hours Year 1
Year 2	\$51.00	*	2000	=	\$102,000.00	Estimated Hours Year 2
Year 3	\$52.02	*	750	=	\$39,015.00	Estimated Hours Year 3
Year 4	\$53.06	*	750	=	\$39,795.30	Estimated Hours Year 4
Year 5	\$54.12	*	500	=	\$27,060.80	Estimated Hours Year 5
	Total Direct Labor Cost with Escalation			=	\$257,871.10	
	Direct Labor Subtotal before Escalation			=	\$250,000.00	
	Estimated total of Direct Labor Salary Increase			=	\$7,871.10	Transfer to Page 1

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *: _____

Signature : _____ Date of Certification (mm/dd/yyyy): _____

Email: _____ Phone Number: _____

Address: _____

*An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

REQUEST FOR PROPOSAL/QUALIFICATIONS - EVALUATION

Project Name: *City of Desert Hot Springs – Local Roadway Safety Plan (LRSP)*

Consultant: _____

Reviewer: _____

Date: _____

Conciseness, responsiveness, and completeness of the proposal	30	
Prior experience, qualifications, references, past performance with similar projects	20	
Staff and sub-consultant’s staff qualifications	20	
Familiarity with State and Federal procedures, incl. HSIP guidelines and LRSP requirements	15	
Project schedule	15	
Total	100	

Scoring Breakdown:

Conciseness, responsiveness, and completeness of the proposal - 30 points maximum

- 0-15: Project understanding is off topic or is missing more than 5 key elements.
- 16-25: Project understanding is understandable but missing a few key elements.
- 26-30: Project understanding well justified and most or all key elements are included.

Prior experience, qualifications, references, past performance with similar projects - 20 points maximum

- 0-10: Consultant does not include or has very minimal experience and no references.
- 11-15: Consultant lists previous experience and references, but they are not relevant or similar.
- 16-20: Consultant lists relevant previous experience and good references with similar work.

Staff and sub-consultant’s staff qualifications - 20 points maximum

- 0-10: Resumes are not included, or staff has little to no experience with similar project.
- 11-15: Staff list includes resumes, but experience is not relevant or similar.
- 16-20: Staff has relevant experience and is competent to perform scope requested.

Familiarity with State and Federal Procedures, incl HSIP guidelines and LRSP requirements - 15 points max.

- 0-5: Zero to little previous Federal and State project experience
- 6-10: Federal and State experience but not on similar work.
- 11-15: Relevant Federal and State Experience.

Project Schedule - 15 points maximum

- 0-5: Scope of work/schedule is not or barely organized into tasks and subtasks, does not flow clearly.
- 6-10: Scope of work/schedule is organized into tasks and subtasks, but not in a clear logical order.
- 11-15: Scope of work/schedule is well organized into logical tasks and subtasks to complete a project.

TOTAL:

Reviewer’s Signature _____

Contract Administrator's Initials _____ **Date** _____

REQUEST FOR QUALIFICATIONS EVALUATION NOTES

Project Name: *City of Desert Hot Springs – Local Roadway Safety Plan (LRSP)*

Consultant: _____

Reviewer: _____

Date: _____

Unique Qualities
(Intangibles):

Comments:

**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 _____, 2022, 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 “Consultant.”

RECITALS:

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

WHEREAS, Consultant 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 RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO 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

Consultant 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.

Section 3. TERM

This Agreement shall commence as of the date in the opening paragraph of this Agreement and shall continue in force and effect until terminated, in accordance with

Section 7 of this Agreement, subject to allocation of funds pursuant to a duly approved City budget.

Section 4. COMPENSATION

The City agrees to pay Consultant for and in consideration of the faithful performance of the Services and duties set forth in this Agreement, and Consultant agrees to accept from the City, as and for compensation for the faithful performance of said Services and duties, _____ Dollars and Zero Cents (\$_____.00) per hour, and estimate Consultant shall provide twenty (20) hours a week of Services to the City, subject to Section 2 of this Agreement, in a total amount not to exceed _____ Dollars and Zero Cents (\$_____.00). The amount of this Agreement shall not exceed Fifty Thousand (\$50,000) Dollars.

Section 5. METHOD OF PAYMENT

a. Consultant shall submit invoices to the City, not more often than once a month, describing the work performed. Consultant'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 Consultant 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 Consultant shall submit invoices under this Agreement to:

Charles Maynard
City of Desert Hot Springs
11999 Palm Drive
Desert Hot Springs, CA 92240
Telephone: (760) 329-6411
Facsimile: (760) 288-3129
Email: cmaynard@cityofdhs.org

Section 6. EXTRA WORK

At any time during the term of this Agreement, the City may request that Consultant 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. Consultant shall not perform Extra Work without written authorization from the City.

Section 7. TERMINATION

This Agreement may be terminated by the City 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, Consultant shall be entitled to compensation for services performed up to the effective date of termination, provided that Consultant 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.

Section 8. OWNERSHIP OF DOCUMENTS

All plans, studies, documents and other writings, including drafts, prepared by and for Consultant, 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 Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant 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 Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without prior written consent of the City, be used by Consultant 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. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential.

b. Consultant shall not use the City's insignia or photographs relating to Consultant's Services, or any publicity pertaining to the Consultant'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. CONSULTANT'S BOOKS AND RECORDS

a. Consultant 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 Consultant pursuant to this Agreement.

b. Consultant 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 Consultant'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 Consultant'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 Consultant, Consultant's representatives, or Consultant's successor-in-interest.

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

Consultant 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 Consultant or any of Consultant's employees, except as herein set forth. Nothing contained in this Agreement shall be deemed, construed or represented by the City or Consultant or by any third person to create the relationship of principal and agent and Consultant 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. Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Consultant 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 CONSULTANT**

a. Consultant represents and acknowledges the following:

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

(6) Consultant 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.

b. The City represents and acknowledges the following:

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

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

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

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

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

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

(7) Consultant 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 Consultant from working for other persons or firms, provided that such work does not create a conflict of interest.

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

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

Section 13. CIVIL CODE SECTION 1542 WAIVER

Consultant 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

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. Consultant 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. Consultant (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 Consultant's services hereunder. Consultant 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. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- (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 Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant 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 CONSULTANT;
WARRANTY; FAMILIARITY WITH WORK; PERMITS AND
LICENSES**

a. Consultant 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, Consultant 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 Consultant 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 Consultant's risk until written instructions are received from the City Manager or appropriate City representative.

d. Consultant 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

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

Section 17. INDEMNIFICATION

a. Consultant shall defend, indemnify and hold harmless the City, its officers, 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 the performance of this Agreement, except for any such claim arising out of the sole negligence, recklessness, or willful misconduct of the City, its officers, agents, employees or volunteers.

b. The City does not, and shall not, waive any rights that it may have against Consultant 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, Consultant 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 Consultant'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 Consultant's control, or for which Consultant is without fault.

d. In the event that Consultant or any employee, agent, or subcontractor of Consultant 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, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant 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.

Section 18. INSURANCE REQUIREMENTS

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

(1) Worker's Compensation Coverage. Consultant shall maintain Worker's Compensation Insurance and Employer's 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. In addition, Consultant shall require each subcontractor to similarly maintain Worker's Compensation Insurance and Employer's 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 Consultant pursuant to this Agreement is not protected by the California State Worker's Compensation Law, Consultant shall provide adequate insurance for the protection of such employees to the satisfaction of the City. This provision shall not apply if Consultant has no employees performing work under this Agreement. Consultant 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. Consultant 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. Consultant shall provide insurance on an occurrence, not claims-made basis. Consultant 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. Consultant shall maintain commercial automobile liability insurance covering bodily injury, personal injury and property damage for all activities of the Consultant 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, Consultant shall be permitted to obtain a non-owned automobile endorsement to its comprehensive general liability insurance providing the same protection and coverage as though Consultant 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. Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's Services, whether such Services are performed by Consultant or by its employees, subcontractors, or sub-consultants, to the extent such persons other than Consultant 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 a 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 Consultant, 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. Consultant 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, Consultant 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 Consultant 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. , Consultant 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 Consultant to perform any part of the Services, Consultant agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Consultant enters into contracts or whom Consultant 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. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.

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, Consultant 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 as to the party providing insurance has been eliminated.

g. Failure to Obtain Coverages. Consultant 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 any subcontractors or others involved in any way with the performance of Services, to the extent such is permissible under this Agreement, Consultant 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, Consultant shall provide written notice to the City either by facsimile and/or via certified mail, at Consultant's earliest possible opportunity and in no case later than fifteen (15) calendar days after Consultant 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: Charles Maynard
City of Desert Hot Springs
11999 Palm Drive
Desert Hot Springs, CA 92240
Telephone: (760) 329-6411
Facsimile: (760) 288-3129
Email: cmaynard@cityofdhs.org

To Consultant: _____

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 Consultant 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 Consultant pursuant to this Agreement;
- c. Retain a different consultant to complete the Services that are not finished by Consultant.

Section 22. ENTIRE AGREEMENT

a. This Agreement supersedes any and all other agreements, either oral or written, between the City and Consultant 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 both parties.

Section 24. ASSIGNMENT AND SUBCONTRACTING

a. The experience, knowledge, capability and reputation of Consultant, 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 Consultant under this Agreement will be permitted only with the written consent of the City.

b. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written consent of the City. If the City consents to such subcontract, Consultant 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.

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

Consultant warrants and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, 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

Consultant 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, Consultant 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 Consultant's Principal Representative and the person responsible for undertaking, managing and supervising the performance of all of the Services for this Agreement. Consultant'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 Consultant's Principal Representative shall not be reassigned, without the express written consent of both parties.

b. Charles Maynard, shall be the Principal Representative of the City for purposes of communicating with Consultant 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 Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Consultant 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. Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work performed by Consultant, and the equipment, materials, papers and other components thereof to prevent losses or damages.

b. The performance of services by Consultant shall not relieve Consultant 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 Consultant.

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, Consultant 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 Consultant shall survive any such termination.

Section 45. FINGERPRINTING

Consultant hereby acknowledges that the people working with the City must pass a background check and that s/he is required to be livescanned (fingerprinted) by the City of Desert Hot Springs Police Department, at Consultant's expense, prior to execution of this Agreement. In the event Consultant does not do so prior to execution, Consultant agrees to do so immediately following execution hereof.

Section 46. USE OF RECYCLED PRODUCTS

Consultant 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

[]

Luke Rainey, City Manager

Name, Title

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer Mizrahi, City Attorney

N:\DHSO\0001-01 General\Doc\6051

EXHIBIT "A"

SCOPE OF SERVICES

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SAMPLE