



City of La Quinta

CITY / SA / HA / FA MEETING DATE: June 2, 2015

AGENDA CATEGORY:

ITEM TITLE: APPROVE PROFESSIONAL SERVICES AGREEMENT WITH NAI CONSULTING, INC. FOR PROJECT MANAGEMENT AND CONTRACT ADMINISTRATIVE SUPPORT SERVICES

BUSINESS SESSION:

CONSENT CALENDAR: 13

STUDY SESSION:

PUBLIC HEARING:

RECOMMENDED ACTION:

Approve a Professional Services Agreement with NAI Consulting, Inc., in an amount not to exceed \$487,455, for project management and contract administrative support services for Fiscal Year 2015/2016.

EXECUTIVE SUMMARY:

- NAI Consulting, Inc. (NAI) provides project management and contract administrative support related to the City's Capital Improvement Program (CIP). The contract expires June 30, 2015.
- After soliciting and reviewing proposals from similar firms, staff recommends entering into a new contract with NAI due to their superior qualifications and comprehensive knowledge of City operations.

FISCAL IMPACT:

The Professional Services Agreement (PSA) is for time and materials not to exceed \$487,455. Funds are included within the project budgets of the CIP. In addition, funds are included in the Public Works operating budget for special projects such as preparation of the City's Maintenance of Effort or updating Development Impact Fees.

BACKGROUND/ANALYSIS:

NAI is a local firm that has provided the City with contract project management, project design, and State and Federal funding administration services since 1997. These services require technical expertise that is not possessed by staff.

In April 2015, staff conducted a formal Request for Proposals process, and five proposals were submitted. NAI was ranked number one. The other firms that submitted proposals were Construction Planning and Management LLC, Onward Engineering, Southstar Engineering and Consulting, and Overland Pacific and Cutler, Inc. NAI's flexibility and comprehensive knowledge of City operations have proven invaluable. Additionally, NAI has maintained the same rates for the City from the previous contract. Staff believes NAI is the most cost effective for addressing project management and engineering support for the City because there will be no learning curve for their staff.

The PSA would be for the period July 1, 2015 through June 30, 2016, with an automatic renewal option for two additional one year terms (Attachment 1). The City reserves the right to terminate the agreement at any time with a 30-day written notice to the consultant and, depending on the number and size of projects within the CIP, the City can add to or deduct work from the proposed agreement as necessary.

ALTERNATIVES:

Due to the exemplary service supplied by NAI Consulting and the firsthand knowledge of the City's CIP by its president, Nick Nickerson, staff does not recommend an alternative.

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. PSA

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into by and between the CITY OF LA QUINTA, ("City"), a California municipal corporation, and **NAI CONSULTING, 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 **Project Management and Contract Administrative Support Services**, as specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference (the "Services"). Consultant represents and warrants that Consultant is a provider of first-class services and Consultant is experienced in performing the Services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the Services required hereunder. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar services under similar circumstances.

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 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, including a City of La Quinta business license. Consultant and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required 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, and shall indemnify, defend (with counsel selected by City), and hold City, its elected officials, officers, employees, and agents, free and harmless against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City hereunder. Consultant shall be responsible for all subcontractors' compliance with this Section.

1.4 Familiarity with Work. By executing this Agreement, Consultant warrants that (a) it has thoroughly investigated and considered the Services to be

performed, (b) it has investigated the site where the Services are to be performed, if any, and fully acquainted itself with the conditions there existing, (c) it has carefully considered how the Services should be performed, and (d) it fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the Services 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 Standard of Care. Consultant acknowledges and understands that the Services contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, Consultant's work will be held to a heightened standard of quality. Consistent with Section 1.4 hereinabove, Consultant represents to City that it holds the necessary skills and abilities to satisfy the heightened standard of quality as set forth in this Agreement. Consultant shall adopt reasonable methods during the life of this Agreement to furnish continuous protection to the Services 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 Services 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.

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") only when directed to do so by the Contract Officer, provided that Consultant shall not be required to perform any Additional Services without compensation. Consultant shall not perform any Additional Services until receiving prior written authorization from the Contract Officer, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant. It is expressly understood by Consultant that the provisions of this Section shall not apply to the Services specifically set forth in the Scope of Services or reasonably contemplated therein. 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 Officer's written authorization for Additional Services shall constitute a waiver of any and all right to adjustment of the Contract Sum or time to perform this Agreement, whether by way of compensation, restitution, quantum meruit, or the like, for Additional Services provided without the appropriate authorization from the

Contract Officer. Compensation for properly authorized Additional Services shall be made in accordance with Section 2.3 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"), which is incorporated herein by this reference and expressly made a part hereof. 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 **Four Hundred Eighty-Seven Thousand, Four Hundred Fifty-Five Dollars (\$487,455.00)** (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. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by City; Consultant shall not be entitled to any additional compensation for attending said meetings. 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.

2.2 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 Services performed in accordance with the terms of this Agreement. Subject to retention pursuant to Section 8.3, City will pay Consultant for all items 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.

2.3 Compensation for Additional Services. Additional Services approved in advance by the Contract Officer pursuant to Section 1.6 of this Agreement 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.

3.0 PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. If the Services not completed in accordance with the Schedule of Performance, as set forth in Section 3.2 and Exhibit C, it is understood that the City will suffer damage.

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 time period in 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 8.8 or 8.9 of this Agreement, the term of this Agreement shall commence on **July 1, 2015 and terminate on June 30, 2016** ("Initial Term"). This Agreement may be extended

for two additional year(s) upon mutual agreement by both parties ("Extended Term").

4.0 COORDINATION OF WORK

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

- a. **Lloyd "Nick" Nickerson, Jr., President**
Email: nnickerson@naiconsulting.com

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. For purposes of this Agreement, the foregoing Principals may not be changed by Consultant and no other personnel may be assigned to perform the Services required hereunder without the express written approval of City.

4.2 Contract Officer. The "Contract Officer" shall be **Timothy R. Jonasson, P.E., Public Works Director/City Engineer** or such other person as may be designated in writing 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, that 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. The Contract Officer shall have authority to sign all documents on behalf of City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability, and reputation of Consultant, its principals, and its 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 transferred, assigned, conveyed, hypothecated, or encumbered, voluntarily or by operation of law, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. Any attempted or purported assignment or contracting by

Consultant without City's express written approval shall be null, void, and of no effect. No approved transfer shall release Consultant of any liability hereunder without the express consent 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 its employees, perform the Services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision, or control of Consultant's employees, servants, representatives, or agents, or in fixing their number or hours of service. 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. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. 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. Except for the Contract Sum paid to Consultant as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing the Services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing the Services hereunder. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System ("PERS") as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation laws regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any payment due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

4.5 Identity of Persons Performing Work. Consultant represents that it employs or will employ at its own expense all personnel required for the

satisfactory performance of any and all of the Services set forth herein. Consultant represents that the Services required herein will be performed by Consultant or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

4.6 City Cooperation. City shall provide Consultant with any plans, publications, reports, statistics, records, or other data or information pertinent to the 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 any Services under this Agreement and throughout the duration of the term of this Agreement, Consultant shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, policies of insurance as set forth in Exhibit E (the "Insurance Requirements") which is incorporated herein by this reference and expressly made a part hereof.

6.0 INDEMNIFICATION.

6.1 Indemnification. To the fullest extent permitted by law, Consultant shall indemnify, protect, defend (with counsel selected by City), and hold harmless City and any and all of its officers, employees, agents, and volunteers as set forth in Exhibit F ("Indemnification") which is incorporated herein by this reference and expressly made a part hereof.

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. Consultant hereby acknowledges that City is greatly concerned about the cost of the Services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

7.2 Records. Consultant shall keep, and require any subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports

(including but not limited to payroll reports), studies, or other documents relating to the disbursements charged to City and the Services performed hereunder (the "Books and Records"), as shall be necessary to perform the Services required by this Agreement and enable the Contract Officer to evaluate the performance of such Services. Any and all such Books and Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such Books and Records at all times during normal business hours of City, including the right to inspect, copy, audit, and make records and transcripts from such Books and Records. Such Books and Records shall be maintained for a period of three (3) years following completion of the Services hereunder, and City shall have access to such Books and Records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the Books and Records may be given to City, and access shall be provided by Consultant's successor in interest. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

7.3 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents, and other materials plans, drawings, estimates, test data, survey results, models, renderings, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, digital renderings, or data stored digitally, magnetically, or in any other medium prepared or caused to be prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement (the "Documents and Materials") shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the expiration or termination of this Agreement, 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 use, reuse, or assignment of the Documents and Materials hereunder. Any use, reuse or assignment of such completed Documents and Materials for other projects and/or use of uncompleted documents without specific written authorization by Consultant will be at City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise, or assignment. Consultant may retain copies of such Documents and Materials for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any Documents and Materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

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 termination or expiration of this Agreement and shall thereafter remain in full force and effect.

7.4 Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, rights of reproduction, and other intellectual property embodied in the Documents and Materials. Consultant shall require all subcontractors, if any, to agree in writing that City is granted a non-exclusive and perpetual license for the Documents and Materials the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all of the Documents and Materials. Consultant makes no such representation and warranty in regard to the Documents and Materials which were prepared by design professionals other than Consultant or provided to Consultant by City. City shall not be limited in any way in its use of the Documents and Materials at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

7.5 Release of Documents. The Documents and Materials 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 interpreted, construed, and governed 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, or 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 8.8. During the period of time that Consultant is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during any period of default.

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 declaratory or 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 8.9 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 the Services 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 to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees; provided, however, that the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing party in the conduct of the litigation. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. The court may set such fees in the same action or in a separate action brought for that purpose.

9.0 CITY OFFICERS AND EMPLOYEES; NONDISCRIMINATION.

9.1 Non-liability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer 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. Consultant covenants that neither it, nor any officer or principal of it, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way

hinder Consultant's performance of the Services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which 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 other 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 any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, 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, sexual orientation, national origin, or ancestry.

10.0 MISCELLANEOUS PROVISIONS

10.1 Notice. Any notice, demand, request, consent, approval, or 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:
NAI CONSULTING, INC.
Attention: Lloyd Nickerson, Jr.
President
68-955 Adelina Road
Cathedral City, CA 92234

10.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

10.3 Section Headings and Subheadings. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

10.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument

10.5 Integrated Agreement. This Agreement including the exhibits hereto is the entire, complete, and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

10.6 Amendment. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Consultant and by the City Council of City. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

10.7 Severability. In the event that any one or more of the articles, phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect any of the remaining articles, 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 unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

10.8 Unfair Business Practices Claims. In entering into this Agreement, Consultant offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials related to this Agreement. This assignment shall be made and become effective at the time City renders final payment to Consultant without further acknowledgment of the parties.

10.9 No Third Party Beneficiaries. With the exception of the specific provisions set forth in this Agreement, there are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

10.10 Authority. The persons executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF LA QUINTA,
a California municipal corporation

CONSULTANT:

By: Lloyd Nickerson, Jr.
Name: Lloyd Nickerson, Jr.
Title: President

FRANK J. SPEVACEK, City Manager

Dated: _____

ATTEST:

By: Lorissa Gruehl
Name: Lorissa Gruehl
Title: Vice President

SUSAN MAYSELS, City Clerk,
La Quinta, California

APPROVED AS TO FORM:

WILLIAM H. IHRKE, City Attorney
City of La Quinta, California

Two signatures are required if Consultant is a corporation.

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

Exhibit A Scope of Services

As directed by City Staff, the consultant's services shall include, but are not limited to the performance of the following assignments, duties and tasks:

- Prepare and submit necessary documents, and coordinate with various regional, county, state and federal funding agencies to acquire and maintain funding approval.
- Prepare and track project schedules.
- Prepare correspondence, reports, and memorandums necessary to administer various City capital improvement projects.
- Assist with bidding procedures, prepare bid summary comparisons in a table format, and make recommendations for City Council consideration to award Public Works contracts for construction.
- Prepare and conduct informal request for proposals to construction support sub-consultants, summarize proposals received and make recommendations for award of Professional Services Agreements.
- Monitor and report on project status, budget vs. actual expenditures, and contract time vs. actual time.
- Prepare staff reports for City Council consideration, as necessary.

Other work objectives may include:

- Preparation and/or management of the City's Development Impact Fee Update.
- Continued assistance with issues associated with the Coachella Valley Transportation Uniform Mitigation Fee (TUMF) Program.
- Continued assistance with the Measure A ½ Cent Sales Tax Capital Improvement Plan and Maintenance of Effort requirements.
- Provide design services for minor Capital Improvement Projects.
- Other duties as assigned by the Public Works Director/City Engineer

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 **Four Hundred Eighty-Seven Thousand, Four Hundred Fifty-Five Dollars (\$487,455.00)** ("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.

Project Manager	\$145.00 per hour
Professional Civil Engineer	\$145.00 per hour
Design Engineer	\$110.00 per hour
CAD Draftsman	\$85.00 per hour
Project Technician	\$85.00 per hour
Secretarial Support	\$65.00 per hour

Any reimbursable expenses shall be provided at cost, without mark-up or additional overhead.

Exhibit C
Schedule of Performance

Consultant shall complete all services within the **TIME LINE ALLOWED BY THE TOTAL CONTRACT SUM.**

Exhibit D
Special Requirements

Projects covered by this Agreement may be partially funded by various Program funds administered through the California Department of Transportation (Caltrans). As such, the Consultant shall comply with the requirements of 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Caltrans Local Procedures Manual Processing Procedures for Implementing Federal and/or State Funded Local Public Transportation Projects.

Debarment And Suspension Certification.

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The Consultant's signature affixed to this Agreement shall constitute a certification, under penalty of perjury, that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, and manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

None.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Agreement. Signing this Agreement on the signature portion thereof shall also constitute signature of this Certification.

1. Rebates, Kickbacks Or Other Unlawful Consideration. The CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

2. Prohibition Of Expending Local Agency State Or Federal Funds For Lobbying.

A. The CONSULTANT certifies to the best of his or her knowledge and belief that:

1) No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2) If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

3. Certifications.

Caltrans LAPM Exhibits 10-F Certification of Consultant and 10-G Certification of Local Agency, are attached and a part of this Agreement.

4. Cost Principles.

- A. NAI agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.
- B. The NAI also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to DESIGN PROFESSIONAL that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by NAI to the City.

5. Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; the CONSULTANT, subcontractors, and the City shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, the State Auditor, City, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

Community Development Block Grant (CDBG) Project Regulations

CDBG funded work under this **Professional Services Agreement** is subject to all applicable Federal, State, and local laws and regulations, including but not limited to the regulations pertaining to the Community Development Block Grant program (*24 CFR and Part 570*), Executive Order #11246, and other applicable requirements.

1. Access to Records and Records Retention:

The Consultant and any sub-consultants shall allow all duly authorized County, Federal, or State officials or authorized representatives access to the work area, as well as all books, documents, materials, papers, and records of the Consultant and any Sub-consultants that are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

The Consultant and any sub-consultants further agree to maintain and keep such books, documents, materials, papers, and records, on a current basis, recording all transactions pertaining to this agreement in a form in accordance with generally acceptable accounting principles.

All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter periods of retention, all books, records, and supporting detail shall be retained for a period of at least four (4) years after the expiration of the term of this Agreement.

2. Federal Employee Benefit Clause:

No member of or delegate to the congress of the United States, and no Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit to arise from the same.

3. Equal Opportunity

The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Consultant will ensure that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. The Consultant will take affirmative action to ensure that applicants are employed and the employees are treated during employment, without regard to their race color, religion, sex, or national origin. Such actions shall include, but are not limited to, the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in a conspicuous place,

available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this non-discriminating clause.

4. Section 3 of the Housing and Community Development Act of 1968

Economic Opportunities for Section 3 Residents and Section 3 Business Concerns
Sec. 135.38 Section 3 clause.

All Section 3 covered contracts shall include the following clause (referred to as the Section 3 Clause):

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract

or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

G. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

H. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

5. Certifications and Reporting

Contractor agrees to complete and submit the following reporting forms at the initiation of project activities:

A. Exhibit B-5/B-6: BIDDER CERTIFICATION FOR AFFIRMATIVE ACTION

B. **Exhibit B-8:** QUESTIONNAIRE REGARDING BIDDER

C. **Exhibit PA-5:** SECTION 3 SUMMARY REPORT

Exhibit E
Insurance Requirements

E.1 Insurance. Prior to the beginning of and throughout the duration of this Agreement, 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 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 rising 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.

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.

Consultant shall provide written notice to City within ten (10) working days if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event any of said policies of insurance are cancelled, Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Exhibit to the Contract Officer. 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.

E.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.

E.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 Consultant 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 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 this Agreement 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 Exhibit 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 Exhibit.

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.

Exhibit F
Indemnification

F.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 (with counsel selected by City), 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 of any subcontractor), 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 subcontractors (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 (with counsel selected by City), and hold harmless the Indemnified Parties 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 subcontractors of Consultant.

F.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 subcontractor 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 Exhibit. 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 F.2(b). Notwithstanding Section F.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 (with counsel selected by City), and hold harmless the 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 of any subcontractor), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, 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 subcontractor, anyone directly or indirectly employed by them or anyone that they control.

3. Design Professional Defined. As used in this Section F.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.