

# City of La Quinta

CITY COUNCIL MEETING: July 7, 2015

## STAFF REPORT

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**AGENDA TITLE:** APPROVE CONTRACT SERVICES AGREEMENT WITH AVIR INCORPORATED FOR COUNCIL CHAMBER AUDIO/VIDEO/CONTROL SYSTEM REPLACEMENT

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### RECOMMENDATION

Approve a Contract Services Agreement with AVIR Incorporated and authorize the City Manager to execute the agreement.

### EXECUTIVE SUMMARY

- The existing audio/visual/control system in the City Council Chambers is over 20 years old and replacement parts are no longer available. The video function has failed and the audio component is marginal.
- A new system will provide better sound and viewing experiences, and video recording and web streaming technology.
- The City circulated a Request for Proposals (RFP) to replace this equipment and local company, AVIR Incorporated, submitted the lowest responsible bid.
- If approved, the installation will occur over the summer months and be ready for use in September.

### FISCAL IMPACT

The project cost is \$179,995. Funding is available from the Equipment Replacement Fund.

### BACKGROUND/ANALYSIS

The audio/video/control system for the Council Chambers was installed in 1993 when the building was constructed. At that time, the Chamber was outfitted with the most up-to-date technology available. Over the past 22 years, the equipment has degraded and shown signs of normal wear and tear. The video component has ceased working and the audio component is marginal at best. Repair of this system is futile as replacement parts are scarce or non-existent.

On March 17, 2015, City Council directed staff to prepare and circulate an RFP to replace the entire system. The project budget is \$200,000. The City received five proposals to replace and/or install the following:

- Video system – including the “Jumbotron” projection system, installing an interactive touchscreen display along the south “voting” wall, replacing the dias monitors with touchscreen controls.

- Wireless system – to allow presenters to connect to the video/audio system to conduct presentations from their devices or to allow “screen sharing” from any device in the room.
- Cameras – four mounted cameras to record meetings.
- Audio system – replace the microphone system with touchscreen controls, eight speakers, and three wireless microphones for presentations.
- Control system – replace the voting system with touchscreen controls, replace the public comment timer system with visual countdown timer, and digital nameplates on dais.

The submittals were reviewed by a selection committee and AVIR Incorporated, a company located in Palm Desert, was the most qualified company.

### ALTERNATIVES

As the selection process has met City requirements and the selected firm meets or exceeds all required qualifications, staff does not recommend an alternative.

Report prepared by: Tustin K. Larson, Marketing & Events Supervisor

Report approved by: Edie Hylton, Deputy City Manager

Attachment: 1. Contract Services Agreement

## CONTRACT SERVICES AGREEMENT

THIS CONTRACT SERVICES AGREEMENT (the “Agreement”) is made and entered into by and between the CITY OF LA QUINTA, a California municipal corporation (“City”), and AVIR Incorporated, a California corporation (“Contractor”).

### RECITALS

WHEREAS, City desires to utilize the services of Contractor as an independent contractor to provide City with the design, installation, integration, and calibration of the Council Chamber audio/video/control system.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Contractor, and Contractor desires to serve City to perform these services subject to the terms contained herein and all applicable local, state, and federal laws and regulations.

NOW, THEREFORE, based on the foregoing Recitals and in consideration of the performance by the parties of the mutual promises, covenants, and conditions contained herein, the parties agree as follows:

#### 1.0 SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide those services related to the design, installation, integration, and calibration of the Council Chamber audio/video/control system as specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference (the “Services”). Contractor represents and warrants that Contractor is a provider of first-class work and services and Contractor is experienced in performing the Services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the Services required hereunder and that all materials will be of good quality, fit for the purpose intended. 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 City and any Federal, State, or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Except as otherwise specified herein, Contractor 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. Contractor 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. Contractor 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. Contractor shall be responsible for all subcontractors' compliance with this Section.

1.4 Familiarity with Work. By executing this Agreement, Contractor 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 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 Contractor discover any latent or unknown conditions materially differing from those inherent in the Services or as represented by City, Contractor shall immediately inform City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer (as defined in Section 4.2 hereof).

1.5 Standard of Care. Contractor acknowledges and understands that the Services contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, Contractor's work will be held to a heightened standard of quality and workmanship. Consistent with Section 1.4 hereinabove, Contractor represents to City that it holds the necessary skills and abilities to satisfy the heightened standard of work as set forth in this Agreement. Contractor shall adopt reasonable methods during the life of this Agreement to furnish continuous protection to the Services performed by Contractor, 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 Contractor shall not relieve Contractor 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 Contractor.

1.6 Additional Services. In accordance with the terms and conditions of this Agreement, Contractor shall perform work in addition to those specified in the Scope of Services ("Additional Services") only when directed to do so by the Contract Officer, provided that Contractor shall not be required to perform any Additional Services

without compensation. No such Additional Services may be undertaken unless a written change order is first given by the Contract Officer to Contractor, 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 Contractor. It is expressly understood by Contractor 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 Contractor 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.

## 2.0 COMPENSATION

2.1 Contract Sum. For the Services rendered pursuant to this Agreement, Contractor shall be compensated in accordance with Exhibit "B" (the "Schedule of Compensation") in a total amount not to exceed **One Hundred Seventy-Nine Thousand, Nine Hundred Ninety-Five Dollars and Zero Cents (\$179,995.00)** (the "Contract Sum"), except as provided in Section 1.6.

## 3.0 PERFORMANCE SCHEDULE

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

3.4 Term. Unless earlier terminated in accordance with Sections 8.8 or 8.9 of this Agreement, this Agreement shall commence on July 15, 2015 and terminate on December 31, 2015 ("Term").

#### 4.0 COORDINATION OF WORK

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

- a. Gordon Spielberg, Owner  
E-mail: [gordan@avir.com](mailto:gordan@avir.com)
- b. Mike Oster, Owner  
E-mail: [mike@avir.com](mailto:mike@avir.com)
- c. Paul Talley, Lead Project Manager  
E-mail: [paul@avir.com](mailto:paul@avir.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 Contractor and devoting sufficient time to personally supervise the Services hereunder. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

4.2 Contract Officer. The "Contract Officer" shall be Frank J. Spevacek, City Manager, or such other person as may be designated in writing by the City Manager of City. It shall be Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the Services, and Contractor 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. 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 Contractor, its principals, and employees were a substantial inducement for City to enter into this Agreement. Except as set forth in this Agreement, Contractor shall not subcontract 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 Contractor, taking all transfers into account on a cumulative basis. Any attempted or purported assignment or subcontracting by Contractor without City's express written approval shall be null, void, and of no effect. No approved transfer shall release Contractor 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 Contractor, its agents, or 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 Contractor's employees, servants, representatives, or agents, or in fixing their number or hours of service. Contractor 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. Contractor 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 Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Contractor 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 Contractor as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing the Services hereunder for City. City shall not be liable for compensation or indemnification to Contractor 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, Contractor 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. Contractor agrees to pay all required taxes on amounts paid to Contractor 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. Contractor shall fully comply with the workers' compensation laws regarding Contractor and Contractor's employees. Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any payment due to Contractor under this Agreement any

amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

4.5 Identity of Persons Performing Work. Contractor 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. Contractor represents that the Services required herein will be performed by Contractor 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 Contractor with any plans, publications, reports, statistics, records, or other data or information pertinent to Services to be performed hereunder which are reasonably available to Contractor only from or through action by City.

4.7 Utility Relocation. City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse Contractor for any costs incurred in locating, repairing damage not caused by Contractor, and removing or relocating such unidentified utility facilities. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

4.8 Trenches or Excavations. Pursuant to California Public Contract Code Section 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply.

4.8.1. Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions at the site different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; or (3) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

4.8.2. City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order per Section 1.8 of this Agreement.



4.8.3. That, in the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under this Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting Parties.

4.9 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Contractor shall at all times be in compliance with all applicable local, state, and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

## 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, Contractor 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, Contractor shall indemnify, protect, defend 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. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services as the Contract Officer shall require. Contractor hereby acknowledges that City is greatly concerned about the cost of the Services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor 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 Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

7.2 Records. Contractor shall keep, and require 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 Contractor’s business, custody of the Books and Records may be given to City, and access shall be provided by Contractor’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 (the “Documents and Materials”) prepared or caused to be prepared by Contractor, its employees, subcontractors, and agents in the performance of this Agreement 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 Contractor 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 Contractor will be at City’s sole risk and without liability to Contractor, and Contractor’s guarantee and warranties shall not extend to

such use, revise, or assignment. Contractor may retain copies of such Documents and Materials for its own use. Contractor 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 Contractor fails to secure such assignment, Contractor 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 Contractor 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 Contractor 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. Contractor shall require all subcontractors 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. Contractor represents and warrants that Contractor has the legal right to license any and all of the Documents and Materials. Contractor makes no such representation and warranty in regard to the Documents and Materials which were prepared by design professionals other than Contractor or provided to Contractor 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. Contractor 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.

7.6 Confidentiality. Contractor covenants that all data, documents, discussion, or other information, if any, developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Contractor to any person or entity without prior written authorization by City. City shall grant such authorization if disclosure is required by law. All City data, documents, discussion, or other information shall be returned to City upon the termination or expiration of this Agreement. Contractor's covenant under this section shall survive the termination or expiration of this Agreement.

## 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 Contractor 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 8.8. During the period of time that Contractor 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. Payments shall be made in accordance with the provisions of Section 2.0 of this Agreement. In accordance with said Sections, City shall pay Contractor a sum based upon ninety-five percent (95%) of the Contract Sum apportionment of the labor and materials incorporated into the Services under this Agreement during the month covered by said invoice. The remaining five percent (5%) thereof shall be retained as performance security to be paid to Contractor within sixty (60) days after final acceptance of the Services by the City Council of City, after Contractor has furnished City with a full release of all undisputed payments under this Agreement, if required by City. In the event there are any claims specifically excluded by Contractor from the operation of the release, City may retain proceeds (per Public Contract Code § 7107) of up to one hundred fifty percent (150%) of the amount in dispute. City's failure to deduct or withhold shall not affect Contractor's obligations hereunder.

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 Contractor 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 Contractor. 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 Contractor. Upon receipt of any notice of termination, Contractor shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Officer. Contractor 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 Contractor. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, Contractor shall vacate any City-owned property which Contractor is permitted to occupy hereunder and 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 Contractor 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 Contractor 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 Contractor, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Conflict of Interest. Contractor 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 Contractor's performance of the Services under this Agreement. Contractor 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. Contractor 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. Contractor 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. Contractor 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. Contractor 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, 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 J. Spevacek  
City Manager  
78-495 Calle Tampico  
La Quinta, CA 92253

To Contractor:  
AVIR Incorporated  
Gordon Spielberg  
Owner  
41905 Boardwalk, Suite X  
Palm Desert, CA 92211

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 Contractor 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, Contractor 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 Contractor 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

CONTRACTOR:

\_\_\_\_\_  
FRANK J. SPEVACEK, City Manager

By: Mike Oster

Name: [Signature]

Title: Owner

6/25/15

Dated: \_\_\_\_\_

ATTEST:

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

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

\_\_\_\_\_  
SUSAN MAYSELS, City Clerk, La Quinta, California

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

APPROVED AS TO FORM:

\_\_\_\_\_  
William H. Ihrke, City Attorney  
City of La Quinta, California

Two signatures are required if a corporation.

NOTE: CONTRACTOR'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 CONTRACTOR'S BUSINESS ENTITY

## Exhibit A

### Scope of Services

#### Contractor will provide:

##### Phase 1 – Project Kick-Off

- a) Meeting with the City to establish project schedule
- b) Review any existing data and any other applicable work done relating to the project

##### Phase 2 – Turnkey audio/video/control system

Contractor agrees to design, install, integrate, and calibrate the electronic systems equipment and its related hardware as outlined in this scope of services. Contractor engineers will work with City staff and other trade vendors to provide the technical specifications, mechanical design and detailed drawings for the system. Upon completion working documents will be supplied to help troubleshoot the system or for any future upgrades by others.

Contractor shall perform installation work, including:

- a) Layout and wiring diagrams
- b) Protection of any utilities in the immediate area of the project
- c) CONTRACTOR has agreed to provide, install, integrate, and calibrate the following video components (Description and quantity):

- |  |   |
|--|---|
| a. 3000 Lm WXGA Short Throw Projector–Sony VPLSW235        | 1 |
| Integrate existing projector screen                        |   |
| b. 70" Class Interactive Display–Samsung DM75D+CY-TD75LDAF | 1 |
| Universal Micro-Adjustable Tilt Wall Mount–Chief XTMU      | 1 |
| Small form factor computer–AVIR Intel NUC                  | 1 |

|    |  |    |
|----|--|----|
| c. | Touchscreen Flush Unit–ListenTech UNICOS-F-MM  | 14 |
|    | 17" SmartView HD Studio Monitor–Blackmagic BLSVHD  | 14 |
|    | Binary Single CAT5e/6 HDBaseT Extender   | 1  |
| d. | AirMedia™ Presentation Gateway–Crestron AM-100   | 1  |
|    | Network Media Player–Apple Apple TV  | 1  |
| e. | Analog to SDI mini converter–Blackmagic BLASDIMC   | 1  |
|    | PTZ Camera with 20x Optical Zoom (Black)–Sony SOEVIH100S   | 3  |
| f. | Joystick Remote Control Panel–Sony SORMBR300   | 1  |
|    | ATEM Production Studio–Blackmagic BL-ATEMP-STU-4K  | 1  |
|    | Small form factor computer–AVIR Intel NUC  | 1  |
|    | 17" SmartView HD Studio Monitor–Blackmagic BLSVHD  | 1  |
|    | iPad Air 2 Wi-Fi 16GB - Space Gray–Apple iPad Air 2  | 1  |
|    | SDI Distribution 4K mini converter–Blackmagic BLMCSD4K   | 1  |
|    | 6G-SDI to HDMI 4K mini converter–Blackmagic BLMCSH4K   | 5  |
| g. | 43" 4K Ultra HD TV–Sony XBR43X830C   | 1  |
|    | Thinstall Medium Tilt Mount–Chief MTTU   | 1  |
|    | 960H Bullet Analog Camera–Bosch VTN-4075-V321  | 1  |
| d) | CONTRACTOR has agreed to provide, install, integrate, and calibrate the following audio components (Description and quantity): |    |
| a. | Power Amplifier 185 W/Ch, 70v–QSC ISA300TI   | 1  |
| b. | Digital Conferencing Delegate Flush Unit ListenTech FD-M   | 1  |
|    | 8 Ch Intellimix with Dante RJ45–Shure SCM820-DAN   | 1  |
| c. | 70v Commercial Speaker - Black–Sonance FMS860  | 4  |
|    | 6.5" 2 Way In-Wall JBL Professional CONTROL-126WT  | 4  |
| d. | Wireless Handheld System–Shure BLX24R/SM58   | 3  |
|    | Wireless Vocal System–Shure BLX14R/W85   | 1  |
| e. | Integrate Denon DN-F450R with Audio system   |    |
|    | Integrate Gentner Digital Hybrid II with Audio system  |    |

e) CONTRACTOR has agreed to provide, install, integrate, and calibrate the following CONTROL SYSTEM components (Description and quantity):

|   |    |
|---|----|
| a. Digital signage–Samsung DB10D                          | 14 |
| b. Central Unit – ListenTech UNICOS-CU                    | 1  |
| c. Managed 26-port Gigabit Ethernet Switch–Cisco SG300-28 | 1  |
| Dante™–ListenTech UNICOS-DANTEANC                         | 1  |
| Small form factor computer–AVIR Intel NUC                 | 1  |
| 3-Series Control System–Crestron CP3                      | 1  |

f) All travel and mobilization costs for Contractor crew are included

g) Final walk-through, training session, and (1) hard copy operations manual, and (1) digital operations manual.

h) Contractor warrants its installation and programming work for a period of five years to commence upon completion of installation. Ownership of equipment shall transfer to client upon delivery of goods. Contractor warrants its structured wiring and termination materials and labor indefinitely to the original property owner. This warranty does not transfer with a change in ownership. Contractor will help the owner get their manufacturer-warranted equipment serviced throughout the life of said warranty.

City will provide:

a) Any and all existing construction drawings, wiring diagrams, or other available documentation of existing audio/video/control system.

b) Coordination of drywall, millwork, and finish carpentry work to be provided by outside contractor.

## Exhibit B

### Schedule of Compensation

Payment shall be on a “Fixed Fee” basis in accordance with the Contractors Schedule of Compensation attached herewith for the work tasks performed in conformance with Section 2.2 of this Agreement. Total compensation for all work performed under this Agreement shall not exceed **One Hundred Seventy-Nine Thousand, Nine Hundred Ninety-Five Dollars and Zero Cents (\$179,995.00)** except as specified in Section 1.6 - Additional Services of this Agreement.

Payment Schedule is as follows:

|   |              |
|---|--------------|
| Upon Agreement Execution                          | \$35,999.00  |
| 30 Days prior to installation of in-wall speakers | \$53,995.50  |
| 45 days prior to component installation           | \$80,997.75  |
| Balance upon completion                           | \$8,995.75   |
| Total:  | \$179,995.00 |

## **Exhibit C**

### Schedule of Performance

Contractor shall complete all services within the term of this agreement. The schedule is as follows:

- a) Week of 7/13/2015 – Removal of existing equipment and clean out rack area in preparation of new equipment.
- b) Week of 7/20/2015 - Prewire dais, and council chambers for new speakers, Televic Unicos devices, CCTV, and displays.
- c) Week of 7/27/2015 - Finish any rough wiring and final legacy system tear down.
- d) Week of 8/3/2015 – Installation of speakers and other trim parts.
- e) 8/3/2015 - 8/24/2015 - Installation of major components and systems.
- f) 8/24-9/3/2015 - System programming and testing.
- g) Week of 9/7/2015 – Operational training and instruction.

## 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)

Contractor 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 Contractor's acts or omissions rising out of or related to Contractor'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 Contractor'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.

Contractor 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 Contractor, its officers, any person directly or indirectly employed by Contractor, any subcontractor or agent, or anyone for whose acts any of them may be liable, arising directly or indirectly out of or related to Contractor's performance under this Agreement. If Contractor or Contractor's employees will use personal autos in any way on this project, Contractor 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

Contractor'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 contractor 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.

Contractor 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.

Contractor 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, Contractor 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 Contractor'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 Contractor 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 Contractor to stop work under this Agreement and/or withhold any payment(s) which become due to Contractor hereunder until Contractor 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 Contractor'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 Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of work under this Agreement.



E.3 General Conditions Pertaining to Provisions of Insurance Coverage by Contractor. Contractor and City agree to the following with respect to insurance provided by Contractor:

1. Contractor 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. Contractor also agrees to require all contractors, and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor 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 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 City, as the need arises. Contractor 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 Contractor'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 Contractor or deducted from sums due Contractor, at City option.

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

10. Contractor 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 Contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to City. At that time, City shall review options with Contractor, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

11. City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Contractor, 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. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor 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. Contractor 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 this 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. Contractor 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 Contractor'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 Contractor under this agreement. Contractor 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. Contractor 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 Contractor 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. Contractor agrees to provide immediate notice to City of any claim or loss against Contractor 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 Contractor's Services, to the fullest extent permitted by law, Contractor 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 Contractor 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 Contractor, its officers, agents, employees or subcontractors (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of professional services under this agreement. With respect to the design of public improvements, Contractor 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 Contractor.

b. Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Contractor 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 Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees, or subcontractors of Contractor.

F.2 Standard Indemnification Provisions. Contractor 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 Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required herein,

Contractor 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 Contractor and shall survive the termination of this agreement or this section.

a. Limitation on Indemnity. Without affecting the rights of City under any provision of this agreement, Contractor 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 Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

