



**CITY OF COACHELLA
PUBLIC WORKS DEPARTMENT
REQUEST FOR PROPOSALS AND CONTRACT DOCUMENTS
FOR
STORM DRAIN SYSTEM MAINTENANCE AND EMERGENCY
STORM DRAIN SERVICES FOR CITY and LLMD FACILITIES**

DUE: September 7, 2022 at 2pm

PROJECT NO. 081622B

**City of Coachella
Public Works Department
Coachella, CA 92236
760.501.8100
www.coachella.org**

**CITY OF COACHELLA - NOTICE INVITING PROPOSALS
STORM DRAIN SYSTEM MAINTENANCE AND EMERGENCY STORM DRAIN SERVICES
FOR CITY AND LLMD FACILITIES
PROJECT NO. 081622B**

PUBLIC NOTICE IS HEREBY GIVEN that proposals will be received by the City of Coachella ("City") in the Public Works Department, 53462 Enterprise Way, Coachella, CA 92236 until **2 PM, WEDNESDAY, SEPTEMBER 7, 2022**. Proposals received after this date will be returned to the proposers unopened. Faxed or electronically submitted proposals will not be accepted.

The City is requesting proposals to provide: Storm Drain System Maintenance and Emergency Storm Drain Services for City and LLMD Facilities. The award of this contract is subject to available budget adequate to carry out the provisions of the proposed agreement including the identified scope of work. The City reserves the right to reject any or all proposals determined not to be in the best interest of the City.

Certain labor categories under this project may be subject to prevailing wages as identified in the State of California Labor Code commencing at sections 1720 et seq. and 1770 et seq. If applicable, employees working in these categories at the site must be paid not less than the basic hourly rates of pay and fringe benefits established by the California Department of Industrial Relations. Copies of the State of California wage schedules are available for review at www.dir.ca.gov/dlsr/. In addition, a copy of the prevailing rate of per diem wages will be made available at the City's Public Works Department upon request. The successful proposer shall post a copy of the prevailing wage rates at each job site. It shall be mandatory upon the proposer to whom the contract is awarded, and upon any subcontractors, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the contract, employment of apprentices, hours of labor and debarment of contractors and subcontractors. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations ("DIR"). No proposal will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the DIR to perform public work. If awarded a contract, the proposer and its subcontractors, of any tier, shall maintain active registration with the DIR for the duration of the project. The contract awarded pursuant to this proposal may also be subject to compliance monitoring and enforcement by the DIR. Contractor must pose an active and valid Contractor's License.

The City of Coachella prefers that the Contractor be "on call" on a 24-hour basis for any emergency that may occur, including holidays. Response time to emergencies and routine requests is expected to be timely, and proposals will be reviewed based in part on the Contractor's ability to provide such "on call" service and by written commitment to respond timely to both scheduled and emergency situations.

Interested proposers may download copies of the Contract Documents by visiting the City's web site, www.coachella.org and looking for Public Works Department Bids from the Public Works Department. Firms that anticipate submitting a proposal are required to send an email to the project manager acknowledging receipt of the Contract Documents so that the City can add the firm to its notification list. Please include the contact person, the name of the firm, address, phone number, and e-mail address. For more information, please contact: **Maritza Martinez, City of Coachella, Public Works Department – (760) 501-8111 and mmartinez@coachella.org**.

**CITY OF COACHELLA
INSTRUCTIONS TO PROPOSERS**

**STORM DRAIN SYSTEM MAINTENANCE AND EMERGENCY STORM DRAIN SERVICES
FOR CITY AND LLMD FACILITIES
PROJECT NO. 081622B**

I. GENERAL

The City of Coachella (“City”) is requesting proposals from qualified firms¹ (“Proposers”) for storm system maintenance services as further described herein (“Services”). All respondents shall be properly licensed for the performance of the Services in accordance with California law.

Proposal Deadline: September 7, 2022 at 2PM
Number of Copies: Submit three (3) copies of the sealed proposal
Return Proposals To: City of Coachella
Public Works Department
53462 Enterprise Way
Coachella, CA 92236

II. SCOPE OF SERVICES/MAINTENANCE SERVICES AGREEMENT

The Proposer selected to provide the scope of Services shall be retained under the City’s Maintenance Services Agreement (“Agreement”), included as part of these Contract Documents. The City will not consider alterations to the Agreement.

This Agreement will be for a three (3) year period after notice to proceed. The firm selected will provide unspecified storm drain maintenance services on an as-needed basis for various city facilities and LLMD facilities.

The City of Coachella prefers that the Contractor be “on call” on a 24-hour basis for any emergency that may occur, including holidays. Response time to emergencies and routine requests is expected to be timely, and proposals will be reviewed based in part on the Contractor’s ability to provide such “on call” service and by written commitment to respond timely to both scheduled and emergency situations.

It shall be the responsibility of the Contractor to supply all necessary tools and equipment to perform the work as requested to the extent that supplies, materials, and parts are required to perform the work. The Contractor shall be responsible for obtaining such supplies, materials, and parts if not provided by the City of Coachella. Such supplies, materials and parts shall be of good quality and the cost of such shall be billed as reflected in the bid document.

III. PUBLIC WORKS PREVAILING WAGE AND CONTRACTOR REGISTRATION

Certain labor categories under this project may be subject to prevailing wages as identified in the State of California Labor Code commencing at sections 1720 et seq. and 1770 et seq. If applicable, employees working in these categories at the site must be paid not less than the basic hourly rates of pay and fringe benefits established by the California Department of Industrial

¹Use of the term “firm” shall mean individual proprietorship, partnership, Limited Liability Company, corporation or joint venture.

Relations (“DIR”). Copies of the State of California wage schedules are available for review at www.dir.ca.gov/dlsr/. In addition, a copy of the prevailing rate of per diem wages will be made available at the City’s Public Works Department upon request. The successful Proposer shall post a copy of the prevailing wage rates at each job site. It shall be mandatory upon the Proposer to whom the Agreement is awarded, and upon any subcontractors, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the Agreement, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the DIR. No proposal will be accepted nor any contract entered into without proof of the Proposer’s and subcontractors’ current registration with the DIR to perform public work. If awarded a contract, the Proposer and its subcontractors, of any tier, shall maintain active registration with the DIR for the duration of the project. The contract awarded pursuant to this proposal may also be subject to compliance monitoring and enforcement by the DIR. Contractor must hold an active, valid state contractors license.

IV. CITY CONTACT

The principal contact for the City will be Maritza Martinez, Public Works Department, (760) 501-8111, mmartinez@coachella.org or a designated representative, who will coordinate the assistance to be provided by the City to the Proposer.

V. REQUESTS FOR CLARIFICATION

All questions, requests for interpretations or clarifications, either administrative or technical must be requested in writing, clearly labeled “Written Questions” and directed to the City Contact, identified above. All written questions, if answered, will be answered in writing, conveyed to all interested firms. Oral statements by any persons should be considered unverified information unless confirmed in writing. To ensure a response, questions must be received in writing by Monday, August 29, 2022 at 5pm.

VI. CONTENT AND FORMAT OF PROPOSAL

The proposal must be made on the form of the Proposal Submission Forms. Proposals must be submitted on all items and schedules included in the Proposal Submission Forms. Proposal packages must include:

- Contractor Information
- References
- Proposed Project Work Schedules/Response Times
- Proposed Facilities, Equipment, Materials, and Staffing Schedule
- Communications, Traffic Safety, and Disposal
- Cost Proposal
- Non-Collusion Declaration
- Public Works Contractor DIR Registration Certification; and
- Proposal Affirmation.

Failure to propose on all items and schedules, or submitting an incomplete proposal package may

result in the proposal being rejected as non-responsive.

VII. EVALUATION CRITERIA

Proposal Rating Criteria (Total Possible Score of 100)

- Contractor Information – 30 Points
- References – 15 Points
- Proposed Facilities, Equipment, Materials, and Staffing Schedule – 15 Points
- Ability to provide 24-hour “on-call” emergency service – 10 Points
- Cost Proposal – 25 Points
- Completeness, Thoroughness, Clarity, and Neatness of Proposal – 5 Points

All proposals will be rated based on review and evaluation by a three (3) member staff selection panel. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from Proposers, or to allow corrections of errors or omissions.

The contract, if awarded, shall be to the most qualified Proposer, which submits the proposal that, in the sole judgment of City, is in the best interest of the City.

Upon selection of a Proposer, the City will endeavor to negotiate a mutually agreeable agreement with the selected Proposer. In the event that the City is unable to reach agreement, the City will proceed, at its sole discretion, to negotiate with the next Proposer selected by the City. The City reserves the right to contract for services in the manner that most benefits the City including awarding more than one contract if desired.

After negotiating a proposed Agreement that is fair and reasonable, City staff will make the final recommendation to the City Council concerning the proposed Agreement. The City Council has the final authority to approve or reject the Agreement.

VIII. SITE EXAMINATION

Proposers must examine the site and become acquainted with all conditions affecting the work. In submitting a Proposal, Proposers warrant that they have made such site examination as they deem necessary to determine the condition of the site, its accessibility to materials, workmen and equipment, and to determine the proposer's ability to protect existing surface and subsurface improvements. Proposers shall also familiarize themselves with all federal, state and local laws, ordinances, rules, regulations, and codes affecting the performance of the work; make such investigations, as it may deem necessary for performance of the Services at its proposal price within the terms of the Agreement; and correlate its observations, investigations, and determinations with the requirements of the Agreement. No claim for allowances—time or money—will be allowed as to such matters.

IX. SUBMITTAL INSTRUCTIONS

The proposal must be received no later than 2 pm local time, on or before September 7, 2022 at the office of:

City of Coachella
Public Works Department
53462 Enterprise Way

Proposals should be submitted in a sealed envelope plainly marked on the outside “**SEALED PROPOSAL STORM DRAIN SYSTEM MAINTENANCE AND EMERGENCY STORM DRAIN SERVICES FOR CITY AND LLMD FACILITIES - DO NOT OPEN WITH REGULAR MAIL.**” The Proposer's name and address shall appear in the upper left hand corner of the envelope. If more than one envelope is required, each envelope shall be legibly numbered below the name of the Proposer, e.g. Envelope 1 of 3, as required.

The City will not be responsible for proposals that are delinquent, lost, incorrectly marked, sent to an address other than that given herein, or sent by mail or courier service and not signed for by the City. **Late or misdirected bids shall be rejected and unopened without exception.**

X. ADDENDA

The City reserves the right to revise the Contract Documents prior to the time set to receive proposals. Revisions, if any, shall be made by written addenda. All addenda issued by the City shall be included in the proposal and made part of the Contract Documents. Each Proposer shall leave with City its name, address, phone and e-mail address for the purpose of receiving addenda. City will cause copies of addenda to be sent to all known recipients of this RFP and will be posted on the City of Coachella website <http://www.coachella.org/>. Proposers are responsible for ensuring that they have received any and all addenda. Each Proposer should contact the City to verify that it has received all addenda issued, if any, prior to the bid opening. Failure to acknowledge receipt of all addenda may result in rejection of the proposal.

XI. PROTESTS

A. Protest Contents

Protests based on the content of the RFP shall be submitted to the City no later than ten (10) calendar days prior to the scheduled proposal submittal deadline. If necessary, the proposal submittal deadline may be extended pending a resolution of the protest. Proposer may protest a contract award if the Proposer believes that the award was inconsistent with this RFP. A protest must be filed in writing with the City (email is acceptable) within five (5) business days after receipt of notification of the contract award. Any protest submitted after 5 p.m. of the fifth business day after notification of the contract award will be rejected by the City as invalid and the Proposer's failure to timely file a protest will waive the Proposer's right to protest the contract award. The Proposer's protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address and telephone number of the person representing the Proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived.

B. City Review

The City will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. The City shall provide the Proposer submitting the protest with a written statement concurring with or denying the protest. Action by the City relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this section are mandatory and are the Proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures will constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

XII. GENERAL CONDITIONS

A. Amendments to Proposals

Unless specifically requested by the City, no amendment, addendum or modification will be accepted after a proposal has been submitted to City. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted prior to the deadline stated herein for receiving proposals.

B. Costs for Preparing

The City will not compensate any Proposer for the cost of preparing any proposal, and all materials submitted with a proposal shall become the property of the City. The City will retain all proposals submitted and may use any idea in a proposal regardless of whether that proposal is selected.

C. Cancellation

City reserves the right to cancel this request for proposals at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other associated marketing costs.

D. Price Validity

Prices provided by Proposers are valid for 90 days from the proposal due date. The City intends to award the contract within this time but may request an extension from the Proposers to hold pricing, until negotiations are complete and the contract is awarded.

E. No Commitment to Award

Issuance of request for proposals and receipt of proposals does not commit the City to award a contract. City expressly reserves the right to postpone the proposal for its own convenience, to accept or reject any or all proposals received, to negotiate with more than one Proposer concurrently, or to cancel all or part of this request for proposals .

F. Right to Negotiate and/or Reject Proposals

City reserves the right to negotiate any price or provision, task order or service, accept any part or all of any proposals, waive any irregularities, and to reject any and all, or parts of any and all proposals, whenever, in the sole opinion of City, such action shall serve its best interests and those of the tax-paying public.

Publication Date of RFP: August 16, 2022

END INSTRUCTIONS TO PROPOSERS

CITY OF COACHELLA
PROPOSAL SUBMISSION FORMS

**STORM DRAIN SYSTEM MAINTENANCE AND EMERGENCY STORM DRAIN SERVICES
FOR CITY AND LLMD FACILITIES
PROJECT NO. 081622B**

1. CONTRACTOR INFORMATION

ATTACH ADDITIONAL SHEETS AS NECESSARY TO PROVIDE COMPLETE RESPONSES

Company Name: _____

TYPE

- Sole proprietor _____
- Partnership _____
- Corporation _____

Street Address: _____

City, State, Zip: _____

Satellite Office (if applicable): _____

Mailing Address: _____

Business Phone: _____

Cell Phone: _____

Email Address: _____

Business License Number: _____

Federal Tax ID Number: _____

Contractor's License Number/Classification/Name Style: _____

Number of Years Operating Under Above License: _____

Number of Years Company has Provided Storm Drain Maintenance Services: _____

Number of Years Company has Provided Storm Drain Maintenance Services for a Public Agency: _____

License Expiration Date: _____

Current License Status: _____

Prior Actions Against This License? _____ If Yes, Please List Citation Type:

And How it was Resolved: _____

Name and Title of Company Officers:

<u>NAME:</u>	<u>TITLE:</u>

Type & Number of Vehicles & Power Equipment Committed to Storm Drain Maintenance Repair Operations:

MOTOR VEHICLES

- TYPE: _____ NUMBER: _____
- TYPE: _____ NUMBER: _____
- TYPE: _____ NUMBER: _____
- TYPE: _____ NUMBER: _____

• POWER EQUIPMENT

- TYPE: _____ NUMBER: _____
- TYPE: _____ NUMBER: _____
- TYPE: _____ NUMBER: _____
- TYPE: _____ NUMBER: _____

Number of Employees committed to Storm Drain Maintenance Repair Operations:

- _____ Supervisors: Avg. Salary Range \$ _____ / _____.
- _____ Technicians: Avg. Wage Scale \$ _____ / Hr.
- _____ Foreman: Avg. Wage Scale \$ _____ / Hr.
- _____ Laborer: Avg. Wage Scale \$ _____ / Hr.

*Use fully burdened rate (i.e. taxes, insurance, benefits, OH&P). This is a prevailing wage project.

2. REFERENCES

The proposer must verify acceptable experience of diversified storm drain services, which will enable the City to judge the responsibility, experience, skill, and business/financial standing of the proposer.

LIST AT LEAST THREE (3) REFERENCES, PUBLIC AGENCY (PREFERRED) OR PROPERTY MANAGEMENT/HOA STORM DRAIN MAINTENANCE CONTRACTS OF SIMILAR SIZE & SCOPE - CURRENT OR SUCCESSFULLY COMPLETED WITHIN THE LAST THREE (3) YEARS.

ATTACH RESPONSES ON ADDITIONAL SHEETS @ ONE (1) FOR EACH REFERENCE

REFERENCE INFORMATION FURNISHED MUST INCLUDE:

- Name and Address of Agency
- Name and Telephone Number of Agency / Client Staff Person Responsible for Administering Contract
- Contract Name (s) / Number (s)
- Annual Contract Amounts (s)
- Number of Facilities Maintained per Contract(s)
- Location(s) of Contract Areas
- Length of Contract(s) and start and end dates

3. PROPOSED FACILITIES, EQUIPMENT, MATERIALS, AND STAFFING SCHEDULE

Due to the location, size/extent and maintenance requirements of the maintenance area, proposer is required to state how he will provide the necessary maintenance and services in the Contract Documents. State the estimated manpower your company will use to fulfill the contract, including but not limited to supervision, technician, and general labor subcategories. List also the estimated vehicles and equipment (by size & type) needed to perform contract scope of work.

Attach numbered pages to provide responses to the following requested information:

Facilities:

List location/address of facility(ies) from which work crews and equipment will be dispatched.

Equipment:

List equipment to be furnished to execute work tasks specified in the Contract Documents. Indicate with (S) any listed equipment to be shared with another contract/project.

Motor Vehicles:

Power Equipment/Tools/:

List both powered and hand equipment/tools

Materials:

Furnish an estimate of the **materials and quantities** needed to execute the following specified work tasks:

Staff:

List the employees, both labor and supervision, to be routinely assigned to execute work tasks specified in the Contract Documents. Be sure to note by title any applicable licenses/certifications held by assigned personnel. Indicate with (S) if listed personnel are to be shared with another contract / project.

List licensed and/or certified personnel - all non-licensed, non-certified personnel must have received verifiable annual training

4. **COMMUNICATIONS, TRAFFIC SAFETY, AND DISPOSAL**

Communications

Project General Terms and Conditions require that the selected Contractor possess, and maintain an effective company-wide communications system. Also, the Contractor must designate some responsible employee to be available on a twenty-four (24) hour basis to receive, and respond to emergency calls.

Please describe your company's internal communications system, both office and infield, and how it will enable your firm to provide the communication capability outlined in the project specifications. Also, please describe how your company will provide the specified twenty-four (24) hour communication capability. **Use additional sheets as necessary to provide a full, and comprehensive response.**

5. **COST PROPOSAL**

TO: CITY OF COACHELLA, "CITY"

DATE: _____

PROPOSER: _____ "CONTRACTOR"

The undersigned declares that he/she has carefully examined the Contract Documents and Addendums No.(s)_____ that he/she is thoroughly familiar with the contents thereof, and is authorized to represent the respective firm and propose services to City of Coachella.

It is understood that the price shown hereon includes all routine and seasonal maintenance described in the Contract Documents and shall be inclusive of all costs for the Proposer to accomplish the work.

The costs of any work shown or required in the Contract Documents, but not specifically identified as a Contract Pay Item are included in the Contract Pay Items, and no additional compensation shall be due Contractor by virtue of Contractor's compliance with the Contract Documents.

For each item, the averaged one-month maintenance cost shall be indicated and the total of these costs shall be extended for the term of the Agreement. Proposer must provide costs for all items below.

PROPOSAL FORM

Two-man Prevailing Wage PreScheduled Work \$ _____per hour
Two-man Prevailing Wage Emergency Work \$ _____per hour
Apprentice/Helper – Hourly Cost \$ _____per hour
Apprentice/Helper – Hourly Cost Emergency Work \$ _____per hour

Material Cost:

Mark-up _____% (expressed as percentage over cost)
Discount _____% (explain circumstances when this would apply)
All dump fees and water usage fees are included in fees noted.

Other (describe, if any)

Availability

Can the Contractor provide 24-hour “on call” emergency coverage (Y / N)

Response time to an emergency call _____

Response time for non-emergency request for service _____

Submission Acknowledgement

Contractor Signature _____

Print Name _____

Title _____

Business Name _____

Date _____

6. NON-COLLUSION DECLARATION

To Be Executed by Proposer(s) and Submitted with Proposal

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on

_____, 20____, at _____, _____
City State

CONTRACTOR

By: _____
Signature

Title: _____

7. PUBLIC WORKS CONTRACTOR DIR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.²

Name of Contractor: _____

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or _____ No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

1. Contractor shall maintain a current DIR registration for the duration of the project.
2. Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor: _____

Signature: _____

Name and Title: _____

Dated: _____

² If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

8. PROPOSAL AFFIRMATION

With regard to the information provided hereinabove (the Proposer's Proposal Submission Forms), I affirm that:

- All information provided is true and correct to the best of my knowledge, and;
- I understand that a materially false statement willfully or fraudulently made in connection with this Proposal may result in the termination of any contract between the City of Coachella and _____, and as a further result, the aforesaid firm may be barred from participation in future City contracts as well as be subject to possible criminal prosecution, and;
- I have legal authority to bind _____ to the terms of this affirmation.

FOR PROPOSAL TO BE VALID, THIS SHEET MUST BE SIGNED

Signature Date

Printed Name

Title

Company Name

END OF PROPOSAL SUBMISSION FORMS

**CITY OF COACHELLA
MAINTENANCE SERVICES AGREEMENT - TEMPLATE**

1. PARTIES AND DATE.

This Agreement is made and entered into this *****INSERT DAY***** day of *****INSERT MONTH*****, *****INSERT YEAR***** by and between the City of Coachella, a municipal organization organized under the laws of the State of California with its principal place of business at 1515 6th Street, Coachella, California 92236 (“City”) and *****INSERT NAME*****, a *****[INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY]***** with its principal place of business at *****INSERT ADDRESS***** (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing landscape maintenance services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

2.2 Project.

City desires to engage Contractor to render such services for the *****INSERT NAME OF PROJECT***** project (“Project”) as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional *****INSERT TYPE OF SERVICES***** maintenance services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from *****INSERT START DATE***** to *****INSERT ENDING DATE*****, unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.1.3 Incorporation of Documents. The following documents shall be referred to collectively as the "Contract Documents," each of which is incorporated into and made part of this Agreement by reference, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Change Orders executed by the City
- Addenda, if any
- Maintenance Services Agreement
- Specific Terms and Conditions
- General Terms and Conditions
- Scope of Services (Exhibit "A")
- Schedule of Services (Exhibit "B")
- Compensation (Exhibit "C")
- Performance and Payment Bond (Exhibit "D")
- Special Provisions (Exhibit "E")
- Latest Edition of the Standard Specifications for Public Works Construction (The Greenbook), Excluding Sections 1-9
- The Notice Inviting Proposals, if any
- The Request for Proposals, if any
- Contractor's Proposal

3.1.4 Precedence. To the extent there is a conflict between any portions of the Contract Documents, the order of precedence shall be in the order set forth above.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates [***INSERT NAME OR TITLE***], or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative" or "Engineer"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates [***INSERT NAME OR TITLE***], or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement and all communications given to the Contractor's Representative shall be as binding as if given to the Contractor. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement. The Contractor's Representative shall be present on the work site at all times as required to perform adequate supervision and coordination of the work. Contractor shall not change its Contractor's Representative without written approval of Engineer.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of [***INSERT WRITTEN DOLLAR AMOUNT***] Dollars (\$[***INSERT NUMERICAL DOLLAR

AMOUNT*]** per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Contract, Contractor shall continue to perform the Work while said dispute is decided by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating

to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

3.2.11 Insurance.

3.2.11.1 Time for Compliance. Contractor shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Section.

3.2.11.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice

the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

(C) Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Agreement.

(D) Additional Insured. The City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers shall be named as additional insureds on Contractor's and its subcontractors' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.2.11.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.3(A).

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.3(B).

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, employees, agents and volunteers, or any other additional insureds.

3.2.11.4 Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers. All policies shall waive any right of subrogation of the insurer against the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

3.2.11.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their directors, officials, officers, employees, agents, and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.11.6 Subcontractor Insurance Requirements. Contractor shall not allow any subcontractors to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Contractor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Contractor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

3.2.11.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.11.8 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11.9 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Services under this Agreement.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the 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, where 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.

3.2.13 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data,

documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.2.14 Work Site.

3.2.14.1 Contract Documents. The Contractor shall carefully study and compare the Contract Documents with each other and with information available to the Contractor and furnished by the City and shall immediately notify the Engineer of errors, inconsistencies or omissions discovered. If the Contractor performs any maintenance activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without notice to the Engineer, the Contractor shall assume appropriate responsibility for such performance and shall assume responsibility for the full costs for correction.

3.2.14.2 Inspection Of Site. Contractor shall visit sites where Services are to be performed and shall become acquainted with all conditions affecting the Services prior to commencing the Services. Contractor shall make such examinations as it deems necessary to determine the condition of the work sites, its accessibility to materials, workmen and equipment, and to determine Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances—time or money—will be allowed as to such matters after commencement of the Services.

3.2.14.3 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents, including any plans, specifications, or scope of work before commencing Services. Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any Services or altering the condition.

3.2.14.4 Hazardous Materials and Differing Conditions. Except as set forth in the Special Conditions or Specifications, should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes, hazardous substance and hazardous materials as defined in California state or federal law at the Site which have not been rendered harmless, the Contractor shall immediately stop work at the affected area and shall report the condition to the City in writing. The City shall contract for any services required to directly remove and/or abate PCBs, hazardous substances, other toxic wastes and hazardous materials, and shall not require the Contractor to subcontract for such services. The Services in the affected area shall not thereafter be resumed except by written agreement of the City and Contractor.

3.2.15 Loss and Damage. Contractor shall be responsible for all loss and damage which may arise out of the nature of the Services agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by City.

3.2.16 Warranty. Contractor warrants all Services under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10)

days after being notified in writing by the City of any defect in the Services or non-conformance of the Services to the Agreement, commence and prosecute with due diligence all Services necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by its defective Services or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed [***INSERT WRITTEN DOLLAR AMOUNT***] (\$[***INSERT NUMERICAL DOLLAR AMOUNT***]) without written approval of City's [***INSERT TITLE***]. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon. Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts and as provided for in Section 7108.5 of the California Business and Professions Code. Such payments to subcontractors shall be based on the measurements and estimates made and progress payments provided to Contractor pursuant to this Agreement.

3.3.2.1 Retainer. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Agreement retainage shall be released and paid to the Contractor and subcontractors pursuant to California Public Contract Code Section 7107. Contractor shall furnish City with labor and

material releases from all subcontractors performing work on, or furnishing materials for, the work governed by this Agreement prior to final payment by City.

3.3.3 Deductions. City may deduct or withhold, as applicable, from each progress payment an amount necessary to protect City from loss because of: (1) stop payment notices as allowed by state law; (2) unsatisfactory prosecution of the Services by Contractor; (3) sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Agreement; and (4) any other sums which the City is entitled to recover from Contractor under the terms of the Agreement or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.3.4 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.5 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.6 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.3.7 Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works" or "maintenance" project, and if the total compensation is \$15,000 or more, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. This Project may also be subject to compliance

monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.4 Termination of Agreement; Temporary Suspension of Work

3.4.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished documents and data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.4.4 Temporary Suspension of Work. The Engineer may order the Contractor to suspend the work on the project, wholly or in part, for such period of time as he may deem necessary due to unsuitable weather or to such other conditions as may be considered unfavorable for the suitable prosecution of the work, or for such time as he may deem necessary due to the failure of the Contractor to carry out orders given or to perform any provision of the contract. The Contractor shall immediately comply with the order of the Engineer to suspend the work, wholly or in part, as the order may provide. Work shall be resumed when conditions are favorable or when the methods have been corrected, as ordered or approved in writing by the Engineer.

3.5 General Provisions.

3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

INSERT NAME, ADDRESS & CONTACT PERSON

City:

City of Coachella
53-990 Enterprise Way
Coachella, CA 92236

Attn: ***INSERT NAME & DEPARTMENT***

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to such loss or damage which is caused by the sole or active negligence or willful misconduct of the City.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, or their officials, employees, agents and volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, or their officials, employees, agents and volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, or their officials, employees, agents and volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City of Coachella, Coachella Fire Protection District, Coachella Sanitary District, Coachella Water Authority, and their officials, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

3.5.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.5.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.15 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.17 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.18 Anti-Trust Claims. This provision shall be operative if this Agreement is applicable to California Public Contract Code Section 7103.5. In entering into this Agreement to supply goods, services or materials, Contractor hereby offers and agrees to assign to the 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. Section 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 pursuant to the Agreement. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF COACHELLA
AND [***INSERT NAME***]**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the [***INSERT DAY***] day of [***INSERT MONTH***], [***INSERT YEAR***].

CITY OF COACHELLA

[*INSERT NAME OF CONSULTANT***]
[***INSERT NAME OF LEGAL ENTITY***]**

By: _____
[INSERT NAME]
[INSERT TITLE]

**[IF CORPORATION, TWO SIGNATURES,
PRESIDENT OR VICE PRESIDENT AND
SECRETARY OR TREASURER REQUIRED]**

By: _____

ATTEST:

Its: _____

Printed Name: _____

By: _____
City Clerk

**[DELETE THE FOLLOWING SIGNATURE
LINE AND SECOND NOTARY
ACKNOWLEDGEMENT IF SECOND
SIGNATURE NOT REQUIRED]**

By: _____

Its: _____

APPROVED AS TO FORM:

Printed Name: _____

By: _____
Best Best & Krieger LLP
City Attorney

Contractor's License Number and
Classification

DIR Registration Number *(if applicable)*

EXHIBIT "A"
SCOPE OF SERVICES

1. LOCATION OF WORK

1.1 *****INSERT LOCATION OF WORK*****

1.2

2. SCOPE OF WORK

2.1 *****INSERT SCOPE OF WORK*****

2.2

3. SPECIFIC SERVICES TO BE PERFORMED

3.1 *INSERT SPECIFIC SERVICES, E.G., PLANT LITTER AND TRASH CONTROL*****

3.1.1 Contractor shall remove and appropriately dispose of all plant litter (broken branches, broken limbs, excessive leaf-drop); trash and/or paper, cans, bottles, broken glass; dog droppings and any other out-of-place or discarded items. Plant litter includes plant debris caused by extreme temperatures or high winds.

3.1.2 Where trash cans and/or doggy stations are present, Contractor shall remove and dispose of their contents and replace the liners (City-provided trash bags). Contractor shall wipe surfaces clean with a non-toxic cleaning solution.

3.2

*****INSERT ANY OTHER NECESSARY INFORMATION TO DESCRIBE SCOPE OF SERVICES*****

EXHIBIT "B"

SCHEDULE OF SERVICES

*****INSERT SCHEDULE*****

EXHIBIT "C"
COMPENSATION

[*INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES***]**