

REQUEST FOR PROPOSALS

**CITY OF CATHEDRAL CITY
HOUSING ELEMENT UPDATE**



Cathedral City

February 5, 2020

Important Dates

Proposal Due:	February 27, 2020
Award of Contract:	March 25, 2020
Project Start Date:	April 8, 2020
Project Completion:	June 24, 2021

Update to the Housing Element of the General Plan Cathedral City, California

~ Request for Proposals ~

Overview

The City of Cathedral City (City) is seeking consultant proposals to prepare an update to the City's Housing Element of the General Plan (Housing Element). Adopted Housing Elements are due the State of California Department of Housing and Community Development (HCD) by October 31, 2021. The Consultant must have the ability to produce an accurate, understandable and defensible 2021-2029 Housing Element Update that is compliant with all applicable laws and is completed within the required time frame.

The Consultant shall be responsible for all steps necessary to prepare and process the updated Housing Element document for certification by HCD. This includes data gathering, public outreach, policy recommendations, public hearings, and communication with HCD. The Consultant must also have the technical ability and resources to prepare amendments to the Land Use and Safety (Emergency Preparedness) Elements, which must be adopted concurrent with the Housing Element Update; amendments to the City-wide Zoning Ordinance to ensure conformance with State law; and the appropriate documentation in accordance with the California Environmental Quality Act (CEQA).

The ideal candidate will have experience with Senate Bill (SB) 18 relative to the existence of Native American Tribal Reservation land within the jurisdiction's boundaries, as well as the recently approved Accessory Dwelling Unit laws and the Housing Crisis Act of 2019 (SB 330).

Background

Cathedral City is a Charter City located in Riverside County between the cities of Palm Springs and Rancho Mirage. As a post-Proposition 13 City that incorporated in 1981, Cathedral City receives reduced property tax revenue in which to provide City services. It is however, the second most populous city in the Coachella Valley area with a 2018 population of approximately 55,000, according to the California Department of Finance. The City is located within the Southern California Associate of Governments (SCAG) planning region and the Coachella Valley Association of Governments sub-region.

The City's boundaries encompass approximately 23 square miles, including over 2,000 acres located north of Interstate 10 annexed into the City between 2007 and 2014. While the newly annexed area is primarily vacant, an approximate 9-acre commercial development was recently completed at the intersection of Rio del Sol Road and Varner Road.

Historically, Cathedral City has served as a “working class” bedroom community comprised of young families and retirees. That demographic is slowly changing with legalization of cannabis and the significant number of new and expanding cannabis businesses within the City. Development of downtown into an Arts and Entertainment District is also instrumental in changing the City’s demographic.

For the 6th Cycle RHNA planning period of October 2021 through October 2029, Cathedral City’s proposed share of the Regional Housing Needs Assessment (RHNA) as of November 8, 2019, is 2,492 new housing units per SCAG’s draft RHNA Plan. Of those, 527 are for very-low income, 345 for low income, 447 for moderate income, and 1,172 are for above moderate income. HCD adoption of the *final* RHNA allocation is scheduled to occur in October 2020.

General Plan Update

The City’s General Plan was adopted in 2002. A General Plan Update is underway and is expected to conclude in late spring 2020. The draft Update projects build-out capacity for additional housing units with a wide range of housing types and density. Several residentially-designated parcels are on Agua Caliente Reservation allottee-controlled land where the City has minimal authority to influence development and where the Native American owner may have little incentive to develop, or to lease the land for development, in the foreseeable future.

The selected Consultant shall be responsible for City-wide amendments to the General Plan and Zoning Ordinance in conformance with the Housing Element Update and to comply with State housing law.

Scope of Work

In preparing a response to the Request for Proposals (RFP), the Consultant shall address the following tasks:

1. Research and Analysis – Evaluate the 2013-2021 Housing Element and the City’s Safety Element for the following:
 - a. Review the current Housing Element goals, objectives, policies, and programs; compare the projected results to actual accomplishments.
 - b. Compare and summarize anticipated housing production with what was achieved during the current housing cycle.
 - c. Compare the current Housing Element to current State Housing law.
 - d. Evaluate existing Safety Element policies for compliance with Assembly Bill 1241.
 - e. Review State laws relative to housing needs and production that may affect other elements of the General Plan.
2. Document Review – Review all applicable documents to increase understanding of local conditions, including the 2002 General Plan, “draft” General Plan Update,

Zoning Ordinance, North City Specific Plan, and North City Extended Specific Plan.

3. RHNA Monitoring and Needs Assessment – Assist City staff in coordinating with HCD and SCAG on the RHNA process and shall review applicable documents to aid in understanding local housing needs. Applicable documents include, but are not limited to, U.S. Census data, State Department of Finance population and housing trends, State Employment Development Department job statistics and forecasts, County homeless surveys, real estate market data for housing prices, and vacant residential land.

The review shall be designed to identify the following in accordance with Government Code Section 65583(a):

- a. Population, demographic and employment trends
 - b. Special housing needs (i.e., large families, seniors, homeless, etc.)
 - c. Housing stock characteristics, (i.e., at-risk units, needed rehabilitation or replacement)
 - d. Adequacy of public facilities (needed maintenance and improvements, accessibility to housing)
 - e. Housing cost and affordability factors
 - f. Projected housing needs
 - g. Current vacant and underutilized land inventory
4. Resources and Opportunities – The Consultant shall identify housing resources and opportunities with a focus on the following:
 - a. Land inventory and analysis with an evaluation of the relationship between zoning and public facilities serving these sites.
 - b. Financial resources, such as federal, state and local housing assistance programs.
 - c. Opportunities for energy conservation.
 5. Housing Constraints - Identify existing and potential governmental and non-governmental constraints to housing production. Where constraints exist, Consultant shall recommend housing programs to mitigate and/or remove them where possible.
 6. Housing Plan – Prepare the City's Housing Element Update so that it is accurate, complete, understandable, and meets all requirements of State law.

Consultant shall use the gathered data and public input in drafting the City's housing plan. Existing policies and programs shall be refined to accomplish goals and objectives that achieve compliance with current State housing law. A schedule of actions for the upcoming planning period shall be recommended for implementation.

The Housing Element shall contain programs to:

- a. Ensure that housing opportunities are available for all persons in the City.
 - b. Preserve and improve the existing stock of affordable housing, including at-risk units.
 - c. Facilitate development of adequate housing to meet the needs of low-, very low-, moderate- and above moderate-income households, and to meet the City's RHNA share.
 - d. Mitigate any governmental constraints to housing production, improvements and maintenance.
 - e. Ensure consistency with other General Plan elements and community goals.
7. CEQA Compliance – The Consultant shall conduct an environmental review in compliance with CEQA upon City approval of a draft of the Housing Element. Timing and completion of CEQA documentation, noticing and approval shall coincide with City Council approval of the Housing Element Update.

Meetings and Hearings

1. Public Outreach – Organize and conduct a public outreach program consistent with State and Federal laws and tailored to Cathedral City. Consultant shall include a minimum of two (2) outreach meetings. City staff will facilitate use of City facilities. City staff, with Consultant support, will prepare public outreach/comment notices and forms.
2. Mailing List – Compile, with City staff input and review, a mailing list of all appropriate agencies, individuals, and interest groups to contact for the public outreach meetings and public hearings. The City will be responsible for reproduction and distribution.
3. Public Hearings – Attend and present at all public hearings. For planning purposes, allow attendance at three (3) public hearings (Planning Commission and City Council). Consultant shall assist staff in preparing all staff reports.
4. Other Meetings –
 - a. In-house staff meetings: Consultant may need to attend up to five (5) meetings with City staff. One or more of these meetings may be via conference call. An in-person kick-off meeting shall be scheduled within 30 days of execution of the professional services agreement.
 - b. Project Status Meetings: Consultant shall attend monthly status meetings with City Project Manager. These meetings may be via conference call and shall include a brief status report of work to date.
 - c. SCAG / HCD Meetings: Consultant may need to confer with SCAG and HCD. Consultant shall plan on attending up to two (2) agency meetings.
 - d. SB18 Tribal Consultation: Consultant may need to confer with the Agua Caliente Tribe in accordance with SB18 at the Tribe's request. Consultant shall plan on one (1) tribal meeting.

Deliverables

1. Provide all text documents submitted to the City in Microsoft Word format.
2. Prepare all public information and outreach materials; City staff shall be responsible for reproduction and distribution.
3. Provide a brief summary of all public meetings within 5 working days of the meeting.
4. Provide one (1) electronic copy and four (4) print copies of each administrative review product.
5. Provide one (1) electronic copy and eleven (11) print copies of all documents to be presented at each public hearing.

Proposal Content

The Statement of Qualifications and Project proposal must include, at a minimum, the following information:

1. Executive Summary – Include a one- to two-page overview of the proposal, its highlights, and the approach to successfully complete this Project.
2. Scope of Work and Schedule – Include a Scope of Work and Schedule of Completion that demonstrates how Consultant proposes to meet Project requirements and deadlines.
3. Overview of Firm – Provide a description of Consultant's firm, including the year the firm was established, the type of organization (partnership, corporation, etc.), and a statement of the firm's qualifications for performing the subject consultant services. Identify the location where the services will be performed.
4. Qualifications and Personnel – A summary of the qualifications and experience of each team member, including sub-consultants, proposed to provide services for completion of the Project, and their role in the Project.
5. Experience and References: Identify at least three (3) successfully completed projects of a similar nature. For each project, identify the name of the agency and agency project manager, contact number, description of work performed, and value of the Consulting contract. Identify the names and responsibilities of the individuals involved who are also team members for the Project. The City may contact the project managers as references.
6. Fee Schedule – Include a fixed fee schedule that includes the hourly rate and classification of all team members who would be assigned to the Project. List per mile travel costs and any other direct or indirect costs associated with performing the required services.
7. Cost Estimate – The proposal shall include an estimate detailing the assumptions used to determine the Consultant's costs for the proposal. Format the estimate so labor hours for each individual and other direct costs are readily apparent for each task and any sub-task. The estimate should state a total not-to-exceed upper limit for the scope of work described in this RFP.

Proposed Schedule

RFP Issued:	February 5, 2020
Proposal Due:	February 27, 2020
Award of Contract:	March 25, 2020
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Project Completion:	June 24, 2021

Proposal Submittal Requirements

To be considered, please submit one (1) electronic copy of the proposal and four (4) bound copies in a sealed envelope that is clearly marked:

“Sealed proposal for Housing Element Update – Do not open with regular mail.”

Submit a single copy of the Cost Estimate and Fee Schedule in a separate sealed envelope within the proposal submittal packet.

All proposals must be submitted no later than **Thursday, February 27, 2020 at 5:00 p.m.** to the address below. All copies received by that time will be date and time stamped. Proposals received after the due date and time will be returned unopened. Proposal shall be addressed to:

City of Cathedral City
Attention: Leisa Lukes, Manager
68-700 Avenida Lalo Guerrero
Cathedral City, CA 92234

Faxed and emailed proposals will not be accepted. Hand carried proposals will be accepted before the response due date/time during normal business hours of 7:00 a.m. through 6:00 p.m., Monday through Thursday.

Evaluation Criteria

City staff will review each proposal for completeness and content. Each proposal will be evaluated based upon the relevant qualifications and experience of the Consultant. Accordingly, the City will use the following evaluation criteria:

1. Experience with preparing a Housing Element Update
2. Relevant qualifications of the team members
3. References with previous projects
4. Familiarity with applicable State and Federal laws
5. Knowledge of housing issues in Cathedral City and the Coachella Valley
6. Approach to public outreach
7. Approach to the overall scope of work
8. Proposed schedule and ability to meet City/HCD deadlines
9. Responsiveness to this RFP

Cost, while not determinative, may be considered in the selection process. A materially incomplete or non-responsive proposal will be rejected.

Selection Procedure

A selection committee of City staff will review and rank the proposals based on the evaluation criteria above. After discussing and ranking the proposals, the Committee will select one firm. Interviews may be conducted.

Acceptance or Rejection of Proposal

The City reserves the right to cancel or reject all, or a portion or portions, of the RFP without notice. Further, the City makes no representations that any agreement will be awarded to any organization submitting a proposal. The City reserves the right to reject any and all proposals submitted in response to this request or any addenda thereto.

The City also reserves the right to reject any sub-consultant or individual working on a Consultant team and to replace the sub-consultant or individual with a mutually acceptable replacement. Any changes to the proposal requirements will be made by written addendum.

Attachments

1. City of Cathedral City Professional Services Agreement
2. Cathedral City General Plan (2002) with adopted and certified Housing Element 2013-2021: <http://www.cathedralcity.gov/services/planning/documents/general-plan>

**AGREEMENT FOR SERVICES
BETWEEN
THE CITY OF CATHEDRAL CITY, CALIFORNIA
AND**

This Agreement for Services ("Agreement") is entered into as of _____, 20__ ("Effective Date") by and between the City of Cathedral City, a municipal corporation ("City") and _____, a _____ ("Service Provider"). City and Service Provider are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

A. City has sought, by [describe process used, i.e. request for qualifications, request for quotations, request for proposals, direct negotiation, informal quotes] the performance of the services defined and described particularly in Section 2 of this Agreement.

B. Service Provider, following submission of a [proposal, quote, bid, etc.] for the performance of the services defined and described particularly in Section 2 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Cathedral City's Municipal Code, City has authority to enter into this Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Service Provider for performance of those services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of Section 19 "Termination of Agreement" of this Agreement, the Term of this Agreement is for [___ years/months] commencing on the Effective Date.

SECTION 2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.

(a) Scope of Services. Service Provider agrees to perform the services set forth in Exhibit "A" "Scope of Services" (hereinafter, the "Services") and made a part of this Agreement by this reference.

(b) Schedule of Performance. The Services shall be completed pursuant to the schedule specified in Exhibit "A." Should the Services not be completed pursuant to that schedule, the Service Provider shall be deemed to be in Default of this Agreement. The City, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Service Provider to continue performing the Services.

SECTION 3. ADDITIONAL SERVICES.

Service Provider shall not be compensated for any work rendered in connection with its performance of this Agreement that are in addition to or outside of the Services unless such additional services are authorized in advance and in writing in accordance with Section 25 "Administration and Implementation" or Section 27 "Amendment" of this Agreement. If and when such additional work is authorized, such additional work shall be deemed to be part of the Services.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Service Provider the amounts specified in Exhibit "B" "Compensation" and made a part of this Agreement by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed [REDACTED] dollars (\$ [REDACTED]), unless additional compensation is approved in writing in accordance with Section 25 "Administration and Implementation" or Section 27 "Amendment" of this Agreement.

(b) Each month Service Provider shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-Service Provider contracts. Sub-Service Provider charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. If the compensation set forth in subsection (a) and Exhibit "B" include payment of labor on an hourly basis (as opposed to labor and materials being paid as a lump sum), the labor category in each invoice shall include detailed descriptions of task performed and the amount of time incurred for or allocated to that task. City shall independently review each invoice submitted by the Service Provider to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection

(c). In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Service Provider for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by Service Provider which are disputed by City, City will use its best efforts to cause Service Provider to be paid within forty-five (45) days of receipt of Service Provider's correct and undisputed invoice.

(d) Payment to Service Provider for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Service Provider.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

City may inspect and accept or reject any of Service Provider's work under this Agreement, either during performance or when completed. City shall reject or finally accept Service Provider's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Service Provider's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Service Provider's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 15 "Indemnification" and Section 16 "Insurance."

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Service Provider in the course of providing the Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Service Provider. Upon completion, expiration or termination of this Agreement, Service Provider shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Service Provider in the course of providing the Services pursuant to this Agreement, Service Provider's guarantees and warranties in Section 9 "Standard of Performance; Familiarity With Work" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

SECTION 7. SERVICE PROVIDER'S BOOKS AND RECORDS.

(a) Service Provider shall maintain any and all documents and records demonstrating or relating to Service Provider's performance of the Services. Service Provider shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Service Provider pursuant to this Agreement. Any and all such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Service Provider's address indicated for receipt of notices in this Agreement.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Service Provider's business, City may, by written request, require that custody of such documents or records be given to the City. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

SECTION 8. INDEPENDENT CONTRACTOR.

(a) Service Provider is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Service Provider shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

(b) The personnel performing the Services under this Agreement on behalf of Service Provider shall at all times be under Service Provider's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Service Provider or any of Service Provider's officers, employees, or agents except as set forth in this Agreement. Service Provider shall not at any time or in any manner represent that Service Provider or any of Service Provider's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

(c) Neither Service Provider , nor any of Service Provider's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Service Provider expressly waives any claim Service Provider may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE; FAMILIARITY WITH WORK.

(a) Service Provider represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Service Provider shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services. In meeting its obligations under this Agreement, Service Provider shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Service Provider under this Agreement. In addition to the general standards of performance set forth this section, additional specific standards of performance and performance criteria may be set forth in Exhibit "A" "Scope of Work" that shall also be applicable to Service Provider's work under this Agreement. Where there is a conflict between a general and a specific standard of performance or performance criteria, the specific standard or criteria shall prevail over the general.

(b) Service Provider warrants that (1) it has thoroughly investigated and considered the work to be performed, (2) it has investigated the issues, regarding the scope of services to be provided, (3) it has carefully considered how the work should be performed, and (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

Service Provider shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Service Provider shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Service Provider to comply with this section.

SECTION 11. PREVAILING WAGE LAWS

It is the understanding of City and Service Provider that California prevailing wage laws do not apply to this Agreement because the Agreement does not involve any of the following services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder: Construction, alteration, demolition, installation, or repair work performed on public buildings, facilities, streets or sewers done under contract and paid for in whole or in part out of public funds. In this context,

“construction” includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

SECTION 12. NONDISCRIMINATION.

Service Provider shall not discriminate, in any way, in the employment of persons to perform the Services in violation of any federal or state law prohibiting discrimination in employment, including based on the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, of any person, except as provided under California Government Code section 12940.

SECTION 13. CONFLICTS OF INTEREST.

(a) Service Provider covenants that neither it, nor any officer or principal of its firm, 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 Service Provider’s performance of the Services. Service Provider 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 City Manager. Service Provider 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.

(b) City may determine that Service Provider must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests. If such a determination is made, Service Provider shall file the subject Form 700 with the City Clerk’s Office pursuant to the written instructions provided by the Office of the City Clerk within ten (10) days of the request.

(c) City understands and acknowledges that Service Provider is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Service Provider is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

(d) City understands and acknowledges that Service Provider will perform non-related services for other governmental agencies and private Parties following the completion of the Services under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

SECTION 14. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by Service Provider in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Service Provider. Service

Provider shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

(b) Service Provider, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Service Provider gives City notice of such court order or subpoena.

(c) If Service Provider, or any officer, employee, agent or subcontractor of Service Provider, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Service Provider for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Service Provider's conduct.

(d) Service Provider shall promptly notify City should Service Provider, its officers, employees, agents or subcontractors, be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Service Provider or be present at any deposition, hearing or similar proceeding. Service Provider agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Service Provider. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

SECTION 15. INDEMNIFICATION.

(a) Indemnification for Professional Liability. Where the law establishes a professional standard of care for Service Provider's services, to the fullest extent permitted by law, Service Provider shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all 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 attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) arise out of, are a consequence of, or are in any way attributable to, in whole or in part, any negligent or wrongful act, error or omission of Service Provider, or by any individual or entity for which Service Provider is legally liable, including but not limited to officers, agents, employees or subcontractors of Service Provider, in the performance of professional services under this Agreement.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Service Provider shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), 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 Service Provider, or by any individual or entity for which Service Provider is legally liable, including but not limited to officers, agents, employees or subcontractors of Service Provider.

(c) Indemnification from Sub-Service Providers. Service Provider agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every sub-Service Provider or any other person or entity involved by, for, with or on behalf of Service Provider in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Service Provider fails to obtain such indemnity obligations from others as required herein, Service Provider agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Service Provider and shall survive the termination of this Agreement or this section.

(d) Limitation of Indemnification. Notwithstanding any provision of this section to the contrary, design professionals are required to defend and indemnify the City only to the extent permitted by Civil Code Section 2782.8, which limits the liability of a design professional to claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," as defined in Section 2782.8, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

(e) City's Negligence. The provisions of this section do not apply to claims occurring as a result of City's sole negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.

SECTION 16. INSURANCE.

Service Provider agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "C" "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. Service Provider agrees to provide City with copies of required policies upon request.

SECTION 17. ASSIGNMENT.

The expertise and experience of Service Provider are material considerations for this Agreement. City has an interest in the qualifications and capability of the persons and entities who will fulfill the duties and obligations imposed upon Service Provider under this Agreement. In recognition of that interest, Service Provider shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Service Provider's duties or obligations under this Agreement without the prior written consent of the City. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement pursuant to Section 19 "Termination of Agreement." City acknowledges, however, that Service Provider, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

SECTION 18. CONTINUITY OF PERSONNEL.

Service Provider shall make every reasonable effort to maintain the stability and continuity of Service Provider's staff and subcontractors, if any, assigned to perform the Services. Service Provider shall notify City of any changes in Service Provider's staff and subcontractors, if any, assigned to perform the Services prior to and during any such performance.

SECTION 19. TERMINATION OF AGREEMENT.

(a) City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Service Provider. In the event such notice is given, Service Provider shall cease immediately all work in progress.

(b) Service Provider may terminate this Agreement for cause at any time upon thirty (30) days written notice of termination to City.

(c) If either Service Provider or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Service Provider, or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Service Provider or City, all property belonging exclusively to City which is in Service Provider's possession shall be returned to City. Service Provider shall furnish to City a final invoice for work performed and expenses incurred by Service Provider, prepared as set forth in Section 4

“Compensation and Method of Payment” of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 “Compensation and Method of Payment” of this Agreement.

SECTION 20. DEFAULT.

In the event that Service Provider is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Service Provider for any work performed after the date of default. Instead, the City may give notice to Service Provider of the default and the reasons for the default. The notice shall include the timeframe in which Service Provider may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Service Provider is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Service Provider does not cure the default, the City may take necessary steps to terminate this Agreement under Section 19 “Termination of Agreement.” Any failure on the part of the City to give notice of the Service Provider’s default shall not be deemed to result in a waiver of the City’s legal rights or any rights arising out of any provision of this Agreement.

SECTION 21. EXCUSABLE DELAYS.

Service Provider shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Service Provider. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

SECTION 22. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Services shall be furnished to Service Provider in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

SECTION 23. NOTICES.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows: