



March 12, 2019

## REQUEST FOR PROPOSAL

The City of Desert Hot Springs, hereinafter referred to as the City, is inviting proposals from qualified firms to provide the City's Full Cost - Cost Allocation Plan and Federal OMB A-87 Cost Allocation Plan and a User Fee Study. To be considered for this agreement, your firm must meet the qualifications and satisfy the requirements as stated in the Request for Proposal (RFP).

### Time Schedule:

The following is the City's tentative schedule for the selection of a consulting firm:

1. Request for Proposal Dated March 12, 2019
2. **Deadline for filing RFP: April 18, 2019 no later than 4:00 p.m.**
3. Staff Reviews Responses May 3, 2019
4. Award Contract May 21, 2019

Prior to 4:00 p.m., **on April 18, 2019** proposals shall be submitted to:

Jerryl Soriano, City Clerk,  
11-999 Palm Drive  
Desert Hot Springs, CA 92240

All questions regarding this RFP must be in writing and directed to Linda Kelly, Finance Director at [lkelly@cityofdhs.org](mailto:lkelly@cityofdhs.org). **Contact with City of Desert Hot Springs personnel or anyone other than those listed above regarding this RFP may be grounds for elimination from the selection process.**

Sincerely,

Linda Kelly  
Finance Director

**CITY OF DESERT HOT SPRINGS  
REQUEST FOR PROPOSAL  
FOR A COST ALLOCATION PLAN AND USER FEE STUDY**

**PART I: SELECTION CRITERIA**

A final contract will be awarded to the Contractor who can best meet the requirements as specified; and provide the highest quality and cost-effective Cost Allocation Plan and Federal OMB A-87 Cost Allocation Plan and User Fee Study to the City, as determined by the City Staff/Council based on the following factors which are listed without implication of priority:

1. Information regarding the Contractor's experience and qualifications to successfully provide a Cost Allocation Plan and Federal OMB A-87 Cost Allocation Plan and User Fee Study.
2. The ability and willingness of the Contractor to meet all requirements as outlined in the scope of work (see Exhibit A).
3. Provided a list of client references and an outline of any experience the Contractor has had in meeting the Cost Allocation Plan and Federal OMB A-87 Cost Allocation Plan and User Fee Study service needs of other governmental organizations, or any other organization. In addition to a list of client references along with a resume of the firm's experience in/with municipal Cost Allocation Plan and Federal OMB A-87 Cost Allocation Plan and User Fee Study services including the name, address and telephone number of client references that may be contacted, provide a brief description of each project explaining the service performed.
4. The thoroughness and conformity of the proposal package, and cost to provide the service.
5. Provide an estimate and compensation schedule on the scope of work as outlined in Exhibit A. The proposed fee schedule including estimated hours for each member of the consulting team and hourly billing rates. The City reserves the right to clarify and further define the scope of work and pricing.

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

1. Contractor shall provide an email with attachment of the proposal.
2. 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).

3. The Contractor shall defend, indemnify, and hold the City of Desert Hot Springs, its officers, agents, volunteers, and employees free and harmless from all causes of action or claims of damages arising out of or related to the Contractor performance under this contract.
4. The City reserves the right to negotiate terms and scope of work with the highest ranked Contractor. If an agreement cannot be negotiated the City reserves the right to negotiate with any other Contractor.
5. Contractor shall identify those services that will be out-sourced to a sub-Contractor. The Contractor will be responsible for verifying the qualifications and validity of all licenses or permits for any out-sourced work to sub-Contractors. The Contractor is also responsible for paying its employees and any sub-Contractors the Contractor hires.
6. Selected Contractor is required to comply with all existing State and Federal labor laws. Selected Contractor is also responsible for complying with all OSHA standards and requirements. If Contractor out-sources any work or job to a sub-Contractor, it will be the prime Contractor's responsibility to ensure that all sub-Contractors meet the requirements as stated in this RFP.
7. A contract will be awarded to the most qualified Contractor. Although price is a prime consideration, it is not the sole determining factor. The City reserves the right to select the appropriate firm based on the most qualified. The determination of the most qualified and most competitively priced may involve all or some of the following factors: price, thoroughness of the qualification 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 the main Contractor 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 Contractor to perform all the work identified in the RFP, or only selected portions based on price and/or other factors.
8. Before execution of the contract, the selected Contractor is obligated to provide evidence of liability insurance to include: Worker's Compensation Insurance of \$1,000,000 per occurrence and, General Liability, Automobile Liability and Professional Liability insurance of \$2,000,000 per occurrence.
9. The successful Contractor shall be an independent contractor, and nothing shall be construed to cause the Contractor to be deemed or represent itself as an agent or employee of the City.
10. Any evidence of agreement or collusion among Contractors acting illegally to restrain freedom of competition by agreement to propose a fixed price, or otherwise, will render the qualification of such Contractors void.
11. The selected Contractor agrees to maintain a City of Desert Hot Springs Business License for the duration of the contract.
12. Contractor agrees that all service by the Contractor shall be to the satisfaction of authorized City personnel. In the event that the Contractor defaults on performance

of any of these requirements, then the City shall have the right to terminate this agreement upon thirty (30) days written notice delivered to the Contractor by certified mail or courier. Termination of the contract will not relieve the Contractor of any liability to the City for damages sustained by the City because of any breach of contract by the Contractor, and the City may withhold any payments to the Contractor until the exact amount of damages due the City from the Contractor is determined.

13. The Contractor shall submit a list of at least five (5) references that have purchased similar products or services from the Contractor. Contractor shall provide company name, contact name and phone number for each reference.
14. 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 two (2) additional one-year at current price levels.
15. The contract between Contractor and the City is non-transferable. Contractor shall under no circumstances assign the agreement without written permission of the City. Contractor shall notify the City, in writing, of any change in shop ownership at least thirty (30) days prior to said change.
16. The standard form of the City's professional services agreement is attached hereto as Exhibit B. The selected Contractor will be required to enter into this Agreement. By submitting a response, Contractor 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 response.
17. The City's terms for payment are net 30 upon receipt of invoice. Contractor 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.
18. Prohibited Interest – No officer, or employee of the City of Desert Hot Springs shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Contractor, or Contractor's sub-Contractors for this project, during his/her tenure or for one year thereafter. The Contractor 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 Contractor or Contractor's sub-Contractors on this project. Contractor further agrees to notify the City in the event any such interest is discovered whether such interest is prohibited by law or this Agreement.

### **PART III: GENERAL INFORMATION**

1. Contractor is required to carefully and fully investigate all the requirements of this RFP. By submitting a response, Contractor 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 responses, if deemed necessary.
3. The City will not reimburse Contractors for any costs involved in the preparation and submission of response. 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 Contractor submitting a response 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 Contractor, then the Contractor should submit a "No" response for the items affected. Alternate or equivalent items may be submitted for consideration by the City, unless otherwise specified.
6. All submitted qualifications and information included therein or attached thereto shall become public records upon contract award.
7. Contractor 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 in writing, to Linda Kelly, Finance Director, via email to [lkelly@cityofdhs.org](mailto:lkelly@cityofdhs.org).

## Exhibit A

### RFP SPECIFICATIONS SPECIAL DISTRICT ADMINISTRATION

#### **CITY INFORMATION**

The City will work with the consultant to conduct a comprehensive review of the City's Cost Allocation Plan and User Fee Study with the goal of establishing a consistent and objectively based fee structure that meets the needs of the City and its citizenry.

A review of the documentation supporting the current cost allocation plan and user fee study and for all departments and services is necessary. These include but are not limited to related fees:

- Administration
- Police
- Community Development
- Planning
- Building and Safety
- Public Works
- Engineering
- Finance
- Fire Inspection
- Code Enforcement
- City Clerk

Consultant shall research all fees including any inadvertently excluded fees.

#### **SCOPE OF SERVICES**

##### **OVERHAD COST ALLOCATION PLAN AND FEDERAL OMB A-87 COST ALLOCATION PLAN:**

Prepare the City's Full Cost - Cost Allocation Plan and Federal OMB A-87 Cost Allocation Plan, which may include the following elements. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

- A. Work and meet with City staff to refine the project scope, purpose, uses and goals of the City's Cost Allocation Plan and Federal OMB A-87 Cost Allocation Plan to ensure that the study will be both accurate and appropriate to the City's needs. Review project schedule and answer any questions pertaining to the successful development of the study.
- B. Meet with staff and conduct interviews as needed to gain an understanding of the City's processes and operations.

- C. Identify the total cost of providing each City service at the appropriate activity level and in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, the State Controller's Office Guidelines for Cost Claiming and OMB Circular A-87 standards.
- D. Determine the appropriate General and Administrative overhead allocations to City activities and applicable overhead rates for use in calculating the City's Billable Hourly rates. The requirements of the model should allow for:
- 1) Additions, revisions, or removal of direct and overhead costs so that the overhead cost allocation plan can be easily adapted to a range of activities, both simple and complex. 5
  - 2) The ability of the City to continuously update the model and overhead cost allocation plan from year to year as the organization changes.
  - 3) The addition of hypothetical service area information for future service enhancements, and the ability to calculate the estimated costs of providing the service under consideration (i.e. ad-hoc analysis).
- E. Report on other matters that come to your attention in the course of your evaluation that in your professional opinion the City should consider.
- F. Present the plan to the City's management group and make necessary adjustments as requested.
- G. If called upon to do so, prepare and deliver presentations to the Council to facilitate their understanding of the plan and its implications to the City.
- H. Provide the City with an electronic copy of the final comprehensive review, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in cost.
- I. Prepare a final report and provide five bound copies, one unbound copy, and a single Microsoft Word and PDF file of the Overhead Cost Recovery Plan that can be made available to City staff. Models, tables and graphs should be provided in Microsoft Excel as deemed appropriate. Any Cost Allocation Model revisions developed shall also be made available to the City in Microsoft Word and PDF formats, providing the ability to add, delete and/or update information as needed.
- J. Provide a computer-based model for adjusting these fees and charges for the City's current and future needs and provide the City with an electronic copy of

the final comprehensive study, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs

K. Consult with City staff should the need arise to defend the cost allocation plan as a result of audits or other challenges.

L. Update the plan annually and maintain accurate records of all correspondence

## **SCOPE OF SERVICES**

### **USER FEE STUDY:**

Prepare a User Fee Study of for the City, which may include the following elements. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

- A. Work and meet with City staff to refine the project scope, purpose, uses and goals of the City's User Fee Study to ensure that the study will be both accurate and appropriate to the City's needs. Review project schedule and answer any questions pertaining to the successful development of the study.
- B. Meet with staff and conduct interviews as needed to gain an understanding of the City's processes and operations. Conduct a comprehensive review of the City's existing fees, rates, and charges.
- C. Identify the total cost of providing each City service at the appropriate activity level and in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, Proposition 218.
- D. Compare service costs with existing recovery levels. This should include any service areas where the City is currently charging for services as well as areas where perhaps the City should charge, in light of the City's practices, or the practices of similar or neighboring cities.
- E. Recommend potential new fees and charges for services that the City currently provides but does not have any fees and/or charges established. Recommendations should be based on practices by surrounding cities that may charge for similar services, industry best practices, or the consultant's professional opinion.

- F. Recommend appropriate fees and charges based on the firm's analysis together with the appropriate subsidy percentage for those fees where full cost recovery may be unrealistic (e.g. youth recreation).
- G. Prepare a report that identifies each fee service, its full cost, recommended and current cost recovery levels. The report should also identify the direct cost, the indirect cost, and the overhead cost for each service
- H. Prepare a report that identifies the present fees, recommended fees, percentage change, cost recovery percentage, revenue impact and fee comparison with Riverside County, Riverside cities or other California cities that are comparable to Desert Hot Springs. A survey comparison of rates and fees with similar cities is for information only.
- I. Report on other matters that come to the Consultant's attention in the course of the evaluation that, in the Consultant's professional opinion, the City should consider.
- J. Provide a computer-based model for adjusting these fees and charges for the City's current and future needs and provide the City with an electronic copy of the final comprehensive study, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs. The requirements of the model should allow for:
- 1) Additions, revisions, or removal of direct and overhead costs so that the overhead cost allocation plan can be easily adapted to a range of activities, both simple and complex.
  - 2) The ability of the City to continuously update the model and overhead cost allocation plan from year to year as the organization changes.
  - 3) The addition of hypothetical service area information for future service enhancements, and the ability to calculate the estimated costs of providing the service under consideration (i.e. ad-hoc analysis).
- K. Prepare and deliver presentations to the City Council to facilitate their understanding of the plan and its implications for the City and make necessary adjustments as requested.
- L. Provide on-site training to enable staff to update fees on an annual basis.
- M. Prepare a final fee study report and provide five bound copies, one unbound copy, and a single Microsoft Word and PDF file of the User Fee Study that can be made available to City staff. Models, tables and graphs should be provided in Microsoft Excel as deemed appropriate. Any Master Fee Schedule revisions

developed shall also be made available to the City in Microsoft Word and PDF format, providing the ability to add or delete and/or update information as needed.

- N. Consult with City staff should it become necessary to defend the City's User Fees as a result of any legal or other challenge
- O. Update the study annually and maintain accurate records of all correspondence, work papers, and other relative evidence during the contract period of three years.

#### **QUALIFICATIONS:**

- What is your firm's focus?
- Describe your firm's experience with respect to the scope of services requested above.
- What unique qualifications set your firm apart from others?
- Provide a list of other agencies for whom you provide similar services preferably in Riverside County. Include contact information for at least three agencies for reference contact.
- Identify the consultant in charge of each service area for this proposal. Also, identify the individual(s) who will be working on day-to-day activities with staff. Briefly describe these individuals experience.
- List any sub-consultant that may potentially be used on this project along with the specific tasks they might perform, years of experience regarding specific tasks, and a description of their experience.
- List any other duties, tasks or assignments that you might perform under this contract that are not listed in the scope above.

#### **SAMPLE REPORTS:**

Please include samples of the following reports as prepared by your company:

- Coat Allocation Plan
- User Fee Study
- Timeline for meeting and completion of work product
- Timeline for the presentation to City Council for a study session and a and agenized meeting.

#### **FEE SCHEDULE**

The City is seeking one firm who can provide all the services requested in the proposal. Individual services will be considered separately if warranted based on all factors.

Please state any one-time fees there would be to start-up services for the City.

## EXHIBIT B

### AGREEMENT FOR A COST ALLOCATION PLAN AND FEDERAL OMB A-87 COST ALLOCATION PLAN AND USER FEE STUDY SERVICES BETWEEN THE CITY OF DESERT HOT SPRINGS AND \_\_\_\_\_

THIS AGREEMENT is made by and between the City of Desert Hot Springs ("City") and \_\_\_\_\_ ("Consultant") as of \_\_\_\_\_, 2019.

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end one year from its effective date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work product required by this Agreement in a substantial, first-class manner.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed \_\_\_\_\_ notwithstanding any contrary indications that may be contained in Consultant's proposal or anywhere else, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this

Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- For each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all the requirements above to pay Consultant.

**2.3 Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (30) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

**2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any

expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the fee schedule set forth in Exhibit A.
- 2.6 Reimbursable Expenses.** Expenses not listed in Exhibit A are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from

or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Consultant shall notify City within 14 days of notification from Consultant's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

**4.2 Commercial General and Automobile Liability Insurance.**

- 4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general, automobile and professional liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability 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. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability and professional liability occurrence form CG 0001 or GL 0002 (most recent editions) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 8 and 9. No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Consultant shall notify City within 14 days of notification from Consultant's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

### **4.3 All Policies Requirements.**

**4.3.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

**4.3.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**4.3.3 Variation.** The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

**4.3.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the 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 Contract Administrator, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase 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.

**4.3.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.4 Remedies.** In addition to any other remedies City may have if Consultant 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 exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Terminate this Agreement.

## **Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

- 5.1 General Requirement.** Consultant shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.2 PERS Indemnification.** 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 the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS 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 City.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims 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. Consultant shall not allow any employee to become eligible for a claim for PERS benefits.

- 6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 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.
- 7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any 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 to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin,

age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
  - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
  - 8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 Consultant's Books and Records.** 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 under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California

Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the 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 the City, for a period of three (3) years after final payment under the Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Riverside or in the United States District Court for the Western District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 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.
- 10.6 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.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

**10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by Director of Finance ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

Any written notice to City shall be sent to:

Charles Maynard, City Manager  
City of Desert Hot Springs  
65950 Pierson Boulevard  
Desert Hot Spring, CA 92240

**10.11 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and the compensation schedule attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement.

CITY OF DESERT HOT SPRINGS

CONSULTANT

\_\_\_\_\_  
**Charles Maynard, City Manager**

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
**Jerryl Soriano, City Clerk**

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
**Jennifer Mizrahi, City Attorney**

Date: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES**  
**&**  
**COMPENSATION SCHEDULE**

Preparation of the Cost Allocation Plan and Federal OMB A-87 Cost Allocation Plan and User Fee Study for the City of Desert Hot Springs.

The consultant shall conduct a comprehensive review of the City's cost allocation plan and the user fee study with the goal of establishing a consistent and objectively based fee structure that meets the needs of the City and its citizenry.

A review of the documentation supporting the current cost allocation plan and the user fee and for all departments and services is necessary. These include but are not limited to related fees:

- Administration
- Police
- Community Development
- Planning
- Building and Safety
- Public Works
- Engineering
- Finance
- Fire Inspection
- Code Enforcement
- City Clerk

Consultant shall research all fees and fully billable hourly rates including any inadvertently excluded fees and or personnel.