

**CITY OF PALM SPRINGS
NOTICE INVITING PROPOSALS
For
MATERIALS TESTING & INSPECTION SERVICES
(RFP 17-09)**

**PALM SPRINGS STORM DRAIN LINE 22, STAGE 2
CITY PROJECT NO. 07-15**

NOTICE IS HEREBY GIVEN that Request for Proposals (RFP) 17-09, for providing Materials Testing & Inspection Services during construction of the Palm Springs Storm Drain Line 22, Stage 2, City Project No. 07-15, will be received at the office of the Procurement Manager, 3200 East Tahquitz Canyon Way, Palm Springs, California, until **2:00 P.M. Local Time, FRIDAY, MARCH 27, 2009.**

DESCRIPTION OF WORK: The purpose of this solicitation is to obtain materials testing/inspection services related to Class II aggregate base, asphalt concrete pavement, Portland cement concrete pavement, storm drain pipe bedding, storm drain trench backfill, storm drain reinforced concrete outlet structure, reinforced concrete retaining walls, and 48" CML/CMC welded steel effluent pipe during construction of City Project No. 07-15 (currently out for bid) which consists of the construction of a master-planned storm drain system extending through the Palm Springs Wastewater Treatment Plant, with a new outlet into the Tahquitz Creek Golf Course. Upon completion, the master-planned storm drain system will be owned and maintained by the Riverside County Flood Control & Water Conservation District ("RCFC"). The services as required in this RFP will be paid from local funds and therefore prevailing wage rates of the State of California do not apply.

OBTAINING RFP DOCUMENTS AND REGISTRATION AS A PROPOSER:

The RFP documents may be downloaded via the internet at www.palmsprings-ca.gov (go to Government, Departments, Procurement, Open Bids & Proposals). If you are interested in submitting a proposal, it is IMPERATIVE that you contact Cheryl Martin, Procurement Administrative Coordinator, via email at Cheryl.Martin@palmsprings-ca.gov or by phone at (760) 322-8373 to **officially register as a Proposer for this specific project** with your company name, address, phone, fax, contact person and email address. Failure to officially register may result in not receiving addenda to the RFP. Failure to acknowledge addenda to the RFP may render your proposal as non-responsive.

EVALUATION OF PROPOSALS AND AWARD OF CONTRACT: This solicitation has been developed in the Request for Proposal (RFP) format. Accordingly, Proposers should take note that multiple factors will be considered by the City in selecting the most qualified firm and awarding of the Contract.

PROPOSALS TO REMAIN OPEN: The Proposer shall guarantee that all contents of their proposal shall be valid for a period of 90 calendar days from the due date of proposals. The receiving time in the Procurement Office will be the governing time for acceptability of Proposals. Telegraphic and telephonic proposals will not be accepted. Late proposals will be returned unopened.

Craig L. Gladders, C.P.M.
Procurement and Contracting Manager

March 6, 2009



CITY OF PALM SPRINGS, CA

REQUEST FOR PROPOSALS #17-09

MATERIALS TESTING / INSPECTION SERVICES PALM SPRINGS STORM DRAIN LINE 22, STAGE 2 CITY PROJECT NO. 07-15

I. BACKGROUND INFORMATION AND GENERAL DESCRIPTION

The City of Palm Springs, California is requesting proposals from qualified firms or individuals to provide materials testing and inspection services required during construction of the Palm Springs Storm Drain Line 22, Stage 2, City Project No. 07-15. This project is currently advertised for construction bids with a bid opening date of March 24, 2009.

The City will be administering and providing construction inspection of this project with its own staff; this solicitation is limited to providing materials testing/inspection services related to Class II aggregate base, asphalt concrete pavement, Portland cement concrete pavement, storm drain pipe bedding, storm drain trench backfill, storm drain reinforced concrete outlet structure, reinforced concrete retaining walls, and 48" CML/CMC welded steel effluent pipe.

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

City Project No. 07-15 for which materials testing and inspection services are required consists of the construction of a master-planned storm drain system extending through the Palm Springs Wastewater Treatment Plant, with a new outlet into the Tahquitz Creek Golf Course. Upon completion, the master-planned storm drain system will be owned and maintained by the Riverside County Flood Control & Water Conservation District ("RCFC").

The selected firm will provide all materials testing and inspection services as required by the plans and specifications prepared for City Project 07-15 by DMC Design Group and dated September 17, 2008, for the following items:

- Storm Drain Outlet Structure complete with Wing Walls, Cut-Off Wall, Trapezoidal Outlet Protection Barrier, and Grouted Rip-Rap Protection (per Details Sheet 11);
- Reinforced concrete storm drain transition structure (1);
- Reinforced concrete storm drain manholes (7);
- 66", 72", 78" and 84" RCP (2000D);
- Storm drain pipe bedding and trench backfill (2,145 LF);
- 48" CML/CMC welded steel effluent pipe;
- Reinforced concrete retaining wall (APWA Std. 610-2, Type 1);
- Portland cement concrete pavement;
- Asphalt concrete pavement;
- Class II aggregate base;

Materials testing/inspection services will include but not be limited to soils compaction and density tests, structural concrete, reinforcing steel, structural steel, metal fabrications, and welding. All storm drain pipe bedding and storm drain trench backfill compaction shall comply with the special provisions prepared for City Project 07-15.

The Contractor will have its inspector(s) report to the City's Representative each day materials testing and inspection services are required. The inspector(s) will submit a daily report indicating the time of arrival and time of departure, the type and quantities of the materials

testing performed and any necessary test results and observations. Any defective work shall be immediately reported to the Owner's Representative in writing.

It is the intention of the City to hire a firm that has personnel that can perform multiple tasks while on site and thereby eliminate minimum charges.

III. PLANS AND SPECIFICATIONS:

Although not required in order to submit a proposal, if you wish to obtain a complete set of plans and specifications, they are available at the City of Palm Springs Public Works and Engineering Department, 3200 E. Tahquitz Canyon Way, Palm Springs, California 92262, phone (760) 323-8253, ext. 8738 for a non-refundable fee of \$100.00 for each set, made payable to City of Palm Springs. Additionally, a complete set of plans and specifications is also available for inspection at the City of Palm Springs, Public Works and Engineering Department.

IV. SCHEDULE

Notice for Request for Proposals posted and issued March 6, 2009
Deadline for receipt of Questions **2:00 P.M., Friday, March 20, 2009**
Deadline for receipt of Proposals **2:00 P.M., Friday, March 27, 2009**
Short List / Interviews (**if desired by City*) TBD
Contract awarded..... TBD

V. MINIMUM QUALIFICATIONS AND REFERENCE CONTACT INFORMATION

The selected firm must have the requisite training and experience to provide the required materials testing and inspection services.

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

VI. PROPOSAL REQUIREMENTS

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

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

The following criteria shall be observed:

- ☐ The submittal should not exceed 10 pages (sheets of paper), double sided (8½" by 11"), including an organization chart, staff resumes and appendices, and cover letter. Dividers, Attachment "A" and Addenda acknowledgments do NOT count toward the 10 page limit.

- ❑ **One (1) unbound original plus Five (5) bound copies for a total of Six (6) proposals are required.** Facsimile (fax), email or other electronically transmitted proposals will not be accepted.

- ❑ Responses to this Request for Proposal shall be organized into six categories as follows:

1. Information on the Firm. In this section the respondent shall provide a brief introduction, address the size of the firm, the number of years in business, the availability of the firm to perform the tasks and services requested, and the history of the firm. A brief statement of the respondent's understanding of the work shall be included, along with key contact information (address, phone, fax, and email).

2. Key Personnel. Provide a brief resume for each of the key persons proposed to work on this project. Credentials of corporate executives or firm principals are not necessary or desired unless these individuals will play an active role in the proposed project. Any key sub-consultants proposed should be identified, and information on their respective role in the project shall be included.

3. Past Experience/References. In this section, the respondent should list no less than five (5) previous projects to be used as references. The projects listed should demonstrate specific experience with the proposed scope of services contained in this RFP. Please highlight areas of special expertise and any unique qualifications. A contact name and current phone number for each reference shall be provided.

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

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

The contractor or consultant will also, to the extent legally possible, solicit applications for employment and proposals for subcontractors and subconsultants for work associated with the proposed contract from local residents and firms as opportunities occur and hire qualified local residents and firms whenever feasible. In order for a Local Business to be eligible to claim the preference, the business **MUST request the preference in the Solicitation response and provide a copy of its current business license from a jurisdiction in the Coachella Valley.**

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

- ☐ The prospective Consultant shall designate, by name, the project manager to be employed for this project. Substitution of the project manager by the selected consultant will not be allowed without prior approval by the City of Palm Springs.
- ☐ All proposals must be received in the City of Palm Springs, Division of Procurement and Contracting by **2:00 P.M., LOCAL TIME, FRIDAY, MARCH 27, 2009**. Proof of receipt before the deadline is a City of Palm Springs, Division of Procurement and Contracting date stamp. It is the responsibility of the Proposer to see that any proposal sent through the mail shall have sufficient time to be received by the Procurement Office prior to the proposal due date and time. Late proposals will be returned to the Proposer unopened. Proposals shall be clearly marked and identified and must be submitted to:

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

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

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

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

Interpretations or clarifications considered necessary in response to such questions will be resolved by the issuance of formal Addenda to the RFP. **The deadline for all questions is 2:00 P.M., Local Time, Friday, March 20, 2009.** Questions received after this date and time may not be answered. Only questions that have been resolved by formal written Addenda via the Division of Procurement and Contracting will be binding. Oral and other interpretations or clarifications will be without legal or contractual effect.

- ☐ Each proposal must include two sealed envelopes.

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

- Completed Signature authorization and Addenda Acknowledgment (see Attachment A)
- Technical proposal – describe in detail your approach and understanding of all necessary tasks and steps involved in the project; include a list of deliverables
- Related Experience; include relevant experience date, name of agency, and reference name/contact information
- If applicable, your specific request for Local Preference and a copy of a valid business license from a jurisdiction in the Coachella Valley.

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

- **Note: Funding for the Work is with all local funds and, as provided under City Charter, will NOT require compliance with the prevailing wage requirements of the State of California.**
- List the hourly rates (or other rates as they may apply) for each type of on-site inspection that you propose to perform in conjunction with the plans and specifications for this project.
- List the unit cost for each type of test you propose to perform on-site.
- List the reports that you propose to prepare for this project and note any additional costs that may be incurred for the preparation of these reports.
- List any reimbursable expenses the City may incur.
- List any additional costs, such as drive time, that the City may incur in conjunction with the duties of the Materials Testing and Inspection firm.
- Complete the "Pricing Exercise" attached hereto as Attachment "C" utilizing the rates schedules offered in your proposal.
- Do NOT include Attachment "A" in the Cost Proposal envelope. Attachment "A" is to be included in Envelope #1.

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

Failure or refusal to enter into an Agreement as herein provided or to conform to any of the stipulated requirements in connection therewith shall be just cause for an annulment of the award. If the highest ranked firm refuses or fails to execute the Agreement, or negotiations are not successful, the City may, at its sole discretion, enter negotiations with and award the Contract to the second highest ranked Proposer, and so on.

VII. RESPONSIBILITY OF PROPOSER

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

VIII. CONSULTANT SELECTION

☐ Each proposal will be reviewed by an evaluation committee to determine if it meets the proposal requirements. Failure to meet the requirements for the Request for Proposal may be cause for rejection of the proposal.

☐ The evaluation committee may, at its sole option, ask for interviews or oral presentations by any proposer(s) participating in this process. Attendance at any such interview will be at the Proposer's expense.

☐ A final selection of the consultant will be determined following review of all work proposals and/or formal oral presentations. The evaluation committee will make a recommendation of the selected consultant for a contract to be awarded by the City Council.

☐ The selected consultant will work closely with City staff throughout the duration of the project. A consulting firm will be selected for final negotiation of a contract based upon the following factors:

- **Project Understanding:** Degree of understanding of the project and familiarity with the area; understanding of materials testing and inspection for public works projects, specifically storm drain projects – (30%).
- **Scope of Work:** Outline of required materials testing and inspection services necessary to ensure construction in accordance with the plans and specifications – (30%).
- **Project Managers/Staff Qualifications:** Qualifications of the staff assigned to provide services related to the project – (25%).
- **Firm Qualifications/Consultant References:** Past experience in projects related to the outlined Scope of Work – (15%).
- **Local Preference:** If applicable, a firm that meets the requirements of a Local Business as defined by Ordinance 1756 and requests such preference in writing with their solicitation – (5%).
- **Project Cost:** The project cost will be considered after selection of the best proposals; no weight shall be given to the cost in the selection or ranking of the consultants. A contract shall be negotiated with the selected consultant on the basis of the submitted cost proposal, and in consideration of reasonable and mutually agreed project costs and time requirements.

☐ **Award of Contract:** It is the City's intent to award a single contract to the firm that can best meet the requirements of the Request for Proposal document. The City reserves the right to award a contract to multiple firms or a single firm or to make no award, whichever is in the best interest of the City. It is anticipated that award of the contract will occur at the next regularly scheduled City Council meeting after the evaluation committee has made its final selection of the consultant to be recommended for award and a contract has been satisfactorily negotiated for consideration. The decision of the City Council will be final.

☐ **Public Record:** Proposer's attention is drawn to the fact that all proposal documents submitted are subject to the California Code Section 6250 et seq., commonly known as the Public Records Act. Information contained in the proposals may be made public after the review process has been completed, negotiations have concluded and a recommendation for award has been officially agendized for City Council consideration, and/or following award of contract, if any, by the City Council.

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

- ❑ **Business License:** The successful proposer will be required to be licensed in accordance with the City of Palm Springs Business License Ordinance, Municipal Code Chapter 3.40 through 3.96, entitled "Business Tax".
- ❑ **Proposal informalities or defects:** The City of Palm Springs reserves the right to waive any informality or technical defect in a Proposal and to accept or reject, in whole or in part, any or all Proposals and to advertise for new Proposals, as best serves the interests of the City.
- ❑ **Investigations:** The City reserves the right to make such investigations as it deems necessary to determine the ability of the Proposer to perform the Work and the Proposer shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any Proposal if the evidence submitted by or investigation of such Proposer fails to satisfy the City that such Proposer is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated therein.
- ❑ **Signed Proposal and Exceptions:** Submission of a signed Proposal will be interpreted to mean that Proposer has hereby agreed to all the terms and conditions set forth in all of the sheets which make up this Request for Proposals, and any attached sample agreement. Exceptions to any of the language in either the RFP documents or attached sample agreement must be submitted with the proposal and clearly defined. Exceptions to the City's RFP document or standard boilerplate language, terms or conditions may be considered in the evaluation process.

ATTACHMENT "A"

RFP 17-09

**MATERIALS TESTING AND INSPECTION SERVICES
PALM SPRINGS STORM DRAIN LINE 22, STAGE 2
CITY PROJECT NO. 07-15**

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

SIGNATURE AUTHORIZATION

NAME OF PROPOSER/FIRM:

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

SIGNATURE

PRINT NAME

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

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

____ An individual;
____ A partnership, Partners' names: _____

____ A company;
____ A corporation

2. My tax identification number is: _____

ADDENDA ACKNOWLEDGMENT:

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

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

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

ATTACHMENT "B"

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

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective this day of , 200 , by and between the CITY OF PALM SPRINGS, a California charter city and municipal corporation, (hereinafter referred to as "City") and **[INSERT FULL NAME OF CONSULTANT, FIRM, OR COMPANY]**, a **[INSERT TYPE OF ENTITY, E.G., A CALIFORNIA CORPORATION, A LIMITED LIABILITY COMPANY, ETC.]**, (hereinafter referred to as "Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties."

RECITALS

A. City has determined that there is a need for **[INSERT BRIEF DESCRIPTION OF PROFESSIONAL SERVICES REQUIRED]** services for **[INSERT BRIEF DESCRIPTION OF PROJECT FOR WHICH PROFESSIONAL SERVICES ARE RELATED]** project (the "Project").

B. Consultant has submitted to City a proposal to provide **[INSERT TYPE OF PROFESSIONAL SERVICES]** to City for the Project pursuant to the terms of this Agreement.

C. Consultant is qualified by virtue of its experience, training, education, reputation, and expertise to provide these services and has agreed to provide such services as provided herein.

D. City desires to retain Consultant to provide such professional services.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant agrees to perform the professional services set forth in the Scope of Services described in Exhibit "A," which is attached hereto and is incorporated herein by reference (hereinafter referred to as the "Services" or "Work"). As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and professional services and that Consultant is experienced in

performing the Work and Services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the Work and Services required hereunder. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized as high quality among well-qualified and experienced professionals performing similar work under similar circumstances.

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Scope of Services; (3) the City's Request for Proposals; and, (4) the Consultant's signed, original proposal submitted to the City ("Consultant's Proposal"), which shall all be referred to collectively hereinafter as the "Contract Documents." The City's Request for Proposals and the Consultant's Proposal, which are both attached hereto as Exhibits "B" and "C," respectively, are hereby incorporated by reference and are made a part of this Agreement. The Scope of Services shall include the Consultant's Proposal. All provisions of the Scope of Services, the City's Request for Proposals, and the Consultant's Proposal shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the provisions of the Scope of Services (Exhibit "A"); (2nd) the provisions of the City's Request for Proposal (Exhibit "B"); (3rd) the terms of this Agreement; and, (4th) the provisions of the Consultant's Proposal (Exhibit "C").

1.3 Compliance with Law. Consultant warrants that all Services rendered hereunder shall be performed in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

1.4 Licenses, Permits, Fees, and Assessments. Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Consultant to perform the Work and Services under this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the Work and Services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes penalties, or interest levied, assessed, or imposed against City hereunder.

1.5 Familiarity with Work. By executing this Agreement, Consultant warrants that Consultant (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the Services should be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services hereunder. Should the Consultant discover any latent or unknown conditions that will materially affect the performance of the

Services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City.

1.6 Care of Work. Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by the City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to twenty-five percent (25%) of the Maximum Contract Amount or \$25,000, whichever is less, or in the time to perform of up to thirty (30) days, may be approved by the City Manager, or his designee, as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the Palm Springs City Council. It is expressly understood by Consultant that the provisions of this section shall not apply to the services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or materials required to complete any work or service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

2. COMPENSATION

2.1 Maximum Contract Amount. For the Services rendered pursuant to this Agreement, Consultant shall be compensated by City in accordance with the Schedule of Compensation, which is attached hereto as Exhibit "D" and is incorporated herein by reference, but not exceeding the maximum contract amount of [INSERT NOT TO EXCEED CONTRACT AMOUNT] Dollars, (\$) (hereinafter referred to as the "Maximum Contract Amount"), except as may be provided pursuant to Section 1.8 above. The method of compensation shall be as set forth in Exhibit "D." Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the Contract Officer designated pursuant to Section 4.2 and will only be approved if such expenses are also specified in the Schedule of Compensation. The Maximum Contract Amount shall include the attendance of Consultant at all Project meetings reasonably deemed necessary by the City. Consultant shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Consultant hereby acknowledges that it accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Consultant

anticipates, that Consultant shall not be entitled to additional compensation therefore, and that the provisions of Section 1.8 shall not be applicable to the services identified in the Scope of Services. The maximum amount of city's payment obligation under this section is the amount specified herein. If the City's maximum payment obligation is reached before the Consultant's Services under this Agreement are completed, consultant shall nevertheless complete the Work without liability on the City's part for further payment beyond the Maximum Contract Amount.

2.2. Method of Payment. Unless some other method of payment is specified in the Schedule of Compensation (Exhibit "D"), in any month in which Consultant wishes to receive payment, no later than the tenth (10) working day of such month, Consultant shall submit to the City, in a form approved by the City's Finance Director, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Consultant and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Consultant within forty-five (45) days after receipt of the invoice or a soon thereafter as is reasonably practical. There shall be a maximum of one payment per month.

2.3 Changes in Scope. In the event any change or changes in the Scope of Services is requested by the City, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional professional fees. An amendment may be entered into: (a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

2.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Palm Springs City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the City.

3. SCHEDULE OF PERFORMANCE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the Work of this Agreement according to the agreed upon Schedule of Performance (Exhibit "E").

3.2 Schedule of Performance. Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in the Schedule of Performance, which is attached hereto as Exhibit "E" and is incorporated herein by reference. When requested by Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer, but such extensions shall not exceed one hundred eighty (180) days cumulatively; however, the City shall not be obligated to grant such an extension.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

3.4 Term. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall commence upon the effective date of this Agreement and continue in full force and effect until completion of the Services but not exceeding three (3) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "E") and pursuant to Section 3.2 above, unless extended by mutual written agreement of the Parties.

4. COORDINATION OF WORK

4.1 Representative of Consultant. The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the Services to be performed under this Agreement and make all decisions in connection therewith: [REDACTED] [INSERT NAME], [REDACTED] [INSERT TITLE]. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services performed hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager of City, and is subject to change by the City Manager. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignments. The experience, knowledge, capability, expertise, and reputation of Consultant, its principals and employees,

were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City. Consultant shall not contract with any other entity to perform the Services required under this Agreement without the prior written consent of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written consent of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Consultant or any surety of Consultant from any liability hereunder without the express written consent of City.

4.4 Independent Contractor.

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for professional fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or

other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing Services hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 2 and Subsection 1.8 herein, of any nature relating to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

5. INSURANCE

5.1 Types of Insurance. Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, the insurance described herein for the duration of this Agreement, including any extension thereof, or as otherwise specified herein, against claims which may arise from or in connection with the performance of the Work hereunder by Consultant, its agents, representatives, or employees. In the event the City Manager determines that the Work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager or his designee. Consultant shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein. Except as otherwise authorized below for professional liability (errors and omissions) insurance, all insurance provided pursuant to this Agreement shall be on an occurrence basis. The minimum amount of insurance required hereunder shall be as follows:

A. **Errors and Omissions Insurance.** Consultant shall obtain and maintain in full force and effect throughout the term of this Agreement, standard industry form professional liability (errors and omissions) insurance coverage in an amount of not less than one million dollars (\$1,000,000.00) per occurrence and two-million dollars (\$2,000,000.00) annual aggregate, in accordance with the provisions of this section.

(1) Consultant shall either: (a) certify in writing to the City that Consultant is unaware of any professional liability claims made against Consultant and is unaware of any facts which may lead to such a claim against Consultant; or (b) if Consultant does not provide the certification pursuant to (a), Consultant shall procure from the professional liability insurer an endorsement providing that the required limits of the policy shall apply separately to claims arising from errors and omissions in the rendition of services pursuant to this Agreement.

(2) If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete

coverage, either of which shall be subject to the written approval by the City Manager.

(3) In the event the policy of insurance is written on an “occurrence” basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall immediately be obtained to ensure coverage during the entire course of performing the Services under the terms of this Agreement.

B. Workers’ Compensation Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, workers’ compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Consultant agrees to waive and obtain endorsements from its workers’ compensation insurer waiving subrogation rights under its workers’ compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers’ compensation insurance policies. If Consultant has no employees, Consultant shall complete the City’s Request for Waiver of Workers’ Compensation Insurance Requirement form.

C. Commercial General Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

D. Business Automobile Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of one million dollars (\$1,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased, and hired cars.

E. Employer Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of employer liability insurance written on a per occurrence basis with a policy limit of at least one million dollars (\$1,000,000.00) for bodily injury or disease.

5.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager prior to commencing any work or services under this Agreement. Consultant guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured retentions in excess of \$10,000, and the City Manager may require evidence of pending claims and claims history as well as evidence of Consultant’s ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of \$10,000.

5.3 Other Insurance Requirements. The following provisions shall apply to the insurance policies required of Consultant pursuant to this Agreement:

- 5.3.1 For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects City and its officers, council members, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- 5.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.
- 5.3.3 All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.
- 5.3.4 None of the insurance coverages required herein will be in compliance with these requirements if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Manager and approved in writing.
- 5.3.5 Consultant agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.
- 5.3.6 Consultant agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.
- 5.3.7 Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any insurance

requirement in no way imposes any additional obligations on the City nor does it waive any rights hereunder in this or any other regard.

- 5.3.8 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Agreement applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.
- 5.3.9 Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- 5.3.10 The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.
- 5.3.11 Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the Work performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.
- 5.3.12 Consultant agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages resulting from the Consultant's activities or the activities of any person or person for which the Consultant is otherwise responsible.

5.4 Sufficiency of Insurers. Insurance required herein shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless such requirements are waived in writing by the City Manager or his designee due to unique circumstances.

5.5 Verification of Coverage. Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require

Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No.____" or "for any and all work performed with the City" may be included in this statement).*

2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No.____" or "for any and all work performed with the City" may be included in this statement).*

3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.*

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies. All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Consultant's obligation to provide them.

6. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its officers, council members, officials, employees, agents and volunteers and all other public agencies whose approval of the Project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders, and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless, or willful performance of or failure to perform any term,

provision, covenant, or condition of this Agreement (“Indemnified Claims”), but Consultant’s liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness, or willful misconduct of the City, its officers, council members, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys’ fees, expert fees, litigation costs, and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant shall defend with legal counsel reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim “may arise out of, pertain to, or relate to Indemnified Claims” shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the Parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness, or willful misconduct of Consultant to any extent, then City shall reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys’ fees, expert fees, litigation costs, and expenses that were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant’s indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

7. REPORTS AND RECORDS

7.1 Accounting Records. Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of the Work and Services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Work or Services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of such fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto

and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and the City shall indemnify the Consultant for all damages resulting therefrom. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. Consultant shall ensure that all its subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization.

7.5 Audit and Inspection of Records. After receipt of reasonable notice and during the regular business hours of City, Consultant shall provide City, or other agents of City, such access to Consultant's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Consultant's performance under this Agreement. Consultant shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law and Venue. This Agreement shall be construed and interpreted both as to validity and as to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such County, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The

terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

8.3 Termination. City may terminate this Agreement for its convenience at any time, without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Upon such notice, City shall pay Consultant for Services performed through the date of termination. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Thereafter, Consultant shall have no further claims against the City under this Agreement. Upon termination of the Agreement pursuant to this section, Consultant shall submit to the City an invoice for work and services performed prior to the date of termination. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days written notice to the City, except that where termination is due to material default by the City, the period of notice may be such shorter time as the Consultant may determine.

8.4 Default of Consultant.

A. Consultant's failure to comply with any provision of this Agreement shall constitute a default.

B. If the City Manager, or his designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Consultant in writing of such default. Consultant shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.3.

C. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.4.B, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the Maximum Contract Amount (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Consultant shall not limit Consultant's liability for completion of the Services as provided herein.

8.5 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

8.6 Rights and Remedies Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

8.7 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

8.8 Attorney Fees. In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

9.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested in violation of any state statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

9.3 Covenant Against Discrimination. In connection with its performance under this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, or national origin. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10. MISCELLANEOUS PROVISIONS

10.1 Patent and Copyright Infringement.

A. To the fullest extent permissible under law, and in lieu of any other warranty by City or Consultant against patent or copyright infringement, statutory or otherwise, it is agreed that Consultant shall defend at its expense any claim or suit against City on account of any allegation that any item furnished under this Agreement, or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and Consultant shall pay all costs and damages finally awarded in any such suit or claim, provided that Consultant is promptly notified in writing of the suit or claim and given authority, information and assistance at Consultant's expense for the defense of same, and provided such suit or claim arises out of, pertains to, or is related to the negligence, recklessness or willful misconduct of Consultant. However, Consultant will not indemnify City if the suit or claim results from: (1) City's alteration of a deliverable, such that City's alteration of such deliverable created the infringement upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by Consultant when it is such use in combination which infringes upon an existing U.S. letters patent or copyright.

B. Consultant shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof, Consultant shall not be obligated to indemnify City under any settlement made without Consultant's consent or in the event City fails to cooperate in the defense of any suit or claim, provided, however, that such defense shall be at Consultant's expense. If the use or sale of such item is enjoined as a result of the suit or claim, Consultant, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

10.2 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by pre-paid First Class U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of

electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

To City:

City of Palm springs
Attention: City Manager & City Clerk
3200 E. Tahquitz Canyon Way
Palm springs, California 92262
Telephone: (760) 323-8204
Facsimile: (760) 323-8332

To Consultant:

Attention: _____
Telephone: _____
Facsimile: _____

10.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

10.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the reminder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

10.5 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

10.6 Third Party Beneficiary. Except as may be expressly provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

10.7 Recitals. The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

10.8. Corporate Authority. Each of the undersigned represents and warrants that (i) the Party for which he or she is executing this Agreement is duly authorized and existing, (ii) he

or she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing, (iii) by so executing this Agreement, the Party for which he or she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he or she is signing is bound.

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

ATTEST:
CITY OF PALM SPRINGS, CA.

By _____
City Clerk

Date: _____

CONTENTS APPROVED:

By _____
City Manager

Date: _____

By _____
City Engineer

Date: _____

APPROVED AS TO FORM:

By _____
City Attorney

Date: _____

APPROVED BY CITY COUNCIL:

Date: _____ Agreement No. _____

Corporations require two notarized signatures. One signature must be from Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.

CONTRACTOR NAME:

Check one ☐ Individual ☐ Partnership ☐ Corporation

Address

By _____
Signature (Notarized)

By _____
Signature (Notarized)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

On _____ before me,

Date

Here Insert Name and Title of the Officer

personally appeared _____

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

EXHIBIT “A”

SCOPE OF SERVICES

EXHIBIT “B”

CITY’S REQUEST FOR PROPOSALS

EXHIBIT “C”

CONSULTANT’S PROPOSAL

EXHIBIT “D”

SCHEDULE OF COMPENSATION

EXHIBIT “E”

SCHEDULE OF PERFORMANCE

ATTACHMENT "C"

PRICING EXERCISE

****TO BE SUBMITTED WITH COST PROPOSAL IN SEALED ENVELOPE #2****

No of Tests	ASTM Test/Description	Unit Price	Extended Price
5 ea	D2922 Density of Soil and Soil Aggregate		
5 ea	D1556 Density and Unit Weight of Soil		
5 ea	D2167 Density and Unit Weight of Soil		
5 ea	D1557 Laboratory Compaction Characteristics of Soil		
5 ea	D3017 Water Content of Soil and Rock in Place		
10 ea	C172 Sampling Freshly Mixed Concrete		
10 ea	C31 Making and Curing Concrete Test Specimens		
10 ea	C39 Compressive Strength of Cylindrical Concrete Specimens		
10 ea	C173 Air Content of Freshly Mixed Concrete		
Identify any additional costs necessary to perform the above tests in the spaces below:		Subtotal of Extended Costs	
Addl Cost			
Addl Cost			
Addl Cost			
Addl Costs			
Addl Cost			
		Grand Total:	