

**AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS
AND
G&M HIRE ENTERPRISES, LLC dba @WORK PERSONNEL SERVICES**

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the "Amendment"), is made and entered into as of the 4th day of June, 2019, by and between the City of Desert Hot Springs, a municipal corporation, in the County of Riverside, State of California, hereinafter referred to as the "City," and G&M Hire Enterprises, LLC, A California limited liability company dba @Work Personnel Services, a California corporation authorized to do business in California, hereinafter referred to as "Consultant," with the City and Consultant sometimes together referred to herein as the "Parties."

RECITALS

WHEREAS, the Parties previously entered into that certain Professional Services Agreement, dated October 18, 2016 (hereinafter, the "Agreement"), for Consultant to provide the City with professional services related to temporary staffing; and

WHEREAS, for clarification purposes, the parties desire to clarify that the Agreement was entered into between City and G&M Hire Enterprises, LLC dba @Work Personnel Services, and that the title of the Agreement listing @ Work Personnel Services was merely a clerical error as @ Work Personnel Services is not a legal entity, but merely a fictitious business name of G&M Hire Enterprises, LLC; and

WHEREAS, the Parties desire to extend the Agreement for a period of three (3) years from the original expiration date to expire June 30, 2022. All remaining terms and conditions of the Agreement remain unchanged; and

WHEREAS, the Parties further desire to update insurance requirements and clarify the obligations of the Parties, as described in more detail below.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

Section 1. RECITALS

The Recitals set forth above are hereby incorporated into this Amendment by this reference, as though fully set forth herein.

Section 2. DEFINITIONS AND TERMS

All words, terms and phrases used or referenced in this Amendment, not expressly defined in this Amendment, shall have the same meaning ascribed to them in the Agreement.

Section 3. Section 3. COMPLETION DATE

Section 3 of the Agreement is hereby revised so that the term of the Agreement shall expire on and including June 30, 2022, subject to allocation of funds pursuant to a duly adopted City budget.

Section 4. Section 4. COMPENSATION

Section 4 of the Agreement is hereby repealed in its entirety and replaced with the following:

The City agrees to pay Consultant for and in consideration of the faithful performance of the 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, compensation in accordance with the Cost Proposal contained in the Scope of Services, but in no event shall compensation exceed One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) per City fiscal year. Consultant understands and agrees that hours worked by and payment of any wages (including overtime) to Consultant Employees is the sole responsibility of Consultant, as sole employer of Consultant Employees, as defined herein, and that determination of Consultant Employee rate of pay is determined solely by Consultant. For purposes of this Agreement, Consultant has requested City's standard hourly rate for certain positions in order to pay Consultant Employees competitively. Consultant agrees that it shall not charge City for any overtime wages paid to Consultant Employees without the express written permission of City.

Section 5. Section 11. INDEPENDENT CONTRACTOR'S STATUS; NOT AGENT OF THE CITY

Section 11 of the Agreement is hereby repealed in its entirety and replaced with the following:

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. Additionally, to the fullest extent permitted by law, 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 dual and/or joint employers (respecting City and Consultant), and Consultant shall not take any actions, nor make a claim that City is an employer or dual/joint employer of any person designated by Consultant to perform any portion of the Services (each, a "Consultant Employee" and plural, "Consultant Employees"), it being understood that any and all Consultant Employees shall be solely an employee of Consultant and not City. Consultant covenants and agrees that it shall clearly inform each Consultant Employee of the same, including without limitation, clearly and conspicuously providing the same in any and all contracts and or other documents provided to or entered into with Consultant Employees, and shall inform each Consultant Employee of the effect of the same. Moreover, Consultant represents and warrants that each and every Consultant Employee shall duly acknowledge the same in writing. Consultant hereby agreed to 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), relating to any such claims regarding Consultant Employees, including without limitation any and all wage or other employment related claims.

Section 6. Section 13. Civil Code Section 1542 Waiver

Section 13 of the Agreement is repealed in its entirety and replaced with the following:

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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party."

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 7. Section 16. Compliance with Laws

Section 16 of the Agreement is repealed in its entirety and replaced with the following:

Consultant shall comply with all local, state and federal laws, rules, policies, orders and regulations applicable to the services required hereunder (collectively, "Laws"), including without limitation any Laws respecting its duties and obligations to its employees, including without limitation all Consultant Employees, as defined herein.

Section 8. Section 17. Indemnification

Section 17 of the Agreement is repealed in its entirety, and replaced with the following:

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 performance of this Agreement, including without limitation any such claims relating to Consultant's employees (e.g. wage-related claims) except for any such claim caused solely by the negligence, or caused by the 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.

e. This Section shall survive in perpetuity.

f. If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

Section 9. SECTION 18 INSURANCE REQUIREMENTS

Section 18.a. of the Agreement is hereby replaced in its entirety with the following:

a. Throughout the term of this Agreement, Consultant shall pay for and maintain in full force and effect, and comply with any and all obligations related to, all insurance as required in Exhibit B or as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion.

**Section 10. EXHIBIT "B". INSURANCE REQUIREMENTS-
PROFESSIONAL SERVICES AGREEMENT**

Exhibit "B," as attached to and incorporated into the Agreement is repealed in its entirety and is hereby replaced and incorporated therein, as follows:

Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than the following:

\$2,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$4,000,000 aggregate for products and completed operations
\$4,000,000 general aggregate

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be

at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$2,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code. 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.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) PROFESSIONAL LIABILITY (Errors and Omissions) insurance appropriate to Consultant's profession, with limits of liability of \$2,000,000 per claim/occurrence and \$2,000,000 policy aggregate, covering 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.

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Consultant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Consultant shall also be responsible for payment of any 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 or other financial guarantee, satisfactory to City, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the

coverage shall not be cancelled, suspended, voided, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, suspension, voiding, or reduction in coverage or in limits, Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing operations and completed operations) and Automobile Liability insurance policies shall name City, its elected or appointed officers/officials, employees, agents and volunteers as an additional insured. 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. All such policies of insurance shall be endorsed so Consultant's insurance shall be primary and no contribution shall be required of City, its elected or appointed officers/officials, employees, agents and volunteers. The coverage(s) shall contain no special limitations on the scope of protection afforded to City, its elected or appointed officers/officials, employees, agents and volunteers. Should Consultant maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City. 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.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of this Agreement or the commencement of work by Consultant.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, Consultant must purchase extended reporting period coverage for a minimum of 5 years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to City for

review.

- (v) These requirements shall survive expiration or termination of the Agreement.

Consultant shall furnish City with all certificate(s) and applicable original endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by City prior to City's execution of the Agreement and before work commences. Upon request of City, Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If at any time during the life of the Agreement or any extension, Consultant or any of its sub-Consultants fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Consultant of its responsibilities under this Agreement.

The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, agents, employees, persons under the supervision of Consultant, vendors, suppliers, invitees, sub-Consultants, or anyone employed directly or indirectly by any of them.

Provided the City gives its written consent for any persons other than Consultant to perform any part of the Services, if Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each sub-Consultant to provide insurance protection in favor of City, its elected or appointed officers/officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the sub-Consultant's certificates and endorsements shall be on file with Consultant and City prior to the commencement of any work by the sub-Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.

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.

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.

Section 11. PARTIES TO THE AGREEMENT & AMENDMENT

The Parties understand and agree that the Agreement was entered into between City and G&M Hire Enterprises, and @Work Personnel Services is a fictitious business name and not a party to the Agreement, and to that end, and for purposes of clarity, G&M Hire Enterprises, LLC dba @Work Personnel Services hereby agrees to be bound by all terms and conditions set forth in the Agreement and this Amendment.

Section 12. ATTORNEY'S 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 Amendment or as a result of any alleged breach of any provision of this Amendment, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 13. COUNTERPARTS

This Amendment may be executed in several counterparts, each of which shall be deemed to be an original and 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 the Parties hereto.

Section 14. CONFLICTS

In the event there exists any conflicts between the terms of this Amendment and the Agreement, the terms of this Amendment shall be superseding.

Section 15. REMAINING PROVISIONS

All other remaining terms and conditions of the Agreement shall remain unchanged.

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IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the date first written above.

CITY OF DESERT HOT SPRINGS

G&M HIRE ENTERPRISES, LLC
dba
ATWORK PERSONNEL SERVICES

Charles Maynard, City Manager



Moses Rangel, Managing Partner

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer Mizrahi, City Attorney