



## **REQUEST FOR PROPOSAL** **ON-CALL LANDSCAPE ARCHITECTURAL DESIGN SERVICES**

### **PROJECT DESCRIPTION:**

The City of La Quinta is seeking a professional landscape architectural firm to provide on-call landscape and irrigation support services for a variety of landscape improvements within its publicly owned right of way. The City may choose to contract with one or more firms that provide such services. There is no promise or guarantee of work, made or implied, by the City and all work that may be assigned is subject to approval and funding for each project.

The following criteria will be used to evaluate proposals:

- Relevant Project Experience and Performance
- Schedule of Fees

### **GENERAL SCOPE OF SERVICES REQUESTED:**

#### **Professional Services**

Services and products associated with these on-call services may include, but may not be limited to:

- Attending meetings and preparing presentations and agenda reports for city advisory boards, commissions and the City Council when said meetings relate to projects covered by the contract;
- Preparing feasibility studies for new, renovation, and alteration projects;
- Preparing inventories of existing landscape conditions in publicly owned right of way;
- Developing landscape themes and concept drawings which are consistent with the City's water conservation goals and objectives;
- Coordinating with neighborhood home owner groups and soliciting feedback and input on community related landscape/irrigation improvements;
- Providing value engineering and preparing plans, specifications and estimates for assigned landscape and irrigation improvement projects, which may include utilizing the City's software systems and Bluebeam;
- Processing assigned projects for the City entitlement, which may include, but not be limited to approval by the Planning Commission,



Building and Safety Department, Facilities Department, Engineering Department and City Council;

- Perform construction support services which may include construction oversight and inspection, responding to bidder requests for information, submittal review, warranty review, contractor progress payment review and project close out.

**Deliverables:**

- Data presented in GIS, AutoCAD, Excel and/or PDF, including graphs, charts, tables and designs.

**GENERAL INSTRUCTIONS FOR SUBMITTAL:**

**Proposal Submittal:**

Proposals are to be submitted in envelopes clearly marked with the consultant's name, address, and phone number. Only one proposal per consultant will be considered.

The proposer shall submit via hard copy one (1) original and three (3) copies by 5:00 P.M. (Pacific Standard Time), on Friday, **September 7, 2018**, to:

City of La Quinta  
Attn: Bryan McKinney, PE, City Engineer  
Design and Development Department  
78-495 Calle Tampico La Quinta, CA 92253

**Due Date and Time:**

Proposals submitted after the due date and time, may, at the sole discretion of the City, be rejected as non-responsive and returned without review. For a proposal to be considered on time, it must be date stamped by City staff upon receipt. At the discretion of the City, a "late" proposal may be considered only if a selection cannot be determined from among proposals received on time. The City shall not be responsible for, nor accept any as a valid excuse, any delay in mail service, or any other method of delivery used by the proposer. All proposals shall be enclosed in a sealed envelope with the words clearly written on the front, "**SEALED BID FOR ON-CALL LANDSCAPE ARCHITECTURAL DESIGN SERVICES - DO NOT OPEN WITH REGULAR MAIL.**" Failure of the proposer to properly identify the sealed envelope proposal as described may result in the proposal being considered non-responsive.



All proposals shall be firm offers subject to acceptance by the City and may not be withdrawn for a period of 180 calendar days following the last day to accept proposals. Proposals may not be amended after the due date except by consent of the City. All proposals must clearly address all of the requirements outlined in this RFP. Each proposal shall be limited to twenty (20) pages, not including the transmittal letter and table of contents, and must include a minimum of three (3) references, which include the address, telephone number, and email address of each reference. Resumes and brochures may be added to the proposal, provided they are located in an appendix at the back of the proposal. Should the proposer have concerns about meeting any noted requirements, the proposer shall include a clearly labeled subsection with individual statements specifically identifying the concerns and exceptions.

#### **RFP Addenda and Clarifications in Written Comments**

All comments and questions from proposers must be submitted in writing and received by no later than 5:00 P.M. on Monday, August 27, 2018 ("Addenda Due Date"), and must be submitted via the following approved written methods addressed to Bryan McKinney, PE, City Engineer, Design and Development Department:

- At [bmckinney@laquintaca.gov](mailto:bmckinney@laquintaca.gov) or
- Via fax to (760) 777-7011, or
- Via mail, as long as the correspondence is received and date stamped by the City on or prior to the Addenda Due Date.

Any questions raised verbally shall not be addressed by the City. Submittal of written comments or questions shall not be considered by the City unless submitted in an approved method on or before the Addenda Due Date. Written comments or questions received via approved method within the time prescribed herein will be addressed by the City's issuance of an addendum to this RFP. Notwithstanding anything else herein, if it becomes necessary for the City to revise any part of this RFP, or to provide clarification or additional information after this RFP has been issued, a written addendum will be posted and published on the City's website, <http://www.laquintaca.gov>. In the event posting on the website is not practicable due to technical difficulties, the addendum will be emailed to each bidder that submits a bid. It shall be the responsibility of the proposers to maintain current, up to date email addresses with the City if any addenda are to be emailed in the event posting on the website is not practicable due to technical difficulties. All addenda shall become part of the RFP.

**Pre-contractual Expenses:**

The City shall not be responsible for, under any circumstances, any claims of expenses necessary for the proposer to receive, evaluate, complete and deliver the proposal. The proposer should also not include any pre-contractual expenses or fees in the proposal.

**Conflicts of Interest:**

The proposer affirms that to the best of his or her knowledge, there exists no actual or potential conflict between the firm's business or financial interests, and either the services to be provided under the Agreement, or any commissioner, officer, employee, or agent of the City. For the duration of the Agreement, the proposer shall refrain from undertaking any work for any individual, business, or legal entity, in which direct conflicts of interest regarding the services to be provided thereunder or herein may arise.

**Proposed Contract:**

The proposer selected through this RFP shall be required to enter into the Agreement with the City, a form of which is attached hereto as "Attachment 1".

**Insurance and Acknowledgement:**

Each proposal shall also include signed acknowledgement(s) in substantially the same form as the form attached hereto as Exhibit "B," through which each insurance carrier that will issue any policy required in the Insurance Provisions, shall acknowledge, warrant and represent that it possesses the ability to and shall furnish all the insurance endorsements prescribed in the Insurance Provisions.

All questions pertaining to this RFP shall be submitted via email to the attention of the City's Engineer, Bryan McKinney, P.E. at: [bmckinney@laquintaca.gov](mailto:bmckinney@laquintaca.gov).

**PROPOSAL FORMAT AND CONTENT:****Presentation**

- Proposals shall be submitted in an 8 ½" x 11" format, fastened with an effective method.



## **Proposal Content**

- Transmittal Letter
  - Contact information, identification of firm, name and email address and telephone number
  - A statement to the effect that the proposal will remain valid for 180 days from the due date for the proposals
  - Acknowledgement of receipt of addenda, if any
  - Signature of the person authorized to bind the terms of the proposal
- Table of Contents
  - Following the transmittal, provide a table of contents for the proposal

## **Qualifications, Related Experience and References**

- This section shall establish the ability of the proposer to satisfy all aspects of the required work with current or recently completed professional consulting work, similar to the work required in this RFP.
- Background information of the firm, including the date of founding, legal form, number and location of offices, number of employees, days and hours of operation and any other pertinent information.
- Disclose any conditions (e.g., bankruptcy, pending litigation, planned office closures, mergers) and organizational conflicts of interest that may affect the ability of the proposer to perform the required duties.
- Certify that the firm is not debarred, suspended or otherwise declared ineligible to contract with any other federal, state or local public agency.
- Provide a list of business clients to which your firm is currently providing, or has recently provided, professional consulting services similar to those required in this RFP. Include company names, beginning/end dates of contracts, and names, titles and telephone numbers the City can contact as references for your firm.

## **Proposed Staffing and Project Organization**

- Discuss the staffing of the proposing firm who would be assigned to work on the City's project.



- Identify the key personnel that would be assigned to the project. Include a brief description of their qualifications and experience in performing the type of work being assigned.
- Designate an administrator who would serve as a day-to-day contact for the City.
- Provide any necessary organizational chart of the firm as it relates to this RFP.

### **Work Plan/Technical Approach**

- Establish the proposer's understanding of the City's objectives and requirements, demonstrate the proper ability to meet those objectives and requirements, and clearly identify the method (plan) of accomplishing the described work.
- Describe what information, documentation or staff assistance from the City your firm would request from the City in order to complete the work described.
- Provide a summary of the firm's proposed services, with a focus on any technologies, innovations, and processes that the firm will offer to help the City meet its objectives.

### **Cost and Price**

- This proposal shall disclose all charges to be assessed to the City for the required services and declare the proposer's preferences for method payment.
- For all types of service proposed, provide a schedule of hourly labor rates and reimbursables.

### **Appendices**

Furnish as appendices, supporting documentation as requested, such as staff resumes.

### **PROPOSAL EVALUATION AND CONTRACT AWARD:**

#### **Evaluation Panel**



An evaluation panel consisting of City staff will be responsible for reviewing, analyzing, and evaluating the proposals received. Interviews may be included in the evaluation process. The panel may also conduct contract negotiations with the highest rated proposer(s). The evaluation panel will either select the successful proposer or make recommendations to the City Council regarding selection.

### **Evaluation Criteria**

Proposals will be evaluated by the panel, considering the factors which are listed below and which are listed in no particular order of significance.

- Work plan
- Qualification and experience of proposer
- Staffing and organization
- Conformance with this RFP
- References of performance including such factors as control of costs, quality of work, ability to meet schedules, cooperation, responsiveness, compliance with the requirements, and other considerations
- Cost and price
- Any other criteria determined by the City

Upon selection of the most qualified proposers, the City may require the finalists to make an oral presentation to the evaluation panel and/or the City Council and/or City Manager. The City expressly reserves the right to reject any or all proposals, with or without providing a reason and to waive any irregularities or informalities in the offers received. In the event of any such rejection, or in the event a proposer's offer is not rejected but does not result in contract award, the City shall not be liable for any costs incurred by the proposer in connection with the preparation and submittal of the proposal.



## NON-COLLUSION AFFIDAVIT FORM

*Must be executed by proposer and submitted with the proposal*

I, \_\_\_\_\_ (name) hereby declare as follows:

I am \_\_\_\_\_ of \_\_\_\_\_,  
(Title) (Company)

the party making the foregoing proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer, or to secure any advantage against the public body awarding the agreement of anyone interested in the proposed agreement; that all statements contained in the proposal are true; and, further, that the proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative hereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Proposer Signature: \_\_\_\_\_

Proposer Name: \_\_\_\_\_

Proposer Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_



## AGREEMENT FOR CONTRACT SERVICES

THIS AGREEMENT FOR CONTRACT SERVICES (the "Agreement") is made and entered into by and between the CITY OF LA QUINTA, ("City"), a California municipal corporation, and \_\_\_\_\_, a \_\_\_\_\_ [insert type of business entity, e.g. sole proprietorship, California Limited Liability Corporation, etc.] ("Contracting Party"). The parties hereto agree as follows:

### 1. SERVICES OF CONTRACTING PARTY.

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contracting Party shall provide those services related to \_\_\_\_\_, Project No. \_\_\_\_\_ NA \_\_\_\_\_, as specified in the "Scope of Services" attached hereto as "**Exhibit A**" and incorporated herein by this reference (the "Services"). Contracting Party represents and warrants that Contracting Party is a provider of first-class work and/or services and Contracting Party is experienced in performing the Services contemplated herein and, in light of such status and experience, Contracting Party covenants that it shall follow industry standards in performing the Services required hereunder, and that all materials, if any, will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "industry standards" shall mean those standards of practice recognized by one or more first-class firms performing similar services under similar circumstances.

1.2 Compliance with Law. All Services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, regulations, and laws of the City and any Federal, State, or local governmental agency of competent jurisdiction.

1.3 Wage and Hour Compliance. Contracting Party shall comply with applicable Federal, State, and local wage and hour laws.

1.4 Licenses, Permits, Fees and Assessments. Except as otherwise specified herein, Contracting Party shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the Services required by this Agreement, including a City of La Quinta business license. Contracting Party and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for the performance of the Services required by this Agreement. Contracting Party 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 performance of the Services required by this Agreement, and shall indemnify, defend (with counsel selected by City), and hold City, its elected officials, officers, employees, and agents, free and harmless against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City hereunder. Contracting Party shall be responsible for all subcontractors' compliance with this Section.

1.5 Familiarity with Work. By executing this Agreement, Contracting Party warrants that (a) it has thoroughly investigated and considered the Services to be performed, (b) it has investigated the site where the Services are to be performed, if any, and fully acquainted itself with the conditions there existing, (c) it has carefully considered how the Services should be performed, and (d) it fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. Should Contracting Party discover any latent or unknown conditions materially differing from those inherent in the Services or as represented by City, Contracting Party shall immediately inform City of such fact and shall not proceed except at Contracting Party's risk until written instructions are received from the Contract Officer (as defined in Section 4.2 hereof).

1.6 Standard of Care. Contracting Party acknowledges and understands that the Services contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, Contracting Party's work will be held to an industry standard of quality and workmanship. Consistent with Section 1.5 hereinabove, Contracting Party represents to City that it holds the necessary skills and abilities to satisfy the industry standard of quality as set forth in this Agreement. Contracting Party shall adopt reasonable methods during the life of this Agreement to furnish continuous protection to the Services performed by Contracting Party, and the equipment, materials, papers, and other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Services by City, except such losses or damages as may be caused by City's own negligence. The performance of Services by Contracting Party shall not relieve Contracting Party from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to City, when such inaccuracies are due to the negligence of Contracting Party.

1.7 Additional Services. In accordance with the terms and conditions of this Agreement, Contracting Party shall perform services in addition to those specified in the Scope of Services ("Additional Services") only when directed to do so by the Contract Officer, provided that Contracting Party shall not be required to perform any Additional Services without compensation. Contracting Party shall not perform any Additional

Services until receiving prior written authorization (in the form of a written change order if Contracting Party is a contractor performing the Services) from the Contract Officer, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Contracting Party. It is expressly understood by Contracting Party that the provisions of this Section shall not apply to the Services specifically set forth in the Scope of Services or reasonably contemplated therein. It is specifically understood and agreed that oral requests and/or approvals of Additional Services shall be barred and are unenforceable. Failure of Contracting Party to secure the Contract Officer's written authorization for Additional Services shall constitute a waiver of any and all right to adjustment of the Contract Sum or time to perform this Agreement, whether by way of compensation, restitution, quantum meruit, or the like, for Additional Services provided without the appropriate authorization from the Contract Officer. Compensation for properly authorized Additional Services shall be made in accordance with Section 2.3 of this Agreement.

1.8 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in "Exhibit D" (the "Special Requirements"), which is incorporated herein by this reference and expressly made a part hereof. In the event of a conflict between the provisions of the Special Requirements and any other provisions of this Agreement, the provisions of the Special Requirements shall govern.

## 2. COMPENSATION.

2.1 Contract Sum. For the Services rendered pursuant to this Agreement, Contracting Party shall be compensated in accordance with "Exhibit B" (the "Schedule of Compensation") in a total amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Contract Sum"), except as provided in Section 1.7. The method of compensation set forth in the Schedule of Compensation may include a lump sum payment upon completion, payment in accordance with the percentage of completion of the Services, payment for time and materials based upon Contracting Party's rate schedule, but not exceeding the Contract Sum, or such other reasonable methods as may be specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contracting Party at all project meetings reasonably deemed necessary by City; Contracting Party shall not be entitled to any additional compensation for attending said meetings. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, transportation expense, telephone expense, and similar costs and expenses when and if specified in the Schedule of Compensation. Regardless of the method of

compensation set forth in the Schedule of Compensation, Contracting Party's overall compensation shall not exceed the Contract Sum, except as provided in Section 1.7 of this Agreement.

2.2 Method of Billing & Payment. Any month in which Contracting Party wishes to receive payment, Contracting Party shall submit to City no later than the tenth (10th) working day of such month, in the form approved by City's Finance Director, an invoice for Services rendered prior to the date of the invoice. Such invoice shall (1) describe in detail the Services provided, including time and materials, and (2) specify each staff member who has provided Services and the number of hours assigned to each such staff member. Such invoice shall contain a certification by a principal member of Contracting Party specifying that the payment requested is for Services performed in accordance with the terms of this Agreement. Upon approval in writing by the Contract Officer and subject to retention pursuant to Section 8.3, City will pay Contracting Party for all items stated thereon which are approved by City pursuant to this Agreement no later than thirty (30) days after invoices are received by the City's Finance Department.

2.3 Compensation for Additional Services. Additional Services approved in advance by the Contract Officer pursuant to Section 1.7 of this Agreement shall be paid for in an amount agreed to in writing by both City and Contracting Party in advance of the Additional Services being rendered by Contracting Party. Any compensation for Additional Services amounting to five percent (5%) or less of the Contract Sum may be approved by the Contract Officer. Any greater amount of compensation for Additional Services must be approved by the La Quinta City Council, the City Manager, or Department Director, depending upon City laws, regulations, rules and procedures concerning public contracting. Under no circumstances shall Contracting Party receive compensation for any Additional Services unless prior written approval for the Additional Services is obtained from the Contract Officer pursuant to Section 1.7 of this Agreement.

### 3. PERFORMANCE SCHEDULE.

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. If the Services not completed in accordance with the Schedule of Performance, as set forth in Section 3.2 and "**Exhibit C**", it is understood that the City will suffer damage.

3.2 Schedule of Performance. All Services rendered pursuant to this Agreement shall be performed diligently and within the time period established in "**Exhibit C**" (the "Schedule of Performance"). Extensions to the time period specified in the Schedule of Performance may be approved in writing by the Contract Officer.

3.3 Force Majeure. The time period 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 Contracting Party, including, but not restricted to, acts of God or of the public enemy, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, acts of any governmental agency other than City, and unusually severe weather, if Contracting Party shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the forced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. Extensions to time period in the Schedule of Performance which are determined by the Contract Officer to be justified pursuant to this Section shall not entitle the Contracting Party to additional compensation in excess of the Contract Sum.

3.4 Term. Unless earlier terminated in accordance with the provisions in Article 8.0 of this Agreement, the term of this agreement shall commence on \_\_\_\_\_, \_\_\_\_\_, 20\_\_ and terminate on \_\_\_\_\_, \_\_\_\_\_, 20\_\_ ("Initial Term"). This Agreement may be extended for \_\_\_\_\_ additional year(s) upon mutual agreement by both parties ("Extended Term"). The extended term shall commence automatically, with no further action or amendment to this Agreement required, unless, with or without cause, and upon no less than thirty (30) days' written notice to Consultant ("notice of non-renewal"), City notifies Consultant that this Agreement shall expire prior to the commencement of the applicable extended term.

#### 4. COORDINATION OF WORK.

4.1 Representative of Contracting Party. The following principals of Contracting Party ("Principals") are hereby designated as being the principals and representatives of Contracting Party authorized to act in its behalf with respect to the Services specified herein and make all decisions in connection therewith:

(a) \_\_\_\_\_  
E-mail: \_\_\_\_\_

(b) \_\_\_\_\_  
E-mail: \_\_\_\_\_

(c) \_\_\_\_\_  
E-mail: \_\_\_\_\_

It is expressly understood that the experience, knowledge, capability, and reputation of the foregoing Principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing Principals shall be responsible during the term of this Agreement for directing all activities of Contracting Party and devoting sufficient time to personally supervise the Services hereunder. For purposes of this Agreement, the foregoing Principals may not be changed by Contracting Party and no other personnel may be assigned to perform the Services required hereunder without the express written approval of City.

4.2 Contract Officer. The "Contract Officer" shall be \_\_\_\_\_ or such other person as may be designated in writing by the City Manager of City. It shall be Contracting Party's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the Services, and Contracting Party shall refer any decisions, that 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 City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability, and reputation of Contracting Party, its principals, and its employees were a substantial inducement for City to enter into this Agreement. Except as set forth in this Agreement, Contracting Party shall not contract or subcontract with any other entity to perform in whole or in part the Services required hereunder without the express written approval of City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered, voluntarily or by operation of law, without the prior written approval 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 Contracting Party, taking all transfers into account on a cumulative basis. Any attempted or purported assignment or contracting or subcontracting by Contracting Party without City's express written approval shall be null, void, and of no effect. No approved transfer shall release Contracting Party of any liability hereunder without the express consent of City.

4.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode, or means by which Contracting Party, its agents, or its employees, perform the Services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision, or control of Contracting

Party's employees, servants, representatives, or agents, or in fixing their number or hours of service. Contracting Party shall perform all Services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contracting Party shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contracting Party in its business or otherwise or a joint venture or a member of any joint enterprise with Contracting Party. Contracting Party shall have no power to incur any debt, obligation, or liability on behalf of City. Contracting Party shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Except for the Contract Sum paid to Contracting Party as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Contracting Party for performing the Services hereunder for City. City shall not be liable for compensation or indemnification to Contracting Party for injury or sickness arising out of performing the Services hereunder. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contracting Party and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System ("PERS") as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Contracting Party agrees to pay all required taxes on amounts paid to Contracting Party under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contracting Party shall fully comply with the workers' compensation laws regarding Contracting Party and Contracting Party's employees. Contracting Party further agrees to indemnify and hold City harmless from any failure of Contracting Party to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any payment due to Contracting Party under this Agreement any amount due to City from Contracting Party as a result of Contracting Party's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

4.5 Identity of Persons Performing Work. Contracting Party represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all of the Services set forth herein. Contracting Party represents that the Services required herein will be performed by Contracting Party or under its direct supervision, and

that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

4.6 City Cooperation. City shall provide Contracting Party with any plans, publications, reports, statistics, records, or other data or information pertinent to the Services to be performed hereunder which are reasonably available to Contracting Party only from or through action by City.

## 5. INSURANCE.

5.1 Insurance. Prior to the beginning of any Services under this Agreement and throughout the duration of the term of this Agreement, Contracting Party shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, policies of insurance as set forth in "Exhibit E" (the "Insurance Requirements") which is incorporated herein by this reference and expressly made a part hereof.

5.2 Proof of Insurance. Contracting Party shall provide Certificate of Insurance to Agency along with all required endorsements. Certificate of Insurance and endorsements must be approved by Agency's Risk Manager prior to commencement of performance.

## 6. INDEMNIFICATION.

6.1 Indemnification. To the fullest extent permitted by law, Contracting Party shall indemnify, protect, defend (with counsel selected by City), and hold harmless City and any and all of its officers, employees, agents, and volunteers as set forth in "Exhibit F" ("Indemnification") which is incorporated herein by this reference and expressly made a part hereof.

## 7. RECORDS AND REPORTS.

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



Contracting Party is providing design services, the estimated increased or decreased cost estimate for the project being designed.

7.2 Records. Contracting Party shall keep, and require any subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports (including but not limited to payroll reports), studies, or other documents relating to the disbursements charged to City and the Services performed hereunder (the "Books and Records"), as shall be necessary to perform the Services required by this Agreement and enable the Contract Officer to evaluate the performance of such Services. Any and all such Books and Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such Books and Records at all times during normal business hours of City, including the right to inspect, copy, audit, and make records and transcripts from such Books and Records. Such Books and Records shall be maintained for a period of three (3) years following completion of the Services hereunder, and City shall have access to such Books and Records in the event any audit is required. In the event of dissolution of Contracting Party's business, custody of the Books and Records may be given to City, and access shall be provided by Contracting Party's successor in interest. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

7.3 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents, and other materials plans, drawings, estimates, test data, survey results, models, renderings, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, digital renderings, or data stored digitally, magnetically, or in any other medium prepared or caused to be prepared by Contracting Party, its employees, subcontractors, and agents in the performance of this Agreement (the "Documents and Materials") shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the expiration or termination of this Agreement, and Contracting Party shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the Documents and Materials hereunder. Any use, reuse or assignment of such completed Documents and Materials for other projects and/or use of uncompleted documents without specific written authorization by Contracting Party will be at City's sole risk and without

liability to Contracting Party, and Contracting Party's guarantee and warranties shall not extend to such use, revise, or assignment. Contracting Party may retain copies of such Documents and Materials for its own use. Contracting Party shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any Documents and Materials prepared by them, and in the event Contracting Party fails to secure such assignment, Contracting Party shall indemnify City for all damages resulting therefrom.

7.4 In the event City or any person, firm, or corporation authorized by City reuses said Documents and Materials without written verification or adaptation by Contracting Party for the specific purpose intended and causes to be made or makes any changes or alterations in said Documents and Materials, City hereby releases, discharges, and exonerates Contracting Party from liability resulting from said change. The provisions of this clause shall survive the termination or expiration of this Agreement and shall thereafter remain in full force and effect.

7.5 Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, rights of reproduction, and other intellectual property embodied in the Documents and Materials. Contracting Party shall require all subcontractors, if any, to agree in writing that City is granted a non-exclusive and perpetual license for the Documents and Materials the subcontractor prepares under this Agreement. Contracting Party represents and warrants that Contracting Party has the legal right to license any and all of the Documents and Materials. Contracting Party makes no such representation and warranty in regard to the Documents and Materials which were prepared by design professionals other than Contracting Party or provided to Contracting Party by City. City shall not be limited in any way in its use of the Documents and Materials at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

7.6 Release of Documents. The Documents and Materials shall not be released publicly without the prior written approval of the Contract Officer or as required by law. Contracting Party shall not disclose to any other entity or person any information regarding the activities of City, except as required by law or as authorized by City.

7.7 Confidential or Personal Identifying Information. Contracting Party covenants that all City data, data lists, trade secrets, documents with personal identifying information, documents that are not public records, draft documents, discussion notes, or other information, if any, developed or received by Contracting Party or provided for performance of this Agreement

are deemed confidential and shall not be disclosed by Contracting Party to any person or entity without prior written authorization by City or unless required by law. City shall grant authorization for disclosure if required by any lawful administrative or legal proceeding, court order, or similar directive with the force of law. All City data, data lists, trade secrets, documents with personal identifying information, documents that are not public records, draft documents, discussions, or other information shall be returned to City upon the termination or expiration of this Agreement. Contracting Party's covenant under this section shall survive the termination or expiration of this Agreement.

## 8. ENFORCEMENT OF AGREEMENT.

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

8.2 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice, or such longer period as may be permitted by the Contract Officer; provided that if the default is an immediate danger to the health, safety, or general welfare, City may take such immediate action as City deems warranted. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to this Article 8.0. During the period of time that Contracting Party is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during any period of default.

8.3 Retention of Funds. City may withhold from any monies payable to Contracting Party sufficient funds to compensate City for any losses, costs, liabilities, or damages it reasonably believes were suffered by City due

to the default of Contracting Party in the performance of the Services required by this Agreement.

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

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

8.6 Legal Action. In addition to any other rights or remedies, either party may take legal action, at law or at 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.

8.7 Termination Prior To Expiration Of Term. This Section shall govern any termination of this Agreement, except as specifically provided in the following Section for termination for cause. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Contracting Party. Upon receipt of any notice of termination, Contracting Party shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Officer. Contracting Party shall be entitled to compensation for all Services rendered prior to receipt of the notice of termination and for any Services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except amounts held as a retention pursuant to this Agreement.

8.8 Termination for Default of Contracting Party. If termination is due to the failure of Contracting Party to fulfill its obligations under this Agreement, Contracting Party shall vacate any City-owned property which Contracting Party is permitted to occupy hereunder and City may, after compliance with the provisions of Section 8.2, take over the Services and prosecute the same to completion by contract or otherwise, and Contracting Party shall be liable to the extent that the total cost for completion of the

Services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Contracting Party for the purpose of setoff or partial payment of the amounts owed City.

8.9 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees; provided, however, that the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing party in the conduct of the litigation. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. The court may set such fees in the same action or in a separate action brought for that purpose.

## 9. CITY OFFICERS AND EMPLOYEES; NONDISCRIMINATION.

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

9.2 Conflict of Interest. Contracting Party covenants that neither it, nor any officer or principal of it, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contracting Party's performance of the Services under this Agreement. Contracting Party further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the Contract Officer. Contracting Party agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of 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 this Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. Contracting Party warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

9.3 Covenant against Discrimination. Contracting Party covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of this Agreement. Contracting Party shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

## 10. MISCELLANEOUS PROVISIONS.

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

To City:

To Contracting Party:

CITY OF LA QUINTA

Attention: [*insert Contract Officer –  
Director decides*]

78-495 Calle Tampico

La Quinta, California 92253

10.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

10.3 Section Headings and Subheadings. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

10.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument

10.5 Integrated Agreement. This Agreement including the exhibits hereto is the entire, complete, and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

10.6 Amendment. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contracting Party and by the City Council of City. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

10.7 Severability. In the event that any one or more of the articles, phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect any of the remaining articles, phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder 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.

10.8 Unfair Business Practices Claims. In entering into this Agreement, Contracting Party offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials related to this Agreement. This assignment shall be made and become effective at the time City renders final payment to Contracting Party without further acknowledgment of the parties.

10.9 No Third Party Beneficiaries. With the exception of the specific provisions set forth in this Agreement, there are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

10.10 Authority. The persons executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly

organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

CITY OF LA QUINTA,  
a California Municipal Corporation

CONTRACTING PARTY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
FRANK J. SPEVACEK, City Manager

City of La Quinta, California

Dated: \_\_\_\_\_

\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
MONIKA RADEVA, Acting City Clerk  
La Quinta, California

APPROVED AS TO FORM:

\_\_\_\_\_  
WILLIAM H. IHRKE, City Attorney  
City of La Quinta, California

(DIRECTOR TO DETERMINE IF THE FOLLOWING IS TO BE FOLLOWED OR DELETED:)

**NOTE:** (1) TWO SIGNATURES ARE REQUIRED IF A CORPORATION'S BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE STATE THAT TWO SIGNATURES ARE REQUIRED ON CONTRACTS, AGREEMENTS, AMENDMENTS, CHANGE ORDERS, ETC.

(2) CONTRACTING PARTY'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTING PARTY'S BUSINESS ENTITY.

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Exhibit A  
Scope of Services

1. Services to be Provided:

[TO BE PROVIDED BY STAFF (include location of work)]

2. Performance Standards:

[TO BE PROVIDED BY STAFF]

OR

[See Attached]

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ADDENDUM TO AGREEMENT  
Re: Scope of Services

If the Scope of Services include construction, alteration, demolition, installation, repair, or maintenance affecting real property or structures or improvements of any kind appurtenant to real property, the following apply:

1. Prevailing Wage Compliance. If Contracting Party is a contractor performing public works and maintenance projects, as described in this Section 1.3, Contracting Party shall comply with applicable Federal, State, and local laws. Contracting Party is aware of the requirements of California Labor Code Sections 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Sections 16000, *et seq.*, (collectively, the "Prevailing Wage Laws"), and La Quinta Municipal Code Section 3.12.040, which require the payment of prevailing wage rates and the performance of other requirements on "Public works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if construction work over twenty-five thousand dollars (\$25,000.00) and/or alterations, demolition, repair or maintenance work over fifteen thousand dollars (\$15,000.00) is entered into or extended on or after January 1, 2015 by this Agreement,, Contracting Party agrees to fully comply with such Prevailing Wage Laws including, but not limited to, requirements related to the maintenance of payroll records and the employment of apprentices. Pursuant to California Labor Code Section 1725.5, no contractor or subcontractor may be awarded a contract for public work on a "Public works" project unless registered with the California Department of Industrial Relations ("DIR") at the time the contract is awarded. If the Services are being performed as part of an applicable "Public works" or "Maintenance" project, as defined by the Prevailing Wage Laws, this project is subject to compliance monitoring and enforcement by the DIR. Contracting Party will maintain and will require all subcontractors to maintain valid and current DIR Public Works contractor registration during the term of this Agreement. Contracting Party shall notify City in writing immediately, and in no case more than twenty-four (24) hours, after receiving any information that Contracting Party's or any of its subcontractor's DIR registration status has been suspended, revoked, expired, or otherwise changed. It is understood that it is the responsibility of Contracting Party to determine the correct salary scale. Contracting Party shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contracting Party's principal place of business and at the project site, if any. The statutory penalties for failure to pay prevailing wage or to comply with State wage and hour laws will be enforced. Contracting

Party must forfeit to City TWENTY FIVE DOLLARS (\$25.00) per day for each worker who works in excess of the minimum working hours when Contracting Party does not pay overtime. In accordance with the provisions of Labor Code Sections 1810 *et seq.*, eight (8) hours is the legal working day. Contracting Party also shall comply with State law requirements to maintain payroll records and shall provide for certified records and inspection of records as required by California Labor Code Section 1770 *et seq.*, including Section 1776. In addition to the other indemnities provided under this Agreement, Contracting Party shall defend (with counsel selected by City), indemnify, and hold City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It is agreed by the parties that, in connection with performance of the Services, including, without limitation, any and all "Public works" (as defined by the Prevailing Wage Laws), Contracting Party shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. Contracting Party acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with such laws. Contracting Party shall require the same of all subcontractors.

2. Retention. Payments shall be made in accordance with the provisions of Article 2.0 of the Agreement. In accordance with said Sections, City shall pay Contracting Party a sum based upon ninety-five percent (95%) of the Contract Sum apportionment of the labor and materials incorporated into the Services under this Agreement during the month covered by said invoice. The remaining five percent (5%) thereof shall be retained as performance security to be paid to Contracting Party within sixty (60) days after final acceptance of the Services by the City Council of City, after Contracting Party has furnished City with a full release of all undisputed payments under this Agreement, if required by City. In the event there are any claims specifically excluded by Contracting Party from the operation of the release, City may retain proceeds (per Public Contract Code § 7107) of up to one hundred fifty percent (150%) of the amount in dispute. City's failure to deduct or withhold shall not affect Contracting Party's obligations under the Agreement.

3. Utility Relocation. City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse Contracting Party for any costs incurred in locating, repairing damage not caused by Contracting Party, and removing or relocating such

unidentified utility facilities. Contracting Party shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

4. Trenches or Excavations. Pursuant to California Public Contract Code Section 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply:

(a) Contracting Party shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contracting Party believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions at the site different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; or (3) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contracting Party's cost of, or the time required for, performance of any part of the work shall issue a change order per Section 1.8 of the Agreement.

(c) in the event that a dispute arises between City and Contracting Party whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contracting Party's cost of, or time required for, performance of any part of the work, Contracting Party shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under this Agreement. Contracting Party shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting Parties.

5. Safety. Contracting Party shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Contracting Party shall at all times be in compliance with all applicable local, state, and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and

procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

6. Liquidated Damages. Since the determination of actual damages for any delay in performance of the Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, Contracting Party shall be liable for and shall pay to City the sum of One Thousand dollars (\$1,000.00) as liquidated damages for each working day of delay in the performance of any of the Services required hereunder, as specified in the Schedule of Performance. In addition, liquidated damages may be assessed for failure to comply with the emergency call out requirements, if any, described in the Scope of Services. City may withhold from any moneys payable on account of the Services performed by Contracting Party any accrued liquidated damages.

## Exhibit B

### Schedule of Compensation

With the exception of compensation for Additional Services, provided for in Section 2.3 of this Agreement, the maximum total compensation to be paid to Contracting Party under this Agreement is \_\_\_\_\_ (\$\_\_\_\_\_) ("Contract Sum"). The Contract Sum shall be paid to Contracting Party in installment payments made on a monthly basis and in an amount identified in Contracting Party's schedule of compensation attached hereto for the work tasks performed and properly invoiced by Contracting Party in conformance with Section 2.2 of this Agreement.

[insert Contracting Party's schedule of compensation]



Exhibit C  
Schedule of Performance

Contracting Party shall complete all services identified in the Scope of Services, Exhibit A of this Agreement, in accordance with the Project Schedule below [or... attached hereto and incorporated herein by this reference].

[insert Project Schedule]

Exhibit D  
Special Requirements

[insert Special Requirements or indicate, "None" if there are none]

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Exhibit E  
Insurance Requirements

E.1 Insurance. Prior to the beginning of and throughout the duration of this Agreement, the following policies shall be maintained and kept in full force and effect providing insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-VI:

Commercial General Liability (at least as broad as ISO CG 0001)  
\$1,000,000 (per occurrence)  
\$2,000,000 (general aggregate)

**Must include the following endorsements:**

General Liability Additional Insured  
General Liability Primary and Non-contributory

Commercial Auto Liability (at least as broad as ISO CA 0001)  
\$1,000,000 (per accident)  
Personal Auto Declaration Page if applicable

Errors and Omissions Liability  
\$1,000,000 (per claim and aggregate)

Workers' Compensation  
(per statutory requirements)

**Must include the following endorsements:**

Workers Compensation Waiver of Subrogation  
Workers Compensation Declaration of Sole Proprietor if applicable

Contracting Party shall procure and maintain, at its cost, and submit concurrently with its execution of this Agreement, Commercial General Liability insurance against all claims for injuries against persons or damages to property resulting from Contracting Party's acts or omissions rising out of or related to Contracting Party's performance under this Agreement. The insurance policy shall contain a severability of interest clause providing that the coverage shall be primary for losses arising out of Contracting Party's performance hereunder and neither City nor its insurers shall be required to contribute to any such loss. An endorsement evidencing the foregoing and naming the City and its officers and employees as additional insured (on the Commercial General Liability policy only) must be submitted concurrently with the execution of this Agreement and approved by City prior to commencement of the services hereunder.

Contracting Party shall carry automobile liability insurance of \$1,000,000 per accident against all claims for injuries against persons or damages to property arising out of the use of any automobile by Contracting Party, its officers, any person directly or indirectly employed by Contracting Party, any subcontractor or agent, or anyone for whose acts any of them may be liable, arising directly or indirectly out of or related to Contracting Party's performance under this Agreement. If Contracting Party or Contracting Party's employees will use personal autos in any way on this project, Contracting Party shall provide evidence of personal auto liability coverage for each such person. The term "automobile" includes, but is not limited to, a land motor vehicle, trailer or semi-trailer designed for travel on public roads. The automobile insurance policy shall contain a severability of interest clause providing that coverage shall be primary for losses arising out of Contracting Party's performance hereunder and neither City nor its insurers shall be required to contribute to such loss.

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 Contracting Party 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.

Contracting Party shall carry Workers' Compensation Insurance in accordance with State Worker's Compensation laws with employer's liability limits no less than \$1,000,000 per accident or disease.

Contracting Party shall provide written notice to City within ten (10) working days if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event any of said policies of insurance are cancelled, Contracting Party shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Exhibit to the Contract Officer. The procuring of such insurance or the delivery of policies or certificates evidencing the same shall not be construed as a limitation of Contracting Party's obligation to indemnify City, its officers, employees, contractors, subcontractors, or agents.

**E.2 Remedies.** In addition to any other remedies City may have if Contracting Party fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement.

b. Order Contracting Party to stop work under this Agreement and/or withhold any payment(s) which become due to Contracting Party hereunder until Contracting Party demonstrates compliance with the requirements hereof.

c. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to any other remedies City may have. The above remedies are not the exclusive remedies for Contracting Party's failure to maintain or secure appropriate policies or endorsements. Nothing herein contained shall be construed as limiting in any way the extent to which Contracting Party may be held responsible for payments of damages to persons or property resulting from Contracting Party's or its subcontractors' performance of work under this Agreement.

E.3 General Conditions Pertaining to Provisions of Insurance Coverage by Contracting Party. Contracting Party and City agree to the following with respect to insurance provided by Contracting Party:

1. Contracting Party agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees, and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Contracting Party also agrees to require all contractors, and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Contracting Party, or Contracting Party's employees, or agents, from waiving the right of subrogation prior to a loss. Contracting Party agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

3. All insurance coverage and limits provided by Contracting Party 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 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 endorsement 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 contractor or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contracting Party 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 Contracting Party'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 interests 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 Contracting Party or deducted from sums due Contracting Party, at City option.

8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Contracting Party 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.

9. Contracting Party agrees to ensure that subcontractors, and any other party involved with the project that is brought onto or involved in the project by Contracting Party, provide the same minimum insurance coverage required of Contracting Party. Contracting Party 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. Contracting Party agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.

10. Contracting Party agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein (with the exception of professional liability coverage, if required) 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 Contracting Party'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 Contracting Party, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

11. The City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contracting Party ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contracting Party, the City will negotiate additional compensation proportional to the increased benefit to City.

12. 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.

13. Contracting Party acknowledges and agrees that any actual or alleged failure on the part of City to inform Contracting Party 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.

14. Contracting Party 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.

15. Contracting Party 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 Contracting Party's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five (5) days of the expiration of coverages.

16. The provisions of any workers' compensation or similar act will not limit the obligations of Contracting Party under this agreement. Contracting Party expressly agrees not to use any statutory immunity

defenses under such laws with respect to City, its employees, officials, and agents.

17. 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 as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

18. 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.

19. 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.

20. Contracting Party 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 Contracting Party 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.

21. Contracting Party agrees to provide immediate notice to City of any claim or loss against Contracting Party 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 F  
Indemnification

F.1 Indemnity for the Benefit of City.

a. Indemnification for Professional Liability. When the law establishes a professional standard of care for Contracting Party's Services, to the fullest extent permitted by law, Contracting Party shall indemnify, protect, defend (with counsel selected by City), and hold harmless City and any and all of its officials, employees, and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities of every kind, nature, and description, damages, injury (including, without limitation, injury to or death of an employee of Contracting Party or of any subcontractor), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Contracting Party, its officers, agents, employees or subcontractors (or any entity or individual that Contracting Party shall bear the legal liability thereof) in the performance of professional services under this agreement. With respect to the design of public improvements, the Contracting Party 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 Contracting Party.

b. Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Contracting Party shall indemnify, defend (with counsel selected by City), and hold harmless the Indemnified Parties 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, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses) incurred in connection therewith and costs of investigation, 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 Contracting Party or by any individual or entity for which Contracting Party is legally liable, including but not limited to officers, agents, employees, or subcontractors of Contracting Party.

c. Indemnity Provisions for Contracts Related to Construction (Limitation on Indemnity). Without affecting the rights of City under any

provision of this agreement, Contracting Party 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 Contracting Party will be for that entire portion or percentage of liability not attributable to the active negligence of City.

d. Indemnification Provision for Design Professionals.

1. Applicability of this Section F.1(d). Notwithstanding Section F.1(a) hereinabove, the following indemnification provision shall apply to a Contracting Party who constitutes a "design professional" as the term is defined in paragraph 3 below.

2. Scope of Indemnification. When the law establishes a professional standard of care for Contracting Party's Services, to the fullest extent permitted by law, Contracting Party shall indemnify and hold harmless City and any and all of its officials, employees, and agents ("Indemnified Parties") from and against any and all losses, liabilities of every kind, nature, and description, damages, injury (including, without limitation, injury to or death of an employee of Contracting Party or of any subcontractor), costs and expenses, including, without limitation, incidental and consequential damages, court costs, reimbursement of attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, to the extent same are caused by any negligent or wrongful act, error or omission of Contracting Party, its officers, agents, employees or subcontractors (or any entity or individual that Contracting Party shall bear the legal liability thereof) in the performance of professional services under this agreement. With respect to the design of public improvements, the Contracting Party 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 Contracting Party..

3. Design Professional Defined. As used in this Section F.1(d), the term "design professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by Civil Code § 2782.8.

F.2 Obligation to Secure Indemnification Provisions. Contracting Party agrees to obtain executed indemnity agreements with

provisions identical to those set forth herein this **Exhibit F**, as applicable to the Contracting Party, from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contracting Party in the performance of this Agreement. In the event Contracting Party fails to obtain such indemnity obligations from others as required herein, Contracting Party agrees to be fully responsible according to the terms of this Exhibit. 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 obligations to indemnify and defend City as set forth in this Agreement are binding on the successors, assigns or heirs of Contracting Party and shall survive the termination of this Agreement.