



# City of La Quinta

**CITY / SA / HA / FA MEETING DATE:** April 1, 2014

**AGENDA CATEGORY:**

**ITEM TITLE:** APPROVE PROFESSIONAL SERVICES AGREEMENT WITH HR GREEN CALIFORNIA, INC. TO PROVIDE ON-CALL ENGINEERING PLAN CHECK SERVICES

**BUSINESS SESSION:**

**CONSENT CALENDAR:** 5

**STUDY SESSION:**

**PUBLIC HEARING:**

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## **RECOMMENDED ACTION:**

Approve a professional services agreement with HR Green California, Inc., for \$70,000, to provide on-call professional engineering plan check services.

## **EXECUTIVE SUMMARY:**

- As discussed during the mid-year budget presentation, contract plan check services were increased in Public Works by \$75,000 in order to meet the greater workload from increased development activity that is occurring in the City.
- Through a competitive selection process, HR Green California, Inc. of Riverside, California, is recommended to perform on-call engineering plan check as necessary to augment in-house plan check capacity.
- Staff recommends approval of the professional services agreement between the City and HR Green California, Inc. (Attachment 1) to ensure timely processing of development projects through engineering plan check.

## **FISCAL IMPACT:**

The General Fund will underwrite less than \$10,000 of this cost with plan check fee income underwriting a majority of this cost. Per the 2013 fee schedule, City costs for development review by Public Works are offset by an average of 90 percent through plan check fees; thus plan check fee income will fund approximately 90 percent of these service costs. Since these services are used on an as-needed basis, any unexpended funds will be returned to the General Fund.

## **BACKGROUND/ANALYSIS:**

As part of the City reorganization in February 2013, staffing in the Development Services of Public Works was reduced in recognition of the much lower level of private development at that time. Since late summer 2013, plan and map checking has increased significantly resulting in the need to increase the City's engineering plan check capacity. After a competitive selection process in August 2013, HR Green was selected to provide engineering plan check services on an as-needed basis under a minor service contract. Staff limited the firms included in the process for these services to those that have demonstrated expertise in a particular area of engineering plan check review. In the case of HR Green their extensive knowledge of local hydrology has proven invaluable in plan checking certain types of development project. Historically this level of expertise has not been readily available in local engineering firms. The on-call consultant selection process is repeated about every two years or as necessary to provide the latest expertise for development review.

## **ALTERNATIVES:**

Since demand for on-call plan check services remains high and HR Green has demonstrated their capability to provide these services, staff does not recommend an alternative to this action.

Report prepared by: Ed Wimmer, P.E., Principal Engineer

Report approved for submission by: Timothy R. Jonasson, P.E.

Public Works Director/City Engineer

Attachment:        1.     Professional Services Agreement

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT FOR CONTRACT SERVICES (the "Agreement") is made and entered into by and between the CITY OF LA QUINTA, ("City"), a California municipal corporation, and **HR GREEN CALIFORNIA, INC.** ("Consultant"). The parties hereto agree as follows:

### 1.0 SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide those services related to **On Call Engineering Plan Check Services**, as specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference (the "services" or "work"). 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.

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

1.3 Licenses, Permits, Fees and Assessments. Except as otherwise specified herein, Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the performance of the services required by this Agreement.

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

## 1.5 Care of Work and Standard of Work.

a. Care of Work. 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, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence. 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 City, when such inaccuracies are due to the negligence of Consultant.

b. Standard of Work. Consultant acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, Consultant's services and work will be held to a heightened standard of quality and workmanship. Consistent with Section 1.4 hereinabove, Consultant represents to City that it holds the necessary skills and abilities to satisfy the heightened standard of work as set forth in this Agreement.

1.6 Additional Services. In accordance with the terms and conditions of this Agreement, Consultant shall perform services in addition to those specified in the Scope of Services ("Additional Services") when directed to do so by the Contract Officer. Consultant shall not perform any Additional Services until receiving prior written authorization from the Contract Officer. It is specifically understood and agreed that oral requests and/or approvals of Additional Services shall be barred and are unenforceable. Failure of Consultant to secure the Contract Manager's written authorization for Additional Services shall constitute a waiver of any and all right to adjustment of the Contract Sum or time due, whether by way of compensation, restitution, quantum meruit, etc. for Additional Services provided without the appropriate authorization from the Contract Manager. Compensation for properly authorized Additional Services shall be made in accordance with Section 2.2 of this Agreement.

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

## 2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with Exhibit "B" (the "Schedule of

Compensation") in a total amount not to exceed **Seventy Thousand Dollars (\$70,000)** (the "Contract Sum"), except as provided in Section 1.6. The method of compensation set forth in the Schedule of Compensation may include a lump sum payment upon completion, payment in accordance with the percentage of completion of the services, payment for time and materials based upon Consultant's rate schedule, but not exceeding the Contract Sum, or such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, transportation expense, telephone expense, and similar costs and expenses when and if specified in the Schedule of Compensation. Regardless of the method of compensation set forth in the Schedule of Compensation, Consultant's overall compensation shall not exceed the Contract Sum, except as provided in Section 1.6 of this Agreement, "Additional Services."

2.2 Compensation for Additional Services. Additional services approved in advance by the Contract Manager pursuant to Section 1.6 of this Agreement, "Additional Services," shall be paid for in an amount agreed to in writing by both City and Consultant in advance of the Additional Services being rendered by Consultant. Any compensation for Additional Services amounting to five percent (5%) or less of the Contract Sum may be approved by the Contract Officer. Any greater amount of compensation for additional services must be approved by the La Quinta City Council. Under no circumstances shall Consultant receive compensation for any Additional Services unless prior written approval for the Additional Services is obtained from the Contract Officer pursuant to Section 1.6 of this Agreement.

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

### 3.0 PERFORMANCE SCHEDULE

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

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

3.3 Force Majeure. The time period specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, acts of any governmental agency other than City, and unusually severe weather, if Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the forced delay when and if in his or her judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. Extensions to the Schedule of Performance which are determined by the Contract Officer to be justified pursuant to this Section shall not entitle the Consultant to additional compensation in excess of the Contract Sum.

3.4 Term. Unless earlier terminated in accordance with Sections 8.7 or 8.8 of this Agreement, the term of this agreement shall commence on **April 7, 2014 and terminate on June 30, 2015.** This agreement may be extended for one additional year upon mutual agreement by both parties.

#### 4.0 COORDINATION OF WORK

4.1 Representative of Consultant. The following principals of Consultant are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

a. **Tina York, P.E.**

It is expressly understood that the experience, knowledge, capability, and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder.

The foregoing principals may not be changed by Consultant and no other personnel may be assigned to perform the service required hereunder without the express written approval of City.

4.2 Contract Officer. The Contract Officer shall be **Timothy R. Jonasson, Public Works Director/City Engineer** or such other person as may be designated by the City Manager of City. It shall be Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and Consultant shall refer any decisions, which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Except as set forth in this Agreement, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

4.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

4.5 City Cooperation. City shall provide Consultant with any plans, publications, reports, statistics, records or other data or information pertinent to services to be performed hereunder which are reasonably available to Consultant only from or through action by City.

## 5.0 INSURANCE

5.1 Insurance. Prior to the beginning of and throughout the duration of the Work performed under this Agreement, Consultant shall procure and maintain, at its cost, and submit concurrently with its execution of this Agreement, Commercial General Liability insurance against all claims for injuries against persons or damages to property resulting from Consultant's acts or omissions arising out of or related to Consultant's performance under this Agreement. The insurance policy shall contain a severability of interest clause providing that the coverage shall be primary for losses arising out of Consultant's performance hereunder and neither City nor its insurers shall be required to contribute to any such loss. A certificate evidencing the foregoing and naming City and its officers and employees as additional insured

(on the Commercial General Liability policy only) shall be delivered to and approved by City prior to commencement of the services hereunder.

The following policies shall be maintained and kept in full force and effect providing insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-:VI:

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

Commercial Auto Liability (at least as broad as ISO CA 0001)  
\$1,000,000 (per accident)

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

Workers' Compensation  
(per statutory requirements)

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

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.



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

All insurance required by this Section shall be kept in effect during the term of this Agreement and shall not be cancelable without written notice to City of proposed cancellation. The procuring of such insurance or the delivery of policies or certificates evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its officers, employees, contractors, subcontractors, or agents.

5.2 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:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement.
- b. Order Consultant to stop work under this Agreement and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.
- c. Terminate this Agreement.

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

5.3 General Conditions pertaining to provisions of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

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

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from

waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

3. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.

8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.

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

10. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein (with the exception of professional liability coverage, if required) and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

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

12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

13. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

14. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

15. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of

insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five (5) days of the expiration of coverages.

16. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.

17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

20. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

21. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

## 6.0 INDEMNIFICATION.

### 6.1 General Indemnification Provision.

a. Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent

permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents (“Indemnified Parties”) from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including, without limitation, injury to or death of an employee of Consultant or subconsultants), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, to the extent same are cause in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Consultant.

b. Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses, and fees of expert consultants or expert witnesses) incurred in connection therewith and costs of investigation, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant.

6.2 Standard Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth herein this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

a. Indemnity Provisions for Contracts Related to Construction.

Without affecting the rights of City under any provision of this agreement, Consultant shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of City.

b. Indemnification Provision for Design Professionals.

1. Applicability of Section 6.2(b). Notwithstanding Section 6.2(a) hereinabove, the following indemnification provision shall apply to Consultants who constitute "design professionals" as the term is defined in paragraph 3 below.

2. Scope of Indemnification. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and City's agents, officers, officials, employees, representatives, and departments ("Indemnified Parties") from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including, without limitation, injury to or death of an employee of Consultant or subconsultants), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control.

3. Design Professional Defined. As used in this Section 6.2(b), the term "design professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by Civil Code § 2782.8.

## 7.0 RECORDS AND REPORTS.

7.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning Consultant's performance of the services required by this Agreement as the Contract Officer shall require.

7.2 Records. Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the cost and the performance of such services. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principals. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.3 Ownership of Documents. Originals of all drawings, specifications, reports, records, documents and other materials, whether in hard copy or electronic form, which are prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement, shall be the property of City and shall be delivered to City upon termination of this Agreement or upon the earlier request of the Contract Officer, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Consultant shall cause all subcontractors to assign to City any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages suffered thereby.

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

7.4 Release of Documents. The drawings, specifications, reports, records, documents and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer or as required by law. Consultant shall not disclose to any other entity or person any information regarding the activities of City, except as required by law or as authorized by City.

## 8.0 ENFORCEMENT OF AGREEMENT.

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

8.2 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice, or such longer period as may be permitted by the Contract Officer; provided that if the default is an immediate danger to the health, safety and general welfare, City may take such immediate action as City deems warranted. Compliance with the provisions of this section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.7.

8.3 Retention of Funds. City may withhold from any monies payable to Consultant sufficient funds to compensate City for any losses, costs, liabilities, or damages it reasonably believes were suffered by City due to the default of Consultant in the performance of the services required by this Agreement.

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

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

8.6 Legal Action. In addition to any other rights or remedies, either party may take legal action, at law or at equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.



8.7 Termination Prior To Expiration Of Term. This section shall govern any termination of this Agreement, except as specifically provided in the following Section 8.8 for termination for cause. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 8.3.

8.8 Termination for Default of Consultant. If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.2, take over work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of setoff or partial payment of the amounts owed City as previously stated in Section 8.3.

8.9 Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the losing party.

#### 9.0 CITY OFFICERS AND EMPLOYEES; NONDISCRIMINATION.

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

9.2 Conflict of Interest. No officer or employee of City shall have any personal interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which she or he is, directly or indirectly, interested, in violation of any State statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or general consideration for obtaining this Agreement.

9.3 Covenant against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

## 10.0 MISCELLANEOUS PROVISIONS

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

To City:  
CITY OF LA QUINTA  
Attention: Frank Spevacek  
City Manager  
78-495 Calle Tampico  
La Quinta, California 92253

To Consultant:  
**HR Green California, Inc.**  
**Attention: Roy F. Stephenson**  
**Principal-in-Charge**  
**3403 10th Street, Suite 704**  
**Riverside, California 92501**  
**Email: tyork@hrgreen.com**

10.2 Integrated Agreement. This Agreement contains all of the agreements of the parties and all previous understanding, negotiations and agreements are integrated into and superseded by this Agreement.

10.3 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing signed by both parties.

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

10.5 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on

behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

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

**CITY OF LA QUINTA** a California municipal corporation

\_\_\_\_\_  
Frank J. Spevacek, City Manager

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Susan Maysels, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
M. Katherine Jenson, City Attorney

**CONSULTANT:** HR Green California, Inc.

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

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

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

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

## Exhibit A Scope of Services

Plan checking may be provided by an On Call Engineering Plan Check Consultant, as applicable, with the following scopes:

### **Plan Checking**

Improvement plan checking will include the review of plans submitted for subdivision (residential) improvements, commercial developments, and infrastructure improvements within the City's right of way. The plans shall be reviewed for conformance with local and other applicable (County, State and Federal) ordinances and standards with a strict attention to details. Plan check services may include, but are not limited to the following:

- Grading Plans including mass grading, rough grading and precise grading plans
- Street Improvement Plans including street widening, rehabilitation and new street plans
- Storm Drainage Plans
- Hydrology and Hydraulic Calculations and Reports
- Engineer's Cost Estimate for the related items of work for bonding purposes
- Engineer's Reports including Fugitive Dust Control (PM10) Plans, Storm Water Pollution and Prevention Plans
- Water Quality Management Plans
- Erosion and Sediment Control Plans

The tasks of the plan checker include:

- To check for design conformance to:
  - The approved Tentative Map
  - Related Specific Plans
  - General Plan and City Ordinances
  - Conditions of Approval
  - City Standards
  - ADA Standards
  - The City's Subdivision Plan Check Lists
  - Other Agency Requirements such as Riverside County Flood Control District (RCFCD), Coachella Valley Water District (CVWD) and CalTrans
- To review plans for sound engineering practices.
- To check for accuracy of design in conformance with the City's most current Plan Check Lists.
- To check general mathematics and design criteria.
- To call for redesign of any portion of plans that:
  - Will not function due to poor engineering.

- Is not consistent with the Approved Tentative Map or Conditions of Approval.
- Will be potentially unsafe to the public.
- Is Impractical to construct.

All plans shall be reviewed under the direct supervision of a California Registered Engineer.

**Prevailing Wage** - In accordance with Section 1770 of the Labor Code, the City has ascertained and does hereby specify that the prevailing wage rates shall be those provided in Article 1110-20.0, **WAGE RATES**. The said rates shall include all employer payments that are required by Section 1773.1 of the Labor Code. The City will furnish to the Contractor, upon request, a copy of such prevailing rates. It shall be the duty of the Contractor to post a copy of such prevailing wages at the job site.

Exhibit B  
Schedule of Compensation

With the exception of compensation for Additional Services, provided for in Section 2.2 of this Agreement, the maximum total compensation to be paid to Consultant under this Agreement is **Seventy Thousand Dollars (\$70,000)** (“Contract Sum”). The Contract Sum shall be paid to Consultant in installment payments made on a monthly basis and in an amount identified in Consultants Schedule of Compensation attached hereto for the work tasks performed and properly invoiced by Consultant in conformance with Section 2.2 of the Agreement.

**Plan Check Compensation**

Plan check payment shall be made in full at a “fixed fee” rate of:

- \$625 per sheet (submittals with 1-5 sheets in quantity)
- \$600 per sheet (submittals with 6-15 sheets in quantity)
- \$550 per sheet (submittals with 16 or more sheets in quantity)

Sheet counts are based on the number of sheets submitted for plan check. Sheets may include title and detail sheets, street plans, storm drain plans, meandering sidewalk and parkway grading plans, rough & precise grading plans at 20, 30, 40 or 50 feet per inch scale.

Consultant receives no additional compensation for review of supporting documents including, but not limited to hydrology and hydraulic calculation reports, soils reports & engineer’s cost estimates, conditions of approval, tentative tract and parcel maps.

Consultant receives no additional compensation for delivery or postage fees necessary to transmit or receive plans from City.

Consultant receives no additional compensation for travel to and from City Hall.

This rate shall be compensation for up to three (3) plan checks. Supplemental payment for additional plan checks after the third check or for special engineering reports including Water Quality Management Plans (WQMP) or other engineering reports, shall be in made at the rates listed in the Schedule of Billing Rates attached herewith for the actual hours submitted in conformance with Section 2.2 of the Agreement. An estimate of hours to complete the plan check (after the third plan check) or for special reports shall be made in writing to the Contract Officer for approval as specified in Section 1.6 - Additional Services of the Agreement.

Compensation for the first three plan checks shall be distributed at the following schedule:

First Plan Check	65% of the Total Plan Check Fee
Second Plan Check	20% of the Total Plan Check Fee
Third Plan Check	15% of the Total Plan Check Fee

The Consultant shall be compensated upon the completion of each plan check as indicated in the above schedule and in conformance with Section 2.2 of the Agreement. If a project is suspended, either definitely or indefinitely, the Consultant shall be compensated based on the last completed plan check. If the plan check process is completed prior to the third plan check, 100% of the plan check fee will be paid upon completion of the final plan check.

The Consultant shall separately invoice per plan and per plan check. No exceptions will be allowed to the payment schedule.

Consultant also may be requested to provide general civil consulting services for specific development related engineering projects for the City as applicable.

Payment shall be made in full at an hourly rate of:

\$155 per hour – no overtime, travel time, expenses or other administrative charges will be allowable over and above the stated hourly rate schedule.



Exhibit C  
Schedule of Performance

Consultant shall complete all services identified in the Scope of Services, Exhibit "A" of this Agreement in accordance with the attached Project Schedule, attached hereto and incorporated herein by this reference.

Consultant shall provide services for a term of twelve (12) months beginning **April 7, 2014 and terminating on June 30, 2015.**

OFFICE HOURS

The Consultant shall maintain normal office hours between 8:00 a.m. and 5:00 p.m., Monday through Friday. The Consultant shall be available to meet with City Staff during normal working hours with 48 hours advance notice.

SCHEDULE

The Consultant shall adhere to the following plan check schedule:

<u>Plan Submittal</u>	<u>Plan Check Turn-Around (From Receipt from City Staff)</u>
1 <sup>st</sup> Plan Check	15 Working Days
2 <sup>nd</sup> Plan Check	10 Working Days
3 <sup>rd</sup> Plan Check	10 Working Days

For larger, more complex projects such as golf course developments, one (1) additional week for the 1<sup>st</sup> and 2<sup>nd</sup> plan check shall be provided, if necessary to complete a thorough plan check. The consultant shall advise the Contract Officer, in writing, if additional time is needed.

Normal plan check operations will be conducted as follows:

1<sup>st</sup> Submittal

Upon completing the 1<sup>st</sup> review, the Consultant shall submit the "red lined" plans and a copy of the applicable Plan Check List to the City. The City will provide supplemental comment as necessary and forward "red lined" plans to the applicant.

2<sup>nd</sup> and Subsequent Submittals

Upon receipt of the 2<sup>nd</sup> round plan check submittal from the applicant and upon completing the 2<sup>nd</sup> review, the Consultant shall submit "red lined" plans and a copy of the applicable 2<sup>nd</sup> review Plan Check List to the City. The City will provide supplemental comment as applicable and forward 2<sup>nd</sup> review "red lined" plans to the applicant. The process of applicant correction, Consultant review followed by City review and "red lined" plan return to applicant shall continue until approvable plans are generated and a plan approval letter is submitted to the City by the Consultant.

If necessary, the Consultant shall be available to meet with City staff and/or the applicant to review the plan check comments. The Consultant will communicate directly with the applicant regarding plan check issues and clarifications. The City desires an average of no more than 3 plan check rounds before final plan approval.

The Consultant shall also maintain a plan check log as follows to track the plan check status. The plan check log shall include the following information:

- 1) Receipt Date
- 2) Transmittal Dates
- 3) Who is Receiving the Information
- 4) Status of Plan Check
- 5) Project Description and City Plan Check Number
- 6) Plan Check Fees

The Consultant shall maintain all files for a period of three years. Copies of requested files will be furnished to the City upon request.

Exhibit D  
Special Requirements

At no additional cost to the City:

1. The Consultant shall provide a hand held (type) cellular telephone for each plan checker assigned to the City Project(s) to assure rapid availability by telephone.
2. The Consultant shall provide his or her own transportation to and from the designated work site. Consultant will not be compensated for travel time to and from designated work site.
3. The Consultant shall respond to requests for plan check within twenty-four (24) hours.
4. The Consultant shall supply all necessary tools and materials to perform their work.

