



July 27th, 2017

## REQUEST FOR PROPOSAL

The City of Desert Hot Springs, hereinafter referred to as the City, is inviting proposals from qualified vendors to bid on an Information Technology Infrastructure Upgrade for the City and Police Department. To be considered for this contract, your firm and proposal must meet the qualifications and satisfy the requirements as stated in this Request for Proposal (RFP).

### **Time Schedule:**

The following is the City's tentative schedule for the selection of a Consulting firm to provide an Information Technology Infrastructure Upgrade:

1. Request for Proposal Dated: July 27, 2017
2. RFP Question Deadline August 28, 2017
3. **Deadline for filing RFP: September 5, 2017 at 4PM**
4. City review of proposals: September 5 – 13, 2017
5. Award Contract September 19, 2017

**Prior to 4:00 p.m., on September 5, 2017 proposals shall be submitted to:**

Attn: City Clerk  
City of Desert Hot Springs  
65950 Pierson Blvd.  
Desert Hot Springs, CA 92240

All Proposals must be received by the City no later than **4:00 PM, PST, September 5, 2017**, where at such time and said place proposals will be publicly opened, examined and declared. Any proposal may be withdrawn by offeror(s) prior to the above scheduled time for the opening of proposals. Any proposal received after the time and date specified shall **NOT** be considered.

All questions regarding this RFP must be directed to Marius Stuler, Information Technology Manager, via email at [mstuler@cityofdhs.org](mailto:mstuler@cityofdhs.org) or by telephone at (760) 329-6411 x254.

**Contact with City of Desert Hot Springs personnel other than those listed above regarding this RFP may be grounds for elimination from the selection process.**

All questions must be received by no later than 5PM, PST, on August 28<sup>th</sup>, 2017. Inquiries received after this deadline will not be accepted. **Responses to all questions will be posted to the City's website at: [http://www.cityofdhs.org/RFP's RFQ's](http://www.cityofdhs.org/RFP's%20RFQ's).** Please note: it is the responsibility of interested bidders to check the questions and answers periodically and especially once the inquiry deadline has passed.

Sincerely,



Luke Rainey  
Deputy City Manager

**CITY OF DESERT HOT SPRINGS  
REQUEST FOR PROPOSAL  
INFORMATION TECHNOLOGY INFRASTRUCTURE UPGRADE**

**PART I: SELECTION CRITERIA**

A final contract will be awarded to the Consultant who can best meet the requirements as specified; and provide high quality, cost effective consulting services for the Information Technology infrastructure upgrade, as determined by the City Staff/Council based on the following factors which are listed without implication of priority:

1. Information regarding the Consultant's experience and qualifications to successfully provide consulting services to conduct an Information Technology infrastructure upgrade.
2. The ability and willingness of the Consultant to meet all requirements as outlined in the scope of work (see Exhibit A).
3. A company resume, a list of client references, and an outline of any experience the Consultant has had in meeting the consulting services required to conduct an Information Technology Infrastructure upgrade for the needs of governmental organizations or any other organization. References should include the name, address and telephone number of clients who may be contacted, along with a brief description explaining the service(s) performed.
4. The thoroughness and conformity of the proposal package and cost of services to complete the scope of work identified in Exhibit A.
5. An estimate and compensation schedule on the scope of work as outlined in Exhibit A and a proposed fee schedule. **Proposals will be evaluated based on the Scope of Work, Exhibit A, established herein. It is the responsibility of the submitter to review and understand all of the requirements.** During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposing firms or to allow corrections of errors or omissions.

**PART II: INSTRUCTIONS, CONDITIONS, and LEGAL REQUIREMENTS**

1. The City of Desert Hot Springs has outlined the requirements herein in as much detail as is currently known. Please provide any exceptions, additional information, or suggestions that will aid in the City's selection process (attachments are acceptable).
2. The Consultant shall defend, indemnify, and hold the City of Desert Hot Springs, its officers, agents, volunteers, and employees free and harmless from any and all causes of action or claims of damages arising out of or related to the Consultant's performance under this contract.
3. The City reserves the right to negotiate terms and scope of work with the highest ranked Consultant. If an agreement cannot be negotiated the City reserves the right to negotiate with any other Consultant.

4. The selected Consultant will be required to comply with all existing State and Federal labor laws. If the Consultant out-sources any work or job to a sub-Contractor/Consultant, it will be the prime Consultant's responsibility to ensure that all sub-Contractors/Consultants meet the requirements as stated in this RFP.
5. A contract will be awarded to the most qualified Consultant. Although price is of prime consideration, it is not the sole determining factor. The City reserves the right to select the appropriate firm based on the most qualified proposal. The determination of the most qualified and most competitively priced proposal may involve all or some of the following factors: price, thoroughness of the proposal package, previous experience and performance; conformity to scope of work in Exhibit A; financial ability to fulfill the contract; ability to meet scope of work; terms of payment; compatibility, as required; number of sub-Contractors/Consultants the main Consultant may need to employ for out-sourced work; other costs; and other objectives and accountable factors which are reasonable. The City reserves the right to select a Consultant to perform all of the work identified in the RFP, or only selected portions based on price and/or other factors.
6. Before execution of the contract, the selected Consultant is obligated to provide evidence of liability insurance to include: Worker's Compensation, General Liability, and Automobile Liability of \$1,000,000 per occurrence, \$2,000,000 aggregate.
7. The successful Consultant shall be an independent contractor and nothing shall be construed to cause the Consultant to be deemed or represent itself as an agent or employee of the City.
8. Any evidence of agreement or collusion among Consultant acting illegally to restrain freedom of competition by agreement to propose a fixed price, or otherwise, will render the proposal of such Consultant void.
9. The selected Consultant agrees to maintain a City of Desert Hot Springs Business License for the duration of the contract.
10. Consultant agrees that all service by the Consultant shall be to the satisfaction of authorized City personnel. Should the Consultant default on performance of any of these requirements, the City shall have the right to terminate this agreement upon thirty (30) days written notice delivered to the Consultant by certified mail or courier. Termination of the contract will not relieve the Consultant of any liability to the City for damages sustained by the City because of any breach of contract by the Consultant. The City may withhold any payments to the Consultant until such time as the exact amount of damages due the City from the Consultant is determined.
11. The Consultant shall submit a list of at least five (5) references that have purchased similar consulting services from the Consultant. Consultant shall provide company name, contact name and phone number for each reference.
12. The term of the contract shall commence upon execution by the City Council or authorized City representative and continue through a date to be determined. The City reserves the option to extend the contract(s) under the same terms and conditions for a maximum of one (1) additional one-year at current price levels.

13. The contract between Consultant and the City is non-transferable. Consultant shall under no circumstances assign the agreement without written permission of the City. Consultant shall notify the City, in writing, of any change in ownership at least thirty (30) days prior to said change.
14. The standard form of the City's Consulting services agreement is attached hereto as Exhibit B. The selected Consultant will be required to enter into this Agreement. By submitting a proposal, Consultant certifies to the City that he/she has reviewed the Specifications of the RFP and the terms of the agreement and has incorporated all direct and indirect costs of complying with the scope of work and the agreement into the Proposal.
15. The City's terms for payment are net 30 upon receipt of invoice. Consultant shall submit invoices between the first and fifteenth business day of each month for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all undisputed fees.
16. Prohibited Interest – No officer, elected official, or employee of the City of Desert Hot Springs shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-Contractors/Consultants for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Desert Hot Springs has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-Contractors/Consultants on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.
17. The selected Consultant must be live scanned (fingerprinted) before execution of an official agreement by the City of Desert Hot Springs Police Department at the Consultant's expense.

### **PART III QUALIFICATIONS**

Please provide a resume of each staff member that will be working with the City directly to complete the Information Technology infrastructure upgrade. The resume should include but is not limited to the following information:

Range of experience in consulting work related to Information Technology consulting services; number of years performing this type of consulting; education; number of years with consulting firm; title of position with the consulting firm; hourly rates; and name of individual.

#### **PART IV: GENERAL INFORMATION**

1. Consultant is required to carefully and fully investigate all of the requirements of this RFP. By submitting a proposal, Consultant represents and certifies to the City that such investigation has been completed and that it fully understands the scope of work.
2. The City reserves the right to reject any and all proposals as deemed necessary.
3. The City will not reimburse Consultants for any costs involved in the preparation and submission of proposals. Furthermore, this RFP does not obligate the City to accept or contract for any expressed or implied services.
4. The City reserves the right to request any Consultant submitting a proposal to clarify its proposal or to supply additional material deemed necessary to assist in the selection process.
5. If an Exhibit "A" requirement cannot be met by a Consultant, then the Consultant should submit a "No Proposal" response for the items affected. Alternate or equivalent items may be submitted for consideration by the City, unless otherwise specified.
6. All submitted proposals and information included therein or attached thereto shall become public records upon contract award.
7. Consultant is requested to provide any exceptions, additional information or suggestions that will aid in the City's selection process.
8. Any questions regarding this RFP should be referred to Marius Stuler, Information Technology Manager, at [mstuler@cityofdhs.org](mailto:mstuler@cityofdhs.org).

## **Exhibit A**

### **Scope of Work**

#### **Information Technology Infrastructure Upgrade**

The City of Hot Desert Springs is planning to implement upgrades to the City's information technology infrastructure. The City will select the best qualified vendor who submits a proposal demonstrating abilities to procure the necessary hardware and design secure and stable local area, wide area, and wireless network layer upgrades that achieve a modernized virtual platform on which to migrate physically hosted workloads.

The selected vendor will perform a like-for-like swap out of our network devices and racks, implement new firewalls with VPN capabilities for site-to-site connectivity, deploy wireless access points (10 APs), build out two (2) hyper-converged platforms and establish a new VMware ESXi cluster, migrate VMs from Hyper-V to VMware ESXi (up to 2 VMs), perform physical to virtual migrations (up to 5), and migrate current Active Directory to new Domain Controllers.

Prior to submitting a bid, interested vendors may contact the City's Information Technology department and schedule a site visit. Please email Marius Stuler, Information Technology Manager, at [mstuler@cityofdhs.org](mailto:mstuler@cityofdhs.org) or call (760) 329-6411 x254

City of Hot Desert Springs is requesting the services and hardware (or equivalent) as follows:

#### **1. Project Kick-off meeting**

- Scope of Work (SOW) review and deliverables/expectations verification.
- Review SOW goals and discuss work stream prioritization
  - VMware deployment, workload migration, and virtual server build out.
  - Network:
    - Cabling, rack build out, rack population.
    - Local area network device refresh.
    - Wireless installation and configuration.
    - Firewalls.
- Discuss timelines.
- Discuss constraints. (Potential utility room space issue).
- Discuss criteria for success.
- Credential requests.
- Document access to existing resources, change control procedures, and maintenance windows.

#### **2. Network:**

- Discovery
  - Review any existing network documentation/diagrams/requirements:
    - Utility room:
      - Size.
      - Power.
      - Cabling.
      - Grounding.
    - Topology.
    - IP schema.

- LAN connectivity within sites.
    - vLAN design.
    - Port management.
    - Network time source.
    - Speed requirements:
      - Server
      - Workstation.
      - Virtual hosts.
      - Storage
  - Review wireless documentation/diagrams/requirements:
    - Internal building materials between RJ-45 jacks and locations where APs will be placed.
    - Heat maps.
    - Bill of Materials.
    - vLANs allocated for wireless.
    - DHCP/DNS sources.
    - Number of ports per rack required for AP/LAN connectivity.
    - Naming standards.
  - Review firewall documentation/diagrams/requirements:
    - Edge design.
    - Review Security policy.
    - Firewall rules.
    - IPS.
    - VPN.
    - Naming standards.
  - Discuss any known performance issues or operational issues.
  - Discuss expectations for configuration, deployment, and implementation activities.
- Design
    - Rack elevations (three racks).
      - Two racks will be in the same utility room:
      - Equipment will be laid out as follows
        - Rack one – City assets.
        - Rack two – Police Department assets.
      - Third rack will reside at the City Manager's office location:
        - Rack three will host a patch panel, router, firewall, and switch.
    - LAN:
      - Document local area network configuration changes (if required) to maintain current functionality due to newer network operating systems.
      - Port mappings/cross connects.
    - Document firewall:
      - Determine network ports to use for connectivity.
      - Transfer firewalls rules from the legacy firewalls to the new firewalls.
      - New IPS policies.
      - New VPN configurations.



- Port mappings.
  - Test scripts.
- Document wireless:
  - Re-cable RJ-45 jacks on the walls below AP placement locations so wires are not exposed (if necessary).
  - Port mappings for APs.
  - Wireless security.
  - Test scripts.
- Build
  - Racks:
    - Assemble racks (three).
    - Install cable management accessories.
    - Ground racks (three).
  - Local area network:
    - Rack equipment per the rack elevation.
    - Cross connect per the design.
    - Configure the switches per the design.
    - Test.
  - Firewalls:
    - Rack firewall appliances (three):
      - One per rack.
    - Cross connect.
    - Configure each firewall per the design (three):
      - Set IPS to monitor mode.
      - Set up VPN.
    - Run test scripts against rules and IPS policies.
    - Test VPN access from another location.
  - Wireless:
    - AP installation:
      - Configure APs (Ten).
      - Mount provided access points and connect to RJ45 jack.
      - OS upgrades (as required).
      - Join to proper network.
      - Tuning of AP Signals.
    - Test signal strength, configuration, and endpoint connectivity.
- Deploy
  - Planning for each work stream
    - Rollback and risks.
    - Task timing and execution:
      - Validate roles and responsibilities.
    - Network device server shut down and start up.
    - Server shut down, rack migration, and start up.
  - Communication plan for each work stream.
    - Constraints:
      - Readiness.
      - Business.

- Resource.
  - Funding.
  - Change management.
- Cutover each rack per the plan.
- Review as-built documentation.
- Provide post-cut support:
  - Local area network (four hours).
  - Wireless network (four hours).
  - Firewalls (four hours).

### 3. VMware ESXi:

- Discovery
  - Review current resource allocations for existing workloads.
  - Discuss current workload characteristics.
  - Discuss requirements for:
    - vSphere Operations Manager.
    - Licensed features.
    - Internal virtual networking.
    - Storage connectivity and provisioning.
    - Specifications for virtual images.
    - Naming standards.
  - Rack placement for physical platforms.
- Design
  - VMware ESXi:
  - Hardware design.
  - Create build documentation covering:
    - Physical network connectivity:
      - Port mapping.
    - Virtual networking.
    - Storage provisioning.
    - Resource allocations.
    - Enabled features.
    - Naming and addressing.
- Build
  - Rack server hardware (two).
    - Setup the HP hyper-converged server platforms (two).
    - Cross connect interfaces into network ports.
    - Install VMware ESXi 6.x.
    - Set up virtual networking.
    - Provision storage.
    - Deploy vCenter.
    - Create new Domain Controllers and migrate Active Directory and services
    - Integrate with Azure Active Directory
    - Assign AD accounts to vCenter administrator role.
    - Test access.
    - Create a new Windows 2012 R2 server image (one) based on user Security Policy/Server Policy or provided iso image

- In lieu of a policy or image, create a basic Windows 2012 R2 server image.
    - Spin up new Windows 2012 R2 virtual guests (five):
      - Over the shoulder virtual server deployment of servers four and five.
      - Test access to one of the servers.
  - Deploy
    - Planning for each work stream
      - Rollback and risks.
      - Task timing and execution:
        - Validate roles and responsibilities.
      - Communication plan for each work stream. •
        - Constraints:
          - Readiness.
          - Business.
          - Resource.
          - Funding.
          - Change management.
    - VMware ESXi: •
      - Move workloads (two) from Hyper-V environment to the new VMware ESXi cluster.
      - Perform up to five physical to virtual migrations.
      - Review as-built documentation and basic console navigation training
4. Provide hourly rate(s) for the following:
- Out of scope scenarios as described below
  - Contingency support, following completion of the project
5. Below is a sample hardware list provided as minimum requirements to achieve the objectives described above.

○ Switching & Access Points

Product	Quantity
10-GbE SFP+ LR Transceiver	6
10-GbE SFP+ SR Transceiver	4
Hospitality 802.11ac Dual 2x2:2 Radio Integrated Antenna AP	10
2-port 10GbE SFP+ Module	9
24G-POE+ Switch	4
802.11n/ac Dual 3x3:3 Radio Integrated Directional Ant Outdoor AP	1
AP-270-MNT-H1 AP-270 Series Outdoor AP Hanging or Tilt Install Mount Kit	1
PD-9001GR-AC 30W 802.3at PoE+ 10/100/1000 Ethernet Indoor Rated Midspan Injector	1
PC-AC-NA (NA) AC Power Cord	1
48G-POE+ Switch	5

(Continued on next page)

- Server & Storage

Product	Quantity
16GB 2RX4 PC4-2133P-R KIT	16
900GB 12G SAS 10K 2.5IN SC ENT HDD	24
480GB 6G SATA MU-3 SFF SC SSD	8
ARRAY P440AR/2G FIO CONTROLLER	2
ARRAY P840/4G CONTROLLER	2
ETHERNET 10GB 2P 561FLR-T ADPTR	2
500W FS PLAT HT PLG PWR SUPPLY KIT	4
2 Node Hyperconverged Cluster	2

- Firewall

Product	Quantity
Security/Firewall Appliance - 8 Port - 1000Base-T, 1000Base-X Gigabit Ethernet - USB - 8 x RJ-45 - 3 - SFP - 2 x SFP - Manageable - 1U - Rack-mountable CORD	2

**Exhibit B**

**(EXAMPLE OF)  
PROFESSIONAL SERVICES AGREEMENT  
BY AND BETWEEN  
CITY OF DESERT HOT SPRINGS  
AND  
[INSERT NAME OF PROFESSIONAL HERE]**

This Professional Services Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Desert Hot Springs, a municipal corporation located in the County of Riverside, State of California, hereinafter referred to as the "City," and [INSERT NAME OF PROFESSIONAL], a [INSERT ENTITY DESCRIPTION IF APPLICABLE], hereinafter referred to as "Consultant."

**RECITALS:**

**WHEREAS**, the City desires to utilize the services of Consultant, as an independent contractor, to perform [INSERT BRIEF DESCRIPTION OF SERVICES HERE] ("Services"); and

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

**NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:**

**Section 1.                      RECITALS**

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

**Section 2.                      SCOPE OF SERVICES**

Consultant shall provide to the City those Services as set forth in the Scope of Services, attached hereto as Exhibit "A" and incorporated herein by this reference, at the time, place, and in the manner specified therein, in a manner satisfactory to the City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. In the event any conflict exists between this Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

**Section 3.**                    **COMPLETION DATE**

Consultant shall complete the services described in the Scope of Services during the term of this Agreement, which shall be effective as of [INSERT EFFECTIVE DATE], and expire [INSERT EXPIRATION DATE].

**Section 4.**                    **COMPENSATION**

The City agrees to pay Consultant for and in consideration of the faithful performance of the consulting services and duties set forth in this Agreement, and Consultant agrees to accept from the City, as and for compensation for the faithful performance of said services and duties, an amount not to exceed [INSERT AMOUNT OF COMPENSATION HERE], in accordance with the Cost Proposal contained in the Scope of Services.

**Section 5.**                    **METHOD OF PAYMENT**

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

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

[INSERT NAME], [INSERT POSITION]  
City of Desert Hot Springs  
65950 Pierson Boulevard  
Desert Hot Springs, CA 92240  
Telephone: \_\_\_\_\_, ext. \_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_  
CC: \_\_\_\_\_

**Section 6.**                    **EXTRA WORK**

At any time during the term of this Agreement, the City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the Services, but which the parties

did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform Extra Work without written authorization from the City.

#### **Section 7.**                    **TERMINATION**

This Agreement may be terminated by the City immediately for cause. The City may terminate this Agreement without cause upon thirty (30) days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination, provided that Consultant shall have satisfied all its obligations under this Agreement through and including the effective date of termination.

#### **Section 8.**                    **OWNERSHIP OF DOCUMENTS**

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

#### **Section 9.**                    **CONFIDENTIALITY**

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

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

#### **Section 10.**                    **CONSULTANT'S BOOKS AND RECORDS**

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

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

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

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

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

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

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

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

a. Consultant represents and acknowledges the following:



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

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

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

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

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

(6) Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City.

b. The City represents and acknowledges the following:

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

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

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

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

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

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

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

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

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

### **Section 13. CIVIL CODE SECTION 1542 WAIVER**

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

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

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

\_\_\_\_\_  
Initials

### **Section 14. CONFLICTS OF INTEREST**

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

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

(1) Does not make or participate in:

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

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

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

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

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

b. By executing this Agreement, Consultant warrants that:

- (1) it has thoroughly investigated and considered the work to be performed;

- (2) it has investigated the issues, regarding the scope of services to be provided;
- (3) it has carefully considered how the work should be performed; and
- (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

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

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

#### **Section 16. COMPLIANCE WITH LAWS**

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

#### **Section 17. INDEMNIFICATION**

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

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

c. Notwithstanding the provisions of subsections a. and b. of this section, Consultant shall not be responsible for damages or be in default or deemed to be in default by reason of delay caused by strikes, lockouts, accidents, or acts of God, or the failure of the City to furnish timely information or to approve or disapprove Consultant's work promptly, or by reason of delay or faulty performance by the City, construction

contractors, or governmental agencies, or by reason of any other delays beyond Consultant's control, or for which Consultant is without fault.

d. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

## **Section 18. INSURANCE REQUIREMENTS**

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

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

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

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

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

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

(1) Except for worker's compensation, errors and omissions, or professional liability coverage, the City, its elected or appointed officers, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

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

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

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

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

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

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

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

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

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

g. Failure to Obtain Coverages. Consultant agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by any subcontractors or others involved in any way with the performance of Services, to the extent such is permissible under this Agreement, Consultant shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any

kind or nature attributable to the City or its officers, employees, servants, volunteers, agents and independent contractors.

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

## **Section 19.           NOTICES**

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

To the City:           [INSERT NAME], [INSERT POSITION]  
City of Desert Hot Springs  
65950 Pierson Boulevard  
Desert Hot Springs, CA 92240  
Telephone: \_\_\_\_\_, ext. \_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

To Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

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

## **Section 20.           DEFAULT**

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default and shall diligently complete



such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

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

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

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

## **Section 21. REMEDIES**

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

- a. Immediately terminate the Agreement;
- b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- c. Retain a different consultant to complete the work described in the Scope of Services that is not finished by Consultant.

## **Section 22. ENTIRE AGREEMENT**

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

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

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

**Section 23.**                    **MODIFICATIONS AND AMENDMENTS**

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

**Section 24.**                    **ASSIGNMENT AND SUBCONTRACTING**

a.        The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the written consent of the City.

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

**Section 25.**                    **WAIVER**

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

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

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

**Section 26.**                    **SEVERABILITY**

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

**Section 27.**                    **VENUE**

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement

action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

**Section 28.**                    **LITIGATION EXPENSES AND ATTORNEYS' FEES**

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

**Section 29.**                    **EXECUTION IN COUNTERPARTS**

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

**Section 30.**                    **PROHIBITED INTERESTS**

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

**Section 31.**                    **EQUAL OPPORTUNITY EMPLOYMENT**

Consultant represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Unless otherwise permitted under the law, Consultant shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

**Section 32.**                    **TIME OF THE ESSENCE**

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

**Section 33.**                    **PRINCIPAL REPRESENTATIVES**

a.        [INSERT NAME OF DESIGNATED PRINCIPAL REPRESENTATIVE] shall be Consultant's Principal Representative and the person responsible for undertaking, managing and supervising the performance of all of the services set forth in the Scope of Services for this Agreement. Consultant's Principal Representative's experience, knowledge, capability and reputation were a substantial inducement for the City to enter into this Agreement, and as such, for the purposes of performing the Scope of Services of this Agreement, the duties of Consultant's Principal Representative shall not be reassigned, without the express written consent of both parties.

b.        The [INSERT POSITION], [INSERT NAME OF CITY EMPLOYEE], shall be the Principal Representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

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

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

**Section 35.**                    **INTERPRETATION**

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

**Section 36.**                    **PROTECTION AND CORRECTION OF WORK**

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

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

**Section 37.**                    **CAPTIONS AND HEADINGS**

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

**Section 38.**                    **GOVERNING LAW**

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

**Section 39.**                    **CUMULATIVE REMEDIES**

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

**Section 40.**                    **NO THIRD PARTY BENEFICIARIES**

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

**Section 41.**                    **OTHER GOVERNMENTAL REGULATIONS**

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

**Section 42.**                    **REPRESENTATIONS OF PARTIES AND PERSONS  
EXECUTING AGREEMENT**

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

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

**Section 43.**                    **SUCCESSORS AND ASSIGNS**

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

**Section 44.**                    **SURVIVAL**

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

**Section 45.            FINGERPRINTING**

Consultant hereby acknowledges that it is required to be livescanned (fingerprinted) by the City of Desert Hot Springs Police Department, at Consultant's expense, prior to execution of this Agreement. In the event Consultant does not do so prior to execution, Consultant agrees to do so immediately following execution hereof.

**Section 46.            USE OF RECYCLED PRODUCTS**

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

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

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

**CITY OF DESERT HOT SPRINGS**

**[INSERT NAME OF PROFESSIONAL]**

\_\_\_\_\_  
[NAME OF CITY STAFF], City Manager

\_\_\_\_\_  
[INSERT NAME OF DESIGNATED  
PRINCIPAL REPRESENTATIVE]

**ATTEST:**

\_\_\_\_\_  
[NAME OF CITY STAFF], Deputy City  
Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
[CITY ATTORNEY], City Attorney