

**REQUEST FOR PROPOSAL**  
**PROVIDE GRAFFITI ABATEMENT SERVICES**

**PART I: SELECTION CRITERIA**

A final contract will be awarded to the Contractor who best can meet the requirements as specified; and provide graffiti abatement service as detailed in Exhibit A and based on the following factors which are listed without implication of priority:

1. Information regarding the Contractor's experience and proposals to successfully provide graffiti abatement service.
2. The ability and willingness of the Contractor to meet all requirements as outlined in the scope of work (see Exhibit A).
3. Provide a list of client references and an outline of any experience the Contractor has had in providing graffiti abatement service needs of other governmental organizations, or any other organization. In addition, provide a list of client references along with a resume of the company's experience providing graffiti abatement service including the name, address and telephone number of client references that may be contacted. Provide a brief description of each graffiti abatement service performed.
4. The thoroughness and conformity of the proposal package, and the cost of service.
5. Provide a written proposal itemizing the graffiti abatement service as outlined in Exhibit A, scope of work. 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 any and 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. The contract shall not exceed \$90,000.00 per year.
5. Contractor shall identify those services that will be out-sourced to a sub-Contractor. The Contractor will be responsible for verifying the proposals 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 of prime consideration, it is not the sole determining factor. The City reserves the right to select the appropriate contractor 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 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 of 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, General Liability, and Automobile Liability.
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 proposal 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 such time as 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 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 On July 1, 2019 and upon execution by the City Council or authorized City representative and continue through June 30, 2022. The City reserves the option to extend the contract under the same terms and conditions for a maximum of one (1) 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 ownership at least thirty (30) days prior to said change.
16. The standard form of the City's Contractor Agreement is attached hereto as Exhibit B. The selected Contractor will be required to enter into this Agreement. By submitting a proposal, 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 Proposal.
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 or not such interest is prohibited by law or this Agreement.

**PART III: GENERAL INFORMATION**

1. Contractor is required to carefully and fully investigate all of the requirements of this RFP. By submitting a proposal, 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 proposals when deemed necessary.
3. The City will not reimburse Contractors 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 Contractor 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 Contractor, then the Contractor 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. 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 to Jim Henson, Deputy Chief, at [jhenson@dhspd.com](mailto:jhenson@dhspd.com).

**Exhibit A**  
**The Scope of Work**

The scope of this RFP is to remove graffiti from private and public property throughout the city upon identification and/or notification. For purposes of the proposal and agreement, “per stop” shall be defined as each parcel or site address. Within the “per stop” price, contractor must consider the following:

1. Contractor is expected to digitally photograph all graffiti prior to removal. These photographs shall be turned into the City/Agency no less than once per week on a compact disk or other digital media agreed upon with the Agency for use by the City’s Police Department. Each photograph will be accompanied by the following information:
  - a. Date and time of removal.
  - b. Location of graffiti.
  - c. Description of graffiti (tags, monikers)

2. The Contractor is expected to provide their own digital camera(s). These cameras must meet the following minimum specifications:

Date and time stamp capabilities, 7.1-megapixel CCD captures high-resolution images up to 3081 x 2313 pixels and 12x optical/4.2x digital/50x total zoom, or better.

3. The Contractor is expected to provide a free application program that allows residents, City employees, and others with smart phones (Droids, iPhones, etc.) to send photos of graffiti to both the Contractor’s employees as well as the City’s Code Enforcement Unit. It is expected the program would use built-in global positioning system technology to attach to the picture and send the complaint/notice. Users should be able to remain anonymous or choose an option to receive updates on the status of their request.
4. The City/Agency may elect to utilize a database or service to track graffiti incidents and trends. The Contractor will be expected to provide support to the City/Agency’s efforts in this endeavor (for example, through electronic record keeping of graffiti incidents abated or the use of digital photography, although

other activities may be requested.) In the event the City/Agency elects to use a different tracking mechanism, the Contractor will be expected to adapt to the new system.

5. The Contractor will be expected to attend regular meetings with City/Agency staff.
6. The Contractor's staff may be required to attend meetings or training sessions with the City's Police Department related to the graffiti services being provided.
7. Contractor must use commercially accepted color matching/blending techniques and equipment to closely match adjacent painted surfaces.
8. Such locations where graffiti has been previously painted over using non-matching colors, the area shall be painted over by the contractor using a color that closely matches the rest of the entire surface.
9. On such locations where surfaces cannot be closely matched due to fading, stains, numerous painting patches etc., the contractor shall paint the entire surface with a color that closely matches the original color.
10. Contractor will canvass major thoroughfares for new graffiti at least four times per week. Additionally, Contractor will contact the Chief of Police, or his designee, to assess if there are upcoming City events that will determine specific areas of attention that need to be addressed that week. The supervisor or designee may add or remove sites at their discretion.
11. Contractor will obtain all necessary permissions from property owners prior to graffiti removal.
12. The contractor shall provide all personnel, equipment, tools, materials, supervision and other items and services necessary to perform **Graffiti Removal Services** defined below for the City of Desert Hot Springs. The contractor shall perform to the standard in this document.
13. The contractor shall use high quality commercial paint and appropriate graffiti removal chemical agents. If contractor intends to use experimental or other non-traditional methods or materials, such methods or materials must be approved by the Chief of Police, or his designee, prior to use.
14. Contractor agrees to furnish graffiti removal services as follows:
  - a) Continued on-going removal of all graffiti utilizing the following techniques where applicable:

1.) Paint over using a color matching technique (including custom blending paint colors if necessary).

2.) Chemical Removal

3.) Sand Blasting

4.) Water Blasting, Pressure Washing or Soda Blasting

- b) Graffiti that is painted over shall be done with a paint color similar to adjacent surfaces. Such locations where graffiti has been previously painted over using non-matching colors, the area shall be painted over by the contractor using a color that closely matches the rest of the surface.
- c) Graffiti on natural surfaces, such as unpainted block or wood, shall be removed with water/sand/soda blasting. The Contractor is responsible for any damage that occurs as a result of their chosen cleaning method.
- d) All underlying graffiti shall not be visible.
- e) All work shall be subject to approval of the Chief of Police or his designee.
- f) Any work in need of correction shall be satisfactorily corrected by the contractor at the Contractor's own expense within one (1) working day of said notification by City/Agency.
- g) Before the work will be considered complete, the entire area shall be placed in a neat and orderly condition. Debris and other excess material related to the graffiti removal process shall be removed from the site.
- h) Provide support to aid the City/Agency in tracking graffiti incidents. Such support will include but is not be limited to the following:
  - 1. Digital Photographs of Graffiti Removed.
  - 2. Description of graffiti (tags, monikers).
  - 3. Location of graffiti (street address, description of where graffiti found such as on wall or sidewalk, etc.)
  - 4. Computer based mapping of events and locations.
- i) An activity log shall be submitted with the monthly invoices for services rendered. This log shall have the following information:
  - 1. Date of Removal.
  - 2. Location of graffiti sites.
  - 3. Description of graffiti (tags, monikers).
  - 4. Methods of removal.
  - 5. Job size.

6. Cost to City/Agency.

15. **CONTRACT MANAGER** — The contractor shall provide a contract manager or foreman who can communicate effectively both in written and oral English. This person shall represent the contractor and be responsible for the performance of the work. The name of this person and any alternate(s) who shall act for the contractor when the manager is absent shall be designated in writing to the Chief of Police, or his designee at the start of the contract term. The City/Agency must be notified in writing within five (5) days of any change in either the primary or alternate contact person.

The contract manager or alternate shall have full authority to act for the contractor on all contract matters relating to daily operations of this contract. Any order or communication given to these foremen shall be deemed as delivered to the Contractor.

The contract manager or alternate shall be available during normal City/Agency working hours within one (1) hour to meet with City/Agency personnel designated by the Chief of Police to discuss problem areas. After normal business hours, the manager or designated alternate shall be available within four (4) hours.

Contractor personnel shall present a neat appearance and be easily recognized. This may be accomplished by wearing distinctive clothing bearing the name of the company or by wearing appropriate badges which contain the company name, employee name and photo of employee.

Personnel assigned to this contract shall not be incompetent, disorderly, troublesome, intemperate or otherwise objectionable. Any employee, who fails or refuses to perform the work properly and acceptably, as determined by the City/Agency's designated representative, shall be discharged or removed from work on City/Agency jobs immediately.

All contractor trucks and other vehicles shall be of one color with the Contractor's name or logo identified. All vehicles and equipment shall be in good condition and appearance.

In the event the contractor is requested to remove graffiti that is not reachable due to gate(s) or other such obstruction, the contractor is expected to notify the City/Agency and request assistance in accessing the area in question.

Contractor shall be responsible for providing a safe work environment, and compliance with standards and regulations of the California Occupational Safety and Health Act (Cal OSHA), Federal Occupational Safety and Health Act (OSHA), California Division of Industrial Safety Orders (CDIS), State Of

California Manual of Traffic Controls, California Department of Food and Agriculture (CDFA) Laws and Regulations, and any other applicable governmental law or Agency risk management standards.

Contractor will comply with the provisions of the Immigration Reform and Control Act of 1986, Public Law 99-603.

16. The contractor shall establish and maintain a complete Quality Control Plan to ensure the requirements of the contract are provided as specified. One copy of the contractor's Quality Control Plan shall be provided to the Police Department Commander not later than the pre-performance conference. An updated copy must be provided to the Chief of Police or his designee within 5 days of any changes in the plan. The plan shall include: The methods for identifying and preventing defects in the quality of service performed before the level of performance becomes unacceptable.

The City/Agency will evaluate the contractor's performance under this contract using the methods of surveillance. When an observation indicates defective performance, the Chief of Police or designated representative will notify the contractor.

17. Graffiti Removal services shall be provided four (4) days per week. No Friday, Saturday or Sunday work is to be scheduled without permission from the City/Agency except for emergency situations.

The Contractor will have staff available by phone, cell phone, or pager contact (not an answering machine), Monday through Thursday, between 8:00 a.m. and 5:00 p.m. to respond to call-outs, questions, verification of schedules, and other non-emergency requests or questions.

Working hours shall be no earlier than 6:00 a.m. and no later than 6:00 p.m. Emergencies are the only exception. Graffiti Removal work shall not start before 6:30 a.m. and shall be completed before 6:00 p.m.

**RECOGNIZED HOLIDAYS** — The contractor is not required to provide service on City/Agency and or Federal holidays. Emergencies are the only exception.

**HOLIDAY WORK SCHEDULE** - When service is performed five times weekly or less frequently, services scheduled for a holiday will be preformed either the week day before or the week day following the holiday, if not otherwise performed.

**AGENCY CLOSURE** - If there is a City/Agency closure due to a natural disaster, hostile action, or any other unforeseeable emergency, the Chief of Police or his designee will determine whether the contractor will continue to perform services called for by this contract.

18. Contract supervision of the Graffiti Removal Services Contract will be provided by the City/Agency Representative. The Chief of Police has overall oversight over the above mentioned staff and the program. City/Agency staff will follow established policies and procedures in their contract oversight activities.

Schedules for specific work tasks required as part of the Agreement will be determined and/or established according to the guidelines described in the SOPs.

The City/Agency reserves the right to review Contractor performance at any time during the term of the Agreement. These reviews will be conducted in a manner described in the SOPs.

Exhibit B

**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

11-999 Palm Drive

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

11-999 Palm Drive

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]**

\_\_\_\_\_  
Charles L. Maynard, City Manager

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

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