



City of El Centro Parks & Recreation

*City of El Centro
County of Imperial
California*

REQUEST FOR QUALIFICATIONS Aquatics Center Master Plan

Requested By:
City of El Centro
Department of Parks and Recreation
375 S. First Street
El Centro, CA 92243
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May 18, 2009

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AQUATIC CENTER MASTER PLAN

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The City of El Centro is requesting a Statement of Qualifications (SOQ) from qualified professional architects/professional service firms (Consultants) with experience and expertise in the design and construction of aquatic center master plans, including but not limited to: design and construction drawings (plans and specifications), phasing, landscaping, and cost/revenue analysis, for a proposed aquatic center on approximately 135,000± s.f. (3.1 acres) located between Adams and Park Avenues and 5th and 6th Streets within Adams Park in the City of El Centro (please, see **Figure 1**, *Project Location Map*, and **Figure 2**, *Project Aerial Photograph*).

If your firm or entity is interested in contracting with the City of El Centro to perform this work, please supply all information in the format specified in this Request for Qualifications (RFQ). Full copies of the RFQ may be obtained on the City of El Centro web site www.cityofelcentro.org.

Invitation

Bidders are requested to submit three (3) copies of their SOQ before 2:00 p.m. on Tuesday July 21, 2009. to:

Department of Parks and Recreation
Aquatic Center Master Plan RFQ
City of El Centro
1275 W Main Street
El Centro, CA 92243

Contact for Further Questions

Molly Praytor
City of El Centro
Parks and Recreation Department
375 S. First Street
El Centro, CA 92243
(760) 337-4555
mpraytor@ci.el-centro.ca.us

The City will share the results of any substantive conversations or correspondence with all respondents.

Project Description

The City of El Centro is exploring the possibility of providing a new, multi-element, aquatic center for the community. Conceptually this approximately 3.1-acre center might consist of a full-size or junior Olympic pool, a children's wading pool, children's splash pad, continuous river, decking, shade area(s), office/restroom/locker facilities, parking, sidewalks/paths, fencing, and landscaping. A phasing plan will be required, because not all proposed facilities will be constructed at once.



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City staff, elected and appointed officials, and community members will work with the chosen Consultant(s) in selecting final center elements based upon guidance, recommendations, and studies provided by the selected Consultant(s).

Minimum Requirements

The successful Consultant(s) will possess the following minimum requirements:

1. Proven ability and experience similar in nature to the scope of this project in the areas of aquatic facility site design, programming, phasing, and costing.
2. Respondents may consist of a single firm or teams. Required information must be provided for each team member including evidence of ability and expertise in its respective field.
3. The proposed project manager must be a licensed professional (architect and/or engineer), and the Consultant(s) firm or team must include a licensed architect, structural engineer, and geotechnical engineer. The firm or team – at the Consultant(s) discretion – also may include, but is not limited to, a civil engineer, a mechanical engineer, and/or a landscape architect.

Evidence of possession of all necessary, appropriate, and current licenses, credentials, and certificates also shall be provided.

4. Possess appropriate and necessary insurance coverage as specified in the **SOQ Content and Format** section, provided below.
5. Proven capability to complete the project within the confines of the project schedule.
6. Proven expertise with similar projects through the provision of ten (10) examples of work successfully completed or nearing completion within the last ten (10) years per team member/discipline.
7. Provision of five (5) references for the Consultant(s) and each team members for work completed within the last five (5) years or nearing completion.

Proposed Scope of Work

The selected Consultant(s) shall prepare an Adams Park Aquatic Center Master Plan and related services consisting of the following minimum tasks:

A. STAGE ONE SERVICES

- A.1 Conduct an introductory meeting with City staff and a separate meeting with the Community Services Commission to discuss potential master plan elements.
- A.2 Prepare a community survey designed to gauge the most desirable elements to be included in the center.
- A.3 Provide a preliminary development budget, construction cost estimate, and construction schedule for each potential element of the Master Plan. Include considerations for proper phasing, parking, landscaping, and potential revenues that could be generated by City operation of the elements (see **Attachment “A,” Potential Aquatic Center**



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Elements Schedule).

- A.4 Conduct a second meeting with City staff and a second separate meeting with the Community Services Commission to review Consultant(s)' findings and recommendations, based on the first three (3) tasks of this Stage One effort and the Consultant(s)' expertise and experience.
- A.5 Conduct additional meetings and coordination as may be requested by the City (see Stage D., PROJECT COORDINATION AND MEETINGS, below).

B. STAGE TWO SERVICES

- B.1 Based on information provided and gathered during Stage One, prepare a conceptual, color-illustrated site plan (Conceptual Site Plan) and statistical abstract, setting forth recommended aquatic center elements, including element sizes, characteristics, and generalized operating requirements. The Conceptual Site Plan shall be provided in 24" x 36" format and in 11" X 17" electronic form (preferably ".pdf" format).
- B.2. Conduct a meeting with City staff to review Task B. 1. results and prepare modifications as requested by staff.
- B.3. Conduct a subsequent meeting with the Community Services Commission to present the Conceptual Site Plan and related materials, as may have been revised during Task B.2.
- B.4. Prepare an Aquatic Center Master Plan, consisting of a Final Conceptual Site Plan, statistical abstract, descriptive text as appropriate, landscaping, parking, appropriate ingress and egress, recommended fencing locations and materials for the entire site and a Phasing Plan.
- B.5. Conduct presentations of the Master Plan, employing PowerPoint, to the Planning Commission and City Council.
- B.6 Conduct additional meetings and coordination as may be requested by the City (see Stage D., PROJECT COORDINATION AND MEETINGS, below).

C. STAGE THREE SERVICES

- C.1 Revise the Master Plan, if necessary, as requested by the City Council.
- C.2 Prepare design and construction drawings (plans and specifications) for the first phase of the Aquatic Center Master Plan, anticipated at this time to consist at a minimum of an approximate 5,000 to 6,000 s.f. office, restrooms/shower, wet-dry swim classroom, and ticket booth; a 50 x 25 m or 30 x 20 m competition/water polo pool; deck; fencing; and associated equipment (see **Attachment "A,"** *Potential Aquatic Center Elements Schedule*).
- C.3 Prepare a final construction/project time line for the first phase construction and a phasing plan for the remainder of the Master Plan elements.
- C.4 Conduct additional meetings and coordination as may be requested by the City (see Stage D., PROJECT COORDINATION AND MEETINGS, below).



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D. PROJECT COORDINATION AND MEETINGS

- D.1 Prepare and present a bi-weekly progress report to the City of El Centro Parks and Recreation Director. The progress reports shall include a summary of the work accomplished during the preceding two-week period together with an account of any significant problems encountered.
- D.2 Prepare a monthly invoice reflecting total effort expended by task, broken down into staff levels utilized and number of hours spent, and percent of project completion by task.
- D.3 Coordinate closely with the City during preparation of the Master Plan, as this is an essential component of the project. This coordination effort shall include representation as to be determined necessary at coordination meetings with City of El Centro staff at the Park and Recreation Department offices. The purpose of these meetings will be to report on the progress and to discuss and resolve any difficulties and issues.
- D.4 Fees for meetings specifically set forth in the Stages One through Three, along with Tasks D.1 through D.3, shall be invoiced under this category of services.

The Consultant(s) selected as part of this SOQ solicitation, if any, will be encouraged to amplify the scope of services, to identify any supplemental tasks necessary, and to recommend any alternatives that may enhance the project or reduce costs.

Schedule

SOQ Due Date	July 21, 2009, no later than 2 p.m.
Selection Date *	July 27, 2009
Award Date *	August 19, 2009
Notice to Proceed*	August 28, 2009

**Anticipated Dates*

SOQ Content and Format

The selected Consultant(s) will be required to verify and defend that all information submitted regarding expertise, experience, and other qualifications is accurate and current. Furthermore, the Consultant(s) will be required to document the source(s) of all compiled information.

Responses to this request must be typed, well-organized, and concise yet comprehensive. A qualifying response shall be organized as follows:

1. A **Cover Letter** of no more than two (2) pages, which shall include:
 - a. The name, address, and phone number of the person designated as the primary contact of the Consultant(s).
 - b. A listing of the Consultant(s)'s range of services – local, regional, national, or international.
 - c. Any qualifying statements or comments regarding the SOQ materials submitted or information provided in this RFQ.



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- d. The Consultant(s)'s interpretation, stated briefly, of the work to be performed and make a positive commitment to perform the work in a manner and time-frame commensurate with the proposed work products.
 - e. Any recommendations, suggestions, or other pertinent information regarding proposed modifications to the Scope of Work or approach set forth in this RFQ.
2. **Statement of Qualifications**, which shall include:
- a. Identification of the Consultant(s) and any team members, including name of supervising principal for each entity to provide services, address, phone number, e-mail address, and number of employees of each entity.
 - b. Identification of the owner(s) of the firm(s) and legal status (e.g., corporation, partnership, sole proprietorship).
 - c. Provision of a list of the number of W-2 employees by firm, name, and discipline.
 - d. Specification of any anticipated 1099 independent contractor(s) by discipline and role including clear indication as to which organization or firm they belong and provide contact information.
 - e. Identification of the qualifications and resumes of the directors or supervisors who will perform the services and include copies of professional registrations, certifications, licenses, and affiliations.
 - f. with an insurance binder listing those covered (see Section 1, Statement of Qualifications, below)
3. **Insurance Data**, which shall include provision of a single, 8½" x 11" statement of coverage for the following types of insurance with the amount of coverage for each category:
- a. Errors and Omissions (\$1,000,000 minimum)
 - b. General Liability (\$1,000,000 minimum)
 - c. Workman's Compensation (as required by the state of California)
 - d. Auto
- Each Consultant or 1099 independent contractor shall be required to provide such statement at the same levels of insurance, but evidence of coverage will not be required as part of the response to this RFQ.
4. **Statement of Experience**, including:
- a. Ten (10) examples of work successfully completed within the last ten (10) years that are similar in nature and scope to the proposed project. Such examples must include photographs with a written description describing the nature of the work performed; the member(s) of the Consultant(s)' team responsible for its completion; the original cost and budget; and a list with reasons for any change orders.
 - b. Five (5) relevant references per team member/discipline. References must have retained the Consultant(s) and other team members within the last five (5) years and relevant projects must be completed or nearing completion.
 - c. References for each listed project must include contact name, current phone number, and the type, nature, and location of the project.
 - d. Statement of Experience shall be provided for each team member, as applicable.



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- e. Statement of Litigation History, listing the nature of the action and status, for the last five (5) years.

Brochures or other marketing collaterals may be included at the end of the response to this RFQ, but are not requested. Such materials, as well as CD-ROM, Flash Drives, or any unusually shaped materials that do not conform easily to an 8½" x 11" format, shall be placed inside a sealed envelope with a clear description of the contents on the outside of the envelope.

Selection Process

Proposals will be evaluated according to the following:

- a. Understanding of the work to be preformed.
- b. Strength of key personnel.
- c. Experience and technical competence of Consultant(s).
- d. Demonstrated expertise related directly to the services to be performed.

Form of Contract

Attached for the Consultant(s) review is a form Agreement for Consultant Services with the City of El Centro. The selected Consultant(s) shall be required to execute an Agreement similar in form and content to the form provided.

Disclaimer

Clarification desired by a Consultant(s) relating to a definition or interpretation may be requested in writing when provided in sufficient time to allow for a response prior to the date the RFQ is due. Responses to inquiries relevant to other recipients of the RFQ will be forward to all parties at the same time. The City will not respond to oral requests for substantive information regarding the scope and nature of this RFQ, and any oral explanation or instruction inadvertently made by the City shall not be considered binding on the City.

Any modification to this solicitation will be issued by the City as a written addendum.

The City will not consider Statements of Qualification or any amendments thereto received after the deadline for submittal, unless the City officially extends the deadline for reasons unrelated to a party's ability to meet the original schedule.

SOQs failing to provide sufficient information and assurances of performance to accurately assess each category of required services and failing to comply with requirements and conditions of this RFQ will not be given further consideration.

This RFQ does not commit the City to award a contract or pay any costs associated with the preparation of a Statement of Qualifications. The City reserves the right to cancel, in part or in its entirety, this solicitation should this be in the best interest of the City.



Figure 1
Project Location Map

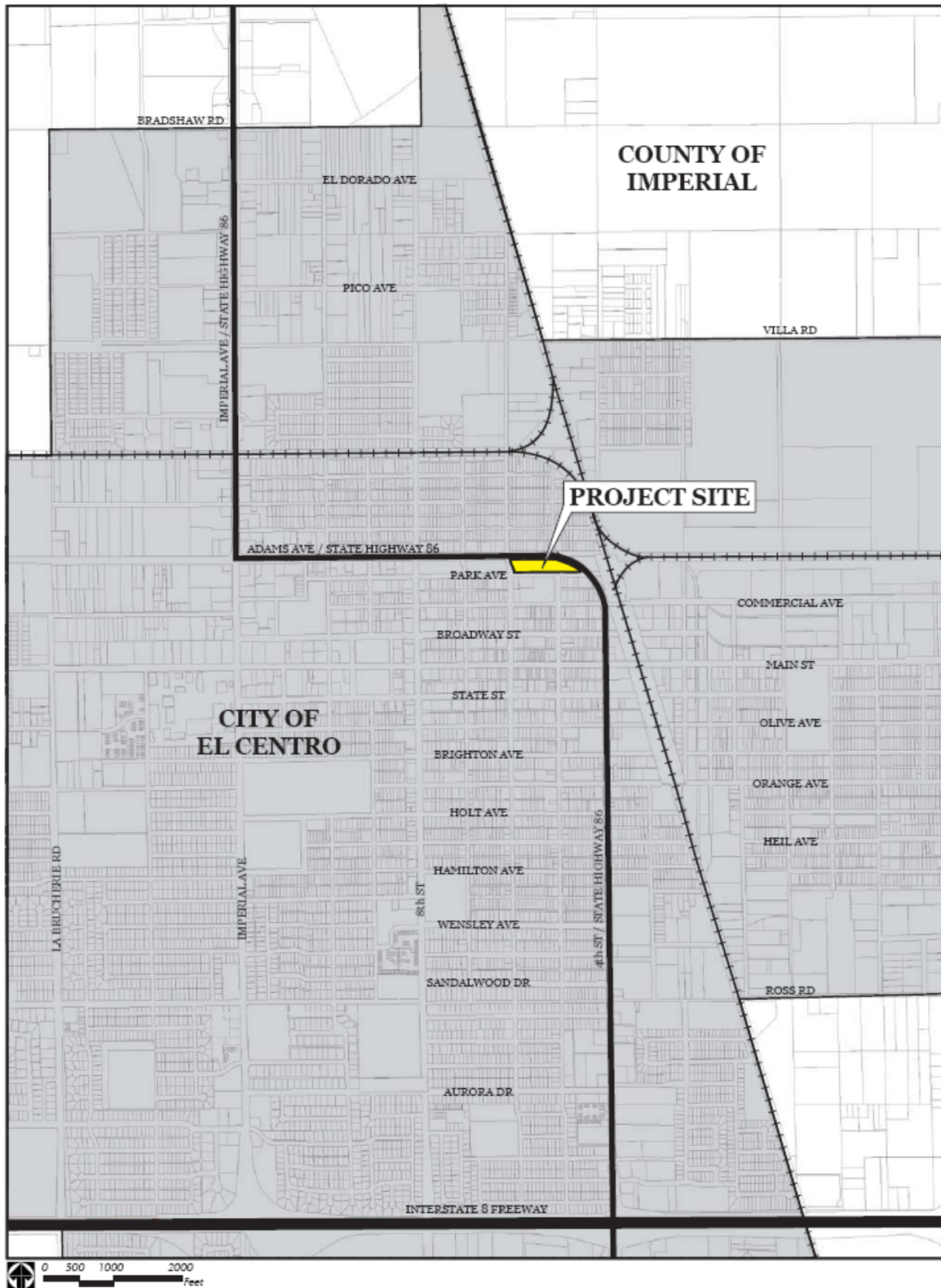


Figure 2
Project Aerial Photograph



POTENTIAL AQUATIC CENTER ELEMENTS SCHEDULE

Although the final elements to be included in any Master Plan and/or final design will be determined as a part of services to be performed by the selected Consultant(s), the following requirements and elements are provided so as to ensure that the responding Consultant(s) fully understands the full extent and nature of the proposed Scope of Work.

Requirements:

1. Plans and designs shall be completed on AutoCAD 2006 or higher with final submittal on Mylar sheets and drawing files on disks. Written documentation, reports, studies, and analyses shall be prepared using Microsoft Word, Version 7 for Windows or higher.
2. All products shall be submitted through the period of performance according to the agreed schedule. The City of El Centro will review the products to ensure that they meet the terms of contract and the scope of work. If the product is not acceptable, the Consultant(s) will be advised not to proceed with the next phase of the contract until the product is determined "acceptable," by the City and any required revisions have been performed at no additional cost to the City of El Centro.
3. It shall be the Consultant(s)'s responsibility to conduct all necessary research including, but not limited to, existing records and documents, in order to ensure the accuracy of its work products.

Options:

At its option, the selected Consultant(s) may format the Final Master Plan using Adobe InDesign instead of Microsoft Word. The format, type of binding, and number of copies will be determined prior to the execution of a contract with the selected Contractor(s).

Potential Aquatic Center Elements

The City of El Centro has identified funding for the design and construction of the following minimum elements, which it anticipates would be developed as the first phase of any Aquatic Center resulting from this process:

1. An approximate 5,000 to 6,000 s.f. building that would include offices, restrooms/shower, a wet-dry swim classroom, and a ticket booth.
2. An approximate 50m x 25m Olympic pool or approximate 30m x 20m competition/water polo pool.
3. Associated equipment, decking, fencing, gate(s), parking, and landscaping.

Additional elements that the City has considered preliminarily include:

1. A children's wading pool.
2. A water slide with splash zone pool.
3. An approximate 6,000-foot lazy river with Flo-Rider.
4. Sunning decks and shade areas.
5. Additional, stand-alone restrooms and drinking fountains.
6. Approximately 300 total parking spaces to service the entire Aquatic Center.



**AGREEMENT
FOR
CONSULTING SERVICES FOR**

_____ *[project]*

THE CITY OF EL CENTRO

AND

_____ *[firm]*



**AGREEMENT BETWEEN THE CITY OF EL CENTRO
AND _____, FOR CONSULTING SERVICES**

THIS Agreement is made and entered into by the City of El Centro **[City]** and _____ **[Consultant]** for the Consultant to provide Consulting Services to the City for the _____ **[Project]**.

RECITALS

The City wants to retain the services of a professional firm to provide the Consulting Services on a fixed lump sum fee basis.

The Consultant has the expertise, experience and personnel necessary to provide the Consulting Services for the Project.

The City and the Consultant **[Parties]** want to enter into an Agreement **[Agreement]** whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Consulting Services for the Project for a fixed lump-sum fee in the amount of _____ (\$_____), as per proposal submitted.

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

**ARTICLE I
CONSULTING SERVICES**

The above-listed recitals are true and correct and are hereby incorporated by reference.

1.1 Scope of Services.

The scope of services will include the engineering planning services and preparation of plans and specifications for _____ *[project description]*. This project is more fully described in the proposal submitted on _____, 200__, **[Exhibit "A"]**. The Consultant shall perform the Consulting Services as described in each Task at the direction of the City for a maximum hourly fee as enumerated in the Fee Schedule **[Exhibit "B"]**.

1.2 Task Administrator.

The _____ *[department head]* is the task administrator for this Agreement. The Consultant shall provide the Consulting Services under the direction of a designated representative of the _____ *[department head]*. The City's designated



representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Consulting Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise.

1.3 City Modification of Scope of Services.

The City may, without invalidating this Agreement, order changes in any Task by altering, adding to or deducting from the Consulting Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Consulting Services, the Consultant shall so notify the City. If appropriate, an equitable adjustment to the Consultant's compensation may be made, provided that any adjustment must be approved by both Parties in writing.

1.4 Written Authorization.

Prior to performing any Consulting Services in connection with the Project, the Consultant shall obtain from the City a written authorization to proceed. The Consultant shall advise the City in writing immediately of any anticipated change in any Task, Fee Schedule, or Time Schedule, and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Consultant from its duty to render all Consulting Services in accordance with applicable laws and accepted industry standards.

1.5 Confidentiality of Services.

All Consulting Services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission by the Consultant, or (c) otherwise becomes known to the Consultant other than through disclosure by the City. Except for Subconsultants covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

1.6 Competitive Bidding.

The Consultant shall ensure that all plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written



justification that has been approved in writing by the City. The Consultant shall submit this written justification to the City prior to beginning work on such plans or specifications. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

ARTICLE II DURATION OF AGREEMENT

2.1 Term of Agreement.

This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and it shall be effective _____, 200_ to _____, 200_, or until completion of the last task order hereunder that was issued prior to _____, 200_.

2.2 Time of Essence.

Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

2.3 Notification of Delay.

The Consultant shall immediately notify the City in writing of any delay in completion of the Consulting Services. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If the delay affects a material part of the Project, the City may exercise its rights under Sections 2.5-2.8 of this Agreement.

2.4 Delay.

If delays in the performance of the Consulting Services are caused by unforeseen events beyond the control of both Parties, such delay may entitle the Consultant to a reasonable extension of time, but such delay shall not entitle the Consultant to damages or additional compensation. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Consultant's work; inability to obtain materials, equipment or labor; required additional Consulting Services; or other specific reasons agreed to between the City and the Consultant; provided, however, that (a) this provision shall not apply and the Consultant shall not be entitled to an extension of time for a delay caused by the acts or omissions of the Consultant; and, (b) that a delay caused by the inability to obtain materials shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof, to the City's satisfaction, of the inability to obtain materials.

2.5 City's Right to Suspend for Convenience.

The City may, at its sole option and for its convenience, suspend all or any portion of the Consultant's performance of the Consulting Services, for a reasonable period of time not to



exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Consultant of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Consultant a sum equivalent to the reasonable value of the Consulting Services the Consultant has performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Consulting Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 City's Right to Terminate for Convenience.

The City may, at its sole option and for its convenience, terminate all or any portion of the Consulting Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Consulting Services shall be effective upon receipt of the notice by the Consultant. After termination of this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Consulting Services under this Agreement. For services rendered in completing the work, the Consultant shall be entitled to fair and reasonable compensation for the Consulting Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to both the Project and to the Consultant's Consulting Services on all Task(s). By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

2.7 City's Right to Terminate for Default.

If the Consultant fails to perform or adequately perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.

If the Consultant files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon the Consultant, immediately cancel and/ or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any



rights by or through the Consultant. The rights and remedies of the City enumerated in Section 2.8 are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

ARTICLE III COMPENSATION

3.1 General.

The City shall pay the Consultant for all the Consulting Services and all expenses related to performance under this Agreement, in an amount as set forth in the Fee Schedule. The Consultant shall be entitled to compensation for the Consulting Services under this Agreement, whether within the scope of work for any Task, or as Additional Services, based on the Fee Schedule. For the duration of this Agreement, the Consultant shall not be entitled to fees which exceed the Fee Schedule. Prior to beginning performance on each Task, Consultant shall provide a proposal to the City including a not to exceed cost estimate for each Task, a schedule of work, and a scope of work. The scope of work shall include all activities or work reasonably anticipated as necessary for successful completion of each Task presented by the City.

3.2 Manner of Payment.

The Consultant shall bill all fees and expenses incurred in accordance with this Agreement directly to the City on a monthly basis.

3.2.1 Payments. The Consultant shall submit one invoice per calendar month for work performed in accordance with the Fee Schedule. The Consultant shall include with each invoice a description of completed work. Undisputed portions of invoices to the City must be in accordance with the Fee Schedule and will be payable if approved, within thirty calendar days of receipt.

3.3 Additional Services.

If the City requires additional Consulting Services [Additional Services] beyond the Task, except for Additional Costs as described in Section 3.4 of this Agreement, the Consultant will be paid an additional fee. Additional Services shall be in accordance with the rates provided in the Fee Schedule. The City and the Consultant must agree in writing upon such fee prior to the Consultant beginning the Additional Services.

3.4 Additional Costs.

Additional Costs are those costs that can be reasonably determined to be related to the Consultant's errors or omissions, and may include Consultant, City, or Sub consultant overhead, construction, materials, demolition, and related costs. The Consultant shall not be paid for the Consulting Services required due to the Consultant's errors or omissions, and the Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Consultant. Whether or not there are any monies due, or becoming due, the Consultant shall reimburse the City for Additional Costs due to the Consultant's errors or omissions.



3.5 Eighty Percent Notification.

The Consultant shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services appears that it may be greater or less than the maximum compensation for this Agreement.

ARTICLE IV CONSULTANT'S OBLIGATIONS

4.1 Industry Standards.

In addition to the Consultant's covenants described in Article VI hereof, the Consultant agrees that the Consulting Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional design engineering firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the City Manager, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to Consultant's and all Subconsultant's premises to review and audit the Consultant's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all records with appropriate safeguards, if such retention is deemed necessary by City in its sole discretion. This information shall be kept by the City in strictest confidence allowed by law.

4.2.2 Audit. The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Consultant is in compliance with all requirements under this Agreement.

4.2.2.1 Cost Audit. If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 Accounting Records. The Consultant shall maintain complete and accurate records in accordance with generally accepted accounting



practices in the industry. The Consultant shall make available to the City for review and audit; all Project related accounting records and documents, and any other financial data. Upon the City's request, the Consultant shall submit exact duplicates of originals of all requested records to the City.

4.2.3 City's Right--Binding on Subconsultants. The Consultant shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subconsultants.

4.3 Insurance.

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in **Exhibit "C"** attached to and part of this agreement.

4.4 Subconsultants.

The Consultant's hiring of or retaining any third parties [Subconsultants] to perform services related to the Project [Subconsultant Services] is subject to prior approval by the City. The Consultant shall list on the Subconsultants List all Subconsultants known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional Subconsultant Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subconsultant Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subconsultant Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

4.4.1 Subconsultant Contract. All contracts entered into between the Consultant and a Subconsultant shall contain the information as described in Sections 4.6, 4.7 and , 4.10.2 as well as any other information, terms, and conditions required elsewhere in this Agreement to be included in said agreements), and shall also provide as follows:

4.4.1.1 For each design professional Subconsultant, each Subconsultant shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subconsultant shall obtain, and the Consultant shall require the Subconsultant to obtain, all policies described in **Exhibit "C"**.

4.4.1.2 The Consultant is obligated to pay the Subconsultant, for Consultant- and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant and any Subconsultant to negotiate fair and reasonable pricing and payment provisions among themselves.

4.4.1.3 In the case of a deficiency in the performance of Subconsultant Services, the Consultant shall notify the City in writing of any withholding of payment to the Subconsultant, specifying: (a) the amount withheld; (b) the specific cause under the terms of the



subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subconsultant must take in order to receive the amount withheld. Once the Subconsultant corrects the deficiency, the Consultant shall pay the Subconsultant the amount withheld within fourteen working days of the Consultant's receipt of the City's next payment.

4.4.1.4 In any dispute between the Consultant and Subconsultant, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Consultant and Subconsultant should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.4.1.5 The Subconsultant is bound to the same requirements as the primary consultant for assurances to the City regarding non-discrimination covenants set forth in Article IV, Section 4.6.

4.4.1.6 Each Subconsultant shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subconsultant shall obtain, and the Consultant shall require the Subconsultant to obtain, all policies described in **Exhibit "C"**.

4.5 Contract Activity Report.

The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subconsultant listed in the report. The Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subconsultant Services as described in Section 4.4.1.

4.6 Non-Discrimination Requirements.

The Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subconsultants, vendors or suppliers. The Consultant shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Consultant and any Subconsultants, vendors and suppliers.

4.7 Drug-Free Workplace.

The Consultant agrees to ensure a drug free work place. The Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form.



4.7.1 Consultant's Notice to Employees. The Consultant shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2 Drug-Free Awareness Program. The Consultant shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1 The dangers of drug abuse in the work place.

4.7.2.2 The policy of maintaining a drug-free work place.

4.7.2.3 Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4 The penalties that may be imposed upon employees for drug abuse violations.

4.7.3 Posting the Statement. In addition to Section 4.7.1 above, the Consultant shall post the drug-free policy in a prominent place.

4.7.4 SubConsultant's Agreements. The Consultant further certifies that each contract for Subconsultant Services for this Project shall contain language that binds the Subconsultant to comply with the provisions of Article IV, Section 4.7 of this Agreement. Consultants and Subconsultants shall be individually responsible for their own drug-free work place program.

4.8 Americans with Disabilities Act Statement.

The Consultant shall certify that any construction documents and specifications meet all current title 24 of the California Code of Regulations, known as the California Building Standards Code [Title 24], requirements and the Americans with Disabilities Act Accessibility Guidelines [ADAAG], and are in compliance with the Americans with Disabilities Act of 1990. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed.

4.9 Product Endorsement.

The Consultant acknowledges and agrees that any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

4.10 Conflict of Interest.

The Consultant is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq. Consultant shall complete one or more statements of economic interest disclosing relevant financial interests as described on [Exhibit "D" – Consultant's Statement of Financial Interest] hereto which may be



amended from time to time by City. Upon the City's request, the Consultant shall submit the necessary supplementary documentation to the City.

4.10.1 The Consultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

4.10.2 The Consultant and its Subconsultants having subcontracts amounting to one percent (1%) or more of the value of the Consulting Services agreed to under this Agreement are precluded from participating in design services, on behalf of the contractor, construction management, and any other construction services related in any way to the Consulting Services without the prior written consent of the City.

4.10.3 The Consultant's personnel employed on any Task shall not accept gratuities or any other favors from any Subconsultants or potential Subconsultants. In connection with any Task, the Consultant shall not recommend or specify any product, supplier, or contractor with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.10.4 If the Consultant violates any conflict of interest laws or any of these provisions in Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorney fees and all damages sustained as a result of the violation.

4.11 Mandatory Assistance.

If a third party dispute or litigation, or both, arises out of, or relates in any way to the Consulting Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.12 Compensation for Mandatory Assistance.

The City will compensate the Consultant for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Consultant, its agents, officers, or employees, the Consultant shall pay back the City. The City is then entitled to repayment of all fees paid to the Consultant, its agents, officers, and employees for Mandatory Assistance.

4.13 Attorney Fees related to Mandatory Assistance.

In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any



attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VII, Section 7.8 of this Agreement.

4.14 Energy Conservation Specifications.

Technological advances in energy conservation devices such as lighting and Heating Ventilation and Air Conditions [HVAC] enable additional energy savings over that required by the State of California's Energy Efficiency Standards (title 24, Part 6 of the California Code of Regulations). The Consultant shall model the energy performance of the Project, if applicable, using an acceptable computer model such as Energy Pro, EQuest, DOE-2, Power DOE, HAP 3.22, etc. and present the summary data to the City at or prior to 100 percent design. This analysis should include life cycle cost analysis showing recovery of construction costs through operation and maintenance costs (e.g., electricity and gas savings.) The Consultant shall prepare a cost savings matrix that lists each device being considered and one, three, five and ten-year project savings. The comparison shall include, but not limited to the following equipment: Lighting, HVAC, Water Heating, and Motors.

4.15 Notification of Increased Construction Cost.

If, as applicable to the task at any time prior to the City's approval of the final plans and specifications, the Consultant anticipates that the total construction cost will exceed the estimated construction budget, the Consultant shall immediately notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Consultant believes will bring the construction cost to within the estimated construction budget. The City may either: (1) approve an increase in the amount authorized for construction; or (2) delineate a project which may be constructed for the budget amount; or (3) any combination of (1) and (2).

ARTICLE V CITY'S OBLIGATIONS

5.1 Ownership of Documents.

Once the Consultant has received any compensation for the Consulting Services performed, all documents, including but not limited to, original plans, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to any Task or Consulting Services, shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed. The City's ownership entitlement arises upon payment or any partial payment for work performed and includes ownership of any and all work product completed. This Section shall apply whether the Consultant's Consulting Services are terminated: (a) by the completion of the Project, or (b) in accordance with other provisions of this Agreement. Notwithstanding any other provision of this paragraph or Agreement, the Consultant shall have the right to make copies of all such plans, studies, sketches, drawings, computer printouts and disk files, and specifications.



The Consultant shall not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where the subsequent changes or uses are not authorized or approved by the Consultant, provided that the service rendered by the Consultant was not a proximate cause of the damage.

5.2 Additional Consultants or Contractors.

The City reserves the right to employ, at its own expense, such additional consultants or contractors as the City deems necessary to perform work or to provide the Consulting Services on the Project.

5.3 Employment of City Staff.

This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or City Manager in connection with the selection of the Consultant.

5.4 Project Site Safety.

Unless otherwise provided by the Scope of Services in this Agreement, the Consultant, Subconsultant and employees are not responsible for general Project site conditions during the course of construction of the Project. The City acknowledges that the construction contractor has primary responsibility for Project site conditions, including safety of all persons and property. This provision shall not be interpreted to in any way relieve the Consultant, Subconsultants or their employees of their obligation under Section 4.1 of this Agreement to comply with all applicable laws, codes and good consulting practices with regard to the maintenance of a safe Project site.

ARTICLE VI INDEMNIFICATION

6.1 Indemnification for Professional Liability.

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the

design at a location other than that specified in Exhibit "A" without the written consent of the Consultant.

6.2 Indemnification for Other Than Professional Liability.

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant.

6.3 General Indemnification Provisions.

Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

6.4 Indemnity Provisions for Contracts Related to Construction.

Without affecting the rights of City under any provision of this agreement, Consultant shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of City.

ARTICLE VII MISCELLANEOUS

7.1 Notices.

In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be



addressed to: _____[name/dept] 1275 Main Street, El Centro, CA 92243 and notice to the Consultant shall be addressed to: _____[company name].

7.2 Headings.

All article headings are for convenience only and shall not affect the interpretation of this Agreement.

7.3 Non-Assignment.

The Consultant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

7.4 Independent Contractors.

The Consultant and any Subconsultants employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Consulting Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

7.5 Consultant and Subconsultant Principals for Consulting Services.

It is understood that this Agreement is for unique Consulting Services. Retention of the Consultant's Consulting Services is based on the particular professional expertise of the individuals rendering the services set forth in each Task. Accordingly, portions of the described service may not be delegated to other members of the team or Subconsultants without prior written consent by the City. It is mutually agreed that Patrick Wong is the principal person responsible for delivery of all Consulting Services and may not be removed from any tasks without the City's prior written approval. In the event Patrick Wong becomes unavailable for any reason, the City must be consulted as to any replacement. Further, the City reserves the right, after consultation with the Consultant, to require removal of the Consultant's employees or agents.

7.6 Covenants and Conditions.

All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Consultant, shall be deemed to be both covenants and conditions.

7.7 Compliance with Controlling Law.

The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor



Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

7.8 Jurisdiction, Venue, and Attorney Fees.

The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of Imperial, State of California.

7.9 Successors in Interest.

This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

7.10 Integration.

This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

7.11 Counterparts.

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

7.12 No Waiver.

No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

7.13 Severability.

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.



7.14 Municipal Powers.

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a general law city of the State of California.

7.15 Drafting Ambiguities.

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision that is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

7.16 Signing Authority.

The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

7.17 Conflicts Between Terms.

If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the City Council of the City of El Centro, acting by and through City Manager, pursuant to Resolution No. _____, authorizing such execution, and by the Consultant.

Dated this _____ day of _____, 200_.

THE CITY OF EL CENTRO

By: _____
City Manager

Date: _____



I HEREBY CERTIFY I can legally bind _____[*company name*], and that I have read all of this Agreement, this ____ day of _____, 200__.

By: _____
Authorized Representative

Title:

Print Name: _____

Date: _____

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 200__.

APPROVED AS TO FORM:
Office of the City Attorney

By _____

Date _____



EXHIBIT “A”
SCOPE OF WORK

[To be provided by Consultant]



EXHIBIT “B”

FEE SCHEDULE

[To be provided by Consultant]



EXHIBIT "C"**INSURANCE REQUIREMENTS**

Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

I
TYPES OF INSURANCE

Consultant shall provide the following types and amount of insurance:

A. Commercial General Liability.

Commercial General Liability insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

B. Business Auto Coverage.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbols 7 and 8. (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

C. Workers' Compensation.

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

D. Excess or Umbrella Liability Insurance.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella.



Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000.00 per occurrence.

E. Professional Liability or Errors and Omissions Insurance.

Professional Liability or Errors and Omissions insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

II

INSURER QUALIFICATIONS

Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

III

GENERAL CONDITIONS

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City of El Centro, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or equivalent provisions as determined by the Office of the City Attorney for the City of El Centro in its sole discretion. Consultant also agrees to require all contractors, subcontractors and anyone else involved in any way with the project contemplated by this agreement, to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all subconsultants to do likewise.



3. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsements of any kind that has not been first submitted to City and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any subconsultants.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interest under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.
8. Endorsements and certificate(s) are to reflect that the insurer will provide 10 days notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such endorsements or certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required to comply with the requirements of the certificate).
9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that



- such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
 12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.
 13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any Party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
 14. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
 15. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
 16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and an additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
 17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to



- use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only at it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
 19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
 20. The requirements in this Exhibit supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit.
 21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
 22. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.



EXHIBIT "D"CONSULTANT'S FINANCIAL DISCLOSURE STATEMENT¹

Consultant will comply with all conflict of interest laws and regulations including, without limitations, City's Conflict of Interest Code (on file in the City Clerk's Office) as required by Section 4.9 of this Agreement. It is incumbent upon the Consultant to notify the City pursuant to Sections 7.1 and 7.5 of any staff changes relating to this Agreement. The City Manager has made the following determination and Consultant, by his/her signature, acknowledges said determination.²

- A. In accomplishing the scope of services of this Agreement, all officers, employees and/or agents of Consultant will be performing a very limited and closely supervised function, and, therefore, unlikely to have a conflict of interest arise. No disclosures are required of any officers, employees, and/or agents of Consultant. Consultant duties are as follows:

City Manager

Consultant Signature & Title

- B. In accomplishing the scope of services of this Agreement, Consultant will be performing a specialized or general service for the City, and there is substantial likelihood that the Consultant may make or participate in making a governmental decision which may have a foreseeable material effect on a financial interest. As a result, the Consultant shall be subject to the Disclosure Category "Consultant" of the City's Conflict of Interest Code.

City Manager

Consultant Signature & Title

¹ Title 2, Division 6. California Code of Regulations Section 18701(a)(2). Pursuant to a contract with a local government agency, a consultant shall be required to file a Statement of Economic Interest if that consultant will: "(A) Make a government decision whether to: (1) Approve a rate, rule or regulation; (2) Adopt or enforce a law; (3) Issue, deny, suspend or revoke any permit, license, application, certificate, approval, order or similar authorization or entitlement; (4) Authorize the agency to enter into, modify or renew a contract provided it is the type of contract which requires agency approval; (5) Grant agency approval to a contract which requires agency approval and which the agency is the party or to the specifications for such contract; (6) Grant agency approval to a plan, design, report, study or similar item; or (7) Adopt, or grant approval of policies, standards or guidelines for the agency or for any subdivision thereof; or (B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code, under Governmental Code Section 87302."

² Disclosure by Consultants: Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the City's adopted Conflict of Interest Code, subject to the following limitations: The City Manager may determine in writing that a particular consultant, although a "designated position", is hired to perform a range of duties that is limited in scope and closely supervised, and, thus, is not required to comply with the disclosure requirements in the City's adopted Conflict of Interest Code. Such written determination shall include a description of the consultant's duties. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as the City's adopted Conflict of Interest Code.

