

DESERT RECREATION DISTRICT
Located at 45-305 Oasis Street, Indio, CA 92201

NOTICE INVITING REQUESTS FOR PROPOSALS

For
Construction Management and Inspection Services for
Construction of 5 acre Park in North Shore, CA

RFP # 15-12-001-NS

PUBLIC NOTICE IS HEREBY GIVEN that the Desert Recreation District (District) is issuing this Request for Proposal for Construction Management and Inspection Services to manage the construction of a 5 acre Park in the North Shore Community, an unincorporated area of Riverside County, located in the Eastern Coachella Valley on 70th Avenue, between Seaview Way and Miramar Drive, in North Shore, CA 92254 (APN: 721-290-028). The proposed park features a shaded pavilion, soccer field, skate plaza, sport court, playground, walking path, native plantings, Lighting and a restroom/bike shop building and landscaped areas constructed using a rammed earth construction method. The rural site is currently undeveloped and is partially situated within a FEMA Zone A floodplain.

The District is seeking proposals from all qualified parties interested in performing the requested services. The District will receive such proposals in the Administration Office of the Desert Recreation District, 45-305 Oasis Street, Indio, CA 92201 up to the hour of **4:00 PM on Thursday, January 21, 2016**.

Firms or individuals interested in submitting proposals shall submit seven (7) copies of the proposal, with an accompanying CD, in a sealed envelope. The Fee Proposal must be delivered in a separate sealed envelope and labeled s as follows:

For Proposal Deliver to:

Desert Recreation District
RE: Construction Management and Inspection Services
RFP # 15-12-001-NS
45-305 Oasis Street
Indio, CA 92201
ATTN: Troy Strange, Director of Planning and Public Works

For Fee Proposal Deliver to:

Desert Recreation District
RE: Construction Management and Inspection Service Fees
RFP # 15-12-001-NS
45-305 Oasis Street
Indio, CA 92201

ATTN: Troy Strange, Director of Planning and Public Works

Each proposal shall include a letter of transmittal, signed by an authorized representative of the consultant/firm. This letter of transmittal must state the names of the individual(s) authorized to negotiate with the District and sign contracts on behalf of the consultant/firm.

Printed copies of this Request for Proposal (RFP # 15-12-001-NS) are available from the Desert Recreation District (District) for a non-refundable fee of \$20.00 per RFP. (RFP # 15-12-001-NS) can be obtained, free of charge, in electronic format by accessing the Desert Recreation District website www.myrecreationdistrict.com/about-us/vendor-info and downloading the documents.

If you intend to submit a proposal, please send an email stating “I intend to submit a proposal” to tstrange@drd.us.com, so that you can be included on any RFI responses or addendums.

Requests for clarifications, questions and comments must be submitted in writing; sent by email or fax; and be received by the District no later than 2:00 PM on Friday, January 15, 2016.

The document must be labeled; “Written Questions for RFP # 15-12-001-NS” and addressed to Troy Strange, Desert Recreation District Administration Office 45-305 Oasis St., Indio, CA 92201. District is not responsible for failure to respond to a request that has not been so labeled. Any changes to this RFP by the District will be sent to each consultant or individual to whom an RFP has been sent. Such changes become an integral part of the RFP for incorporation into any contract awarded pursuant to the RFP.

Important Dates:

RFP Issue Date:	Friday, January 8, 2016
Request for Clarification Closing Date:	Friday, January 15, 2016
RFP Closing Date:	Thursday, January 21, 2016
Evaluation and Selection Complete	Tuesday, January 26, 2016

This request for proposal is issued in accordance with District Policy No. **AP010** for procurement of professional services as well as the additional requirements of federal law. The District reserves the right to reject any and all proposals and to waive any technical irregularities, to accept any proposal, and to take all proposals under advisement for a period of sixty (60) days.

SPECIAL REQUIREMENTS:

This project is being financed with Community Development Block Grant funds from the U.S. Department of Housing and Urban Development (24 CFR Part 570), and subject to certain Federal requirements. Information pertaining to the Federal requirements is on file with the County of Riverside Economic Development Agency. The selected Consultant will be required to complete and submit the attached Exhibit “Q” and register as a vendor for Riverside County.

This project contains specialize requirements for rammed earth or similar construction as well as specialized park lighting.

QUESTIONNAIRE REGARDING BIDDERS

Bidder has been engaged in the contracting business under the present name of _____
 _____, since _____ (Date).

Present business address is: _____

Federal Tax ID: _____ **Amount of Bid \$** _____

State of California Contractor's License No.: _____

Expiration Date: _____

Because this project is Federally-funded, it is necessary to obtain information concerning minority and other group participation for statistical purposes. The U.S. Department of Housing and Urban Development (HUD) uses this information to determine the degree to which its programs are being utilized by minority business enterprises and targeted group contractors.

A minority enterprise is defined by the Federal Government as a business that is fifty-one percent (51%) or more "minority-owned". Please check applicable box concerning the ownership of your business:

- American Indian or Native Alaskan
- Asian or Pacific Islander/Native Hawaiian
- Black/African American
- Hispanic
- White
- Hasidic Jews
- Other _____

A woman-owned enterprise is defined by the Federal Government as a business that is fifty-percent (50%) or more woman-owned. Please check applicable box concerning the ownership of your business:

- Woman/Female owned Male owned

A Section 3 Contractor or Subcontractor is a business concern that is more than fifty-one percent (51%) owned by a low or very low-income person, or a business concern that provides economic opportunities to low and very low-income residents. Please check applicable box concerning the ownership of your business:

Section 3 Business concern Non-Section 3 Business concern

The United States Department of Housing and Urban Development (HUD) is authorized to solicit the information requested in this form by virtue of *Title 12, United States Code, Section 1701 et seq.*, and other regulations. It will not be disclosed or released outside of HUD without your consent, except as required or permitted by law.



DESERT RECREATION DISTRICT

Request for Proposal (RFP) December 2015

Construction Management and Inspection Services for Construction of 5 acre Park in North Shore, CA

Introduction

The Desert Recreation District (“District” or “DRD”), formerly Coachella Valley Recreation and Parkway District, was created in 1950. It was established under authority of the California Public Resources Code Sections 5780 et seq. to administer park facilities and provide recreation program services. The District is the largest recreation district in California (over 1,800 square miles). The District’s broad territory stretches from Rancho Mirage (at Bob Hope Drive) east to the Salton Sea and includes the incorporated cities of Palm Desert, Indian Wells, La Quinta, Indio, Coachella, and a portion of Rancho Mirage. Additionally, the District includes the unincorporated communities of Thermal, Mecca, North Shore, Bermuda Dunes, Thousand Palms, Indio Hills, Vista Santa Rosa, Oasis, and 100 Palms.

The District is issuing this Request for Proposal for Construction Management and Inspection Services for construction of 5 acre Park in North Shore, CA. The District is seeking proposals from all qualified parties interested in performing the requested services.:

PLEASE NOTE: This project is being financed with Community Development Block Grant funds from the U.S. Department of Housing and Urban Development (24 CFR Part 570), and subject to certain Federal requirements. Information pertaining to the Federal requirements is on file with the County of Riverside Economic Development Agency. The selected Consultant will be required to complete and submit the attached Exhibit “Q” and register as a vendor for Riverside County.

Responses are due by 4:00 p.m. on January 21, 2016.

Submit responses to:

Troy Strange, Director of Planning and Public Works
Desert Recreation District
45-305 Oasis Street
Indio, CA 92201

Scope of Work

The services sought under this RFP are set forth in more detail in Exhibit “A”, attached hereto and incorporated herein by this reference. Notwithstanding the inclusion of such services in Exhibit “A” the final scope of services negotiated between the District and the successful proposer shall be set forth in the agreement for professional services (Agreement) executed by and between DRD and the successful proposer. A copy of the Agreement is attached hereto as Exhibit “B” and is incorporated herein by this reference.

Term and Timeline

The term and time line will be determined and set forth in the Agreement, Exhibit "A".

Experience and Qualifications

Consultants shall demonstrate the following minimum qualifications:

- Extensive experience with Parks and Recreational Facility projects for Government and Public Agencies.
- The designated manager for this project must be a Certified Construction Manager and provide proof of certification.
- Consultants must read and comply with the additional federal requirements here. The Construction Management and Inspection Services are to be funded with CDBG grant funds and thus all proposals must meet the additional requirements of federal law and regulation for the use of such funds.

Proposal Components

Your proposal should include the following components:

1. Cover Letter - The cover letter shall introduce the Consultant and summarize its qualifications. The cover letter should also contain the location of the firm's home office and names, titles, addresses and telephone numbers of the individual(s) assigned to the project.
2. Description of Proposed Services - This section is to provide an outline of the Consultant's approach, recommended scope of services and detailed timeline for completing the project generally described above as well as meeting federal requirements.
3. General Description of the Firm & Experience - The Consultant shall provide a general description of the firm, including a brief history, types of services provided, and its experience in providing similar services as those requested in this RFP.
4. Personnel to be Assigned - A project manager must be designated and must be the principal contact for the District and must be a Certified Construction Manager and provide proof of certification. Construction Inspector(s) shall be certified Inspectors (ICBO certified and/or other related required certifications)
5. This section shall specifically identify the Certified Construction Manager, his/her specific experience, including projects for Government and Public Agencies related to Parks and Recreational Facilities and similar to the proposed project. This section shall also identify any other individuals who will perform the primary tasks for the project, the scope of work they shall perform and the percentage of the overall project time they will perform. This section shall also include a certification that the personnel identified in the proposal will actually perform the work for the District and at the approximate scope of work percentages specified.
6. Proposed Fee Schedule - The Fee Schedule should reflect the total costs for all personnel, materials and services necessary to complete the scope of services requested in this RFP.
7. References - This section shall consist of a list of at least Three (3) clients (include names of contact persons, telephone numbers, and a brief description of the work performed) for whom the Consultant has performed successful construction management and inspections services

similar to those required by the District within the past 5 years. Please do not include information on projects that are not similar in scope and character to the proposed project.

SELECTION PROCESS

Proposals will be evaluated by a selection committee, which may be comprised of District staff members, outside experts and project designers/participants. The method of selection will be based on the quality and responsiveness of the proposal to the criteria and considerations set forth below.

1. Demonstrated competence and professional qualifications necessary for satisfactory performance of the services required by the District, including compliance with public policy and contractor integrity, financial and technical resources - 20%
2. Background, experience and past performance in performing construction management and inspection services related to parks and Recreational Facility Projects for Government and Public Agencies – 25%.
3. Understanding of the work required by the District and proposed approach for the scope of work-25%
4. Verified References 10%
5. Proposed compensation – 20%

As reflected above, a contract award will not be based solely on price, but on a combination of factors as determined to be in the best interest of the District. Given that the expertise required for this RFP is highly specialized, the District reserves the right to negotiate a contract with the firm determined to offer specific expertise.

After evaluating the proposals, the District reserves the right to request additional information and/or to further negotiate the proposed scope of work, method of delivery and amount of compensation.

Proposal Submittal

Please submit seven (7) printed copies and one CD of your proposal to the District no later than 4:00 p.m. on January 21, 2016.

Proposals should be mailed to:

Troy Strange, Director of Planning and Public Works
Desert Recreation District
45-305 Oasis Street
Indio, CA 92201

Contact Persons

The primary contact person for the project will be Troy Strange, Director of Planning and Public Work.

General Terms and Conditions:

This RFP does not commit the District to any contract. The District may suspend or terminate this RFP at any time. Costs incurred in responding to the RFP are borne by the responding party. District reserves

the right to reject any and all responses. Any agreement is contingent on the execution of a professional services agreement in a form acceptable to both parties. Any agreement is contingent on the execution of a professional services agreement in a form acceptable to both parties. The response to this RFP is a public document.

EXHIBIT A

Scope of Work

I. INTRODUCTION

The Proposed North Shore Community is located at 70th Avenue, between Seaview Way and Miramar Drive, in North Shore, CA 92254 (APN: 721-290-028). The proposed park features a shaded pavilion, soccer field, skate plaza, sport court, playground, walking path, native plantings, Lighting and a restroom/bike shop building and landscaped areas constructed using a rammed earth construction method. The rural site is currently undeveloped and is partially situated within a FEMA Zone A floodplain.

II. PROJECT DESCRIPTION

The purpose of this RFP is to obtain construction management and inspection services for the Construction of a five-acre park in North Shore. To ensure the delivery of quality project within the project budget, and compliance with applicable regulations for public construction, the Consultant will perform all of the duties including, but not limited to, the construction management, project management, building and site inspection for the District; coordinating contractors, subcontractors, and person working at the site; and interacting with the District and other City/County Departments and other agencies. The Consultant shall maximize the efficiency of the work, provide quality product acceptable to the City, and minimize the total cost to the District to provide a project that is on time; within budget and compliant with applicable laws and regulations. The plans are at 90% completion. Staff anticipates final plans and specifications for construction to be released in March 2016. The Design Consultant for this project is Kounkuey Design Initiative (KDI). KDI is responsible for finalizing the plans and specifications for the project.

III. SCOPE OF SERVICES

The District is requesting a proposal for the provision of construction management and inspection services during preparation of construction documents, construction and project close out. The scope of services as well as the entire RFP will become part of the Agreement. The services requested include but are not limited to:

- A. The Consultant shall provide a qualified/Certified Construction Manager and inspector(s) qualified to inspect several or all disciplines. The Consultant will be responsible to provide equipment necessary to provide the needed services.
- B. The Construction Manager assigned by the Consultant shall have at least five (5) years of experience as the prime responsible party for the construction of a municipal building of similar size and complexity. The Manager shall have prime responsibility for the duties described in the "CONSTRUCTION MANAGER AND INSPECTOR'S DUTIES" and shall have a Bachelor of Science degree in Civil Engineering, Construction Management, Architecture or related field. Professional registration as an Engineer or AIA registered is desired but not required.

C. The Consultant shall provide qualified inspectors to perform continuous onsite construction inspection. The inspectors shall report directly to and shall receive their assignments directly from the Construction Manager. The District reserves the right to approve Construction Inspectors.

D. The Consultant shall provide building project inspection services during the construction phase to monitor all construction activities including infrastructure improvements, off-site road improvements, site work, structural, architectural, mechanical, plumbing, electrical, landscape and other work as assigned. The inspector(s) shall verify and certify that all aspects of construction conform to all applicable building codes, ordinances and the project plans and specifications. The inspector(s) shall monitor material application and methods of construction for quality assurance. The inspector shall have knowledge of Federal and California OSHA safety orders and procedures and shall alert the Construction Manager and Contractor of potential areas of concern that may cause liability exposure to the District. The Inspectors shall track and ensure the contractor is keeping accurate field documentation.

E. Construction Inspectors shall be certified Inspectors (ICBO certified and/or other related required certifications) and the Consultant shall maintain daily logs.

G. The District requires a Construction Manager to be devoted to this Project. He/she shall be available to the Department of Public Works each day the Project is under construction. The Construction Manager shall be present at the Project site or at the field office each day the Project unless approved by the District. The Construction Manager shall provide emergency contact information.

H. The Construction Manager shall be responsible to provide professional supervision and adequate staffing at all times.

I. The District will not accept a remote office, offsite project construction management, inexperienced staff, or insufficient personnel to adequately carry out the work.

J. The Construction Manager shall collaborate with the District and other Project participants in the interest of maintaining the Project budget and schedule and minimizing claims. There will be a kick-off meeting and weekly meetings. Meetings shall be attended by the Construction Manager and key staff as requested by the District, at no additional cost to the District. All meetings are to be held at the Administrative Office, located at 45-305 Oasis Street, Indio, CA 92201, and are subject to change.

K. Construction Manager and Inspector's Duties and Responsibilities

During the construction phase of the Project, the Construction Manager shall assume primary responsibility for the performance of duties to achieve the successful completion of the project. The Construction Manager shall be the District's Construction/Field representative for the project and be responsible for coordinating the efforts of contractors, subcontractors, architect, engineers, inspectors, testing laboratories, and other construction project service providers as well as coordinating and assuring proper approvals have been obtained for all contract change order (CCO) work. The Construction Manager shall prepare a recommended staffing plan for the activities related to the Project and shall review it with the District. Participate in meetings with the District General Manager and Board

of Directors and other ancillary bodies upon request by District staff. The Construction Manager and Inspector duties shall also include responsibility for:

Pre-Construction

1. Plans and Specifications Review

- The Construction Manager shall review the Architect's project plans and specifications for contract administration. The Construction Manager shall review the architect's estimate and evaluate the estimates. In addition, he/she will complete constructability review of the construction documents and submittals including specifications at 100%.

2. Pre-Bid Conference

- It is the District's desire to obtain the services of a Construction Manager prior to selecting a contractor for the Project. The Construction Manager shall participate in pre-bid conference(s) with potential bidders, sub-contractors and District, to assist the District and Architect in clarifying any questions that may arise during the bidding process. Request for Bid and Addenda shall be issued only by the City.

3. Post- Bidding Evaluation

Construction Manager shall do the following:

- Assist the District in evaluating bids and bidders.
- Review and evaluate details of contractors' bids.
- Review and evaluate contractor's activity schedule.

Construction Phase

4. Liaison

Receive, process and disseminate all communication among the District, inspectors, Architect and contractor during the construction phase. The Construction Manager shall recommend and provide project management software for the Project to collect and disseminate all communication between the parties involved with the Project. The software shall be user-friendly, compatible with existing Districts systems in a format easily accessed and nonproprietary.

5. Arrange and Conduct Meetings

Conduct pre-construction meetings with successful contractor and subcontractors. Construction Manager shall also conduct weekly project meetings or more often as needed, to discuss such matters as project coordination, quality control, progress, problems, scheduling, costs, billings, procedures and equal employment opportunity. Summarize record and prepare and distribute minutes of all meetings to all participants. Construction Manager shall attend all meetings.

6. Construction Contract Change Orders (CCOs):

Review all requests for change orders and make recommendations to the District concerning content, cost and extensions of time, if any. Evaluate the cost features of all change orders and, when necessary, negotiate with the contractor to obtain a fair price for the work and make recommendations to the

District. Prepare and process all change orders and supporting documentation in accordance with District standards and procedures. Assist the District to process and obtain all reviews and approvals of all change order work from state, county and local reviewing agencies. Identify and track those contract change orders attributable to the errors and omissions of the Architect. Recommend to the District and the Architect necessary or desirable changes in the work or schedule.

7. Estimating

In cooperation with the Architect and the District, revise and refine the approved estimates of construction costs, develop budget reports and forecasts as needed and maintain accurate cost accounting records. Reconcile the Construction Manager's estimate with that prepared by the Architect and report results to the District. During the construction phase, and in cooperation with the Architect and the District, prepare cost estimates for additional work resulting from negligent errors or omissions in the Architect's construction documents or from the District or contractor-requested changes in the work. Prepare estimates for all contractor-generated requests for changes in the work and/or material and equipment substitutions.

8. Project Milestones & Construction Schedule

Establish project milestones with the District and the Architect for the contractor to attain during the construction phase. These phases shall have time and liquidated damages associated with them if the contractor does not attain them. Review construction schedule, including sequences and duration, schedule of submittals and delivery schedule. Review contractor's update and revisions as may be required to reflect actual progress of work.

9. Contractor Claims Analysis

Maintain detailed records of project progress for District's use in the analysis of potential contractor claims. In the event any claim is made or any action brought during the term of the Consultant agreement in any way relating to the construction of the project, assist the District, including the preparation of written reports with supporting documentation in an effort to resolve the disputes. Excluding direct disputes between District and Construction Manager, analyze and prepare written documentation on all disputed issues. Provide a detailed record of the circumstances and positions of the involved parties. Make recommendations for the settlement of claim issues.

10. Drawing Control System

Establish a drawing control system which correlates all the drawings and specification sections, including Contract Change Orders, Addenda, Clarifications, and Requests for Information and Information Bulletins.

11. Document Clarification:

Review and pre-screen all Requests for Information (RFIs) for contract compliance and frivolous questions and information already included in the construction documents. Reject all illegitimate or incomplete RFIs. In cooperation with the Architect and District, prepare and/or monitor responses to contractor RFIs and maintain a log and other records for all such requests.

12. Records

Maintain project records, including but not limited to contract payment requests, contract change orders and their approvals, shop drawing submittal/approval logs, purchase orders, material purchase/delivery logs, equipment purchase/delivery logs, plan clarifications, requests for information, contract drawings and specifications with addenda, record documents, warranties and guarantees, system and equipment operating and maintenance manuals, daily and monthly progress reports, correspondence files, previous orders, payment request records, transmittal records, meeting minutes, inspection reports, bid information, lab test reports, punch lists, critical path and other project schedules and updates, and composite record drawings.

13. Shop Drawings, Materials and Samples

Review all submittals for completeness and contract compliance prior to forwarding to Architect and District for review. Reject all incomplete submittals. Assist Architect and contractor in establishing and implementing procedures for processing, expediting, checking and coordinating submittals, shop drawings, samples, catalog cuts and other related data.

14. Progress Control Monitoring

- Observe the work of the contractor and assist in coordination of the contractor's work with the activities and responsibilities of the Architect in an attempt to complete the project in accordance with the District's objectives of cost, time and quality.
- Monitor the progress of the project and compare with contractor's progress schedule (CPM schedule) for actual progress and impact on the project and District.
- Submit written progress reports to the District containing information on the contractor's work, disputes, approved change orders, potential change orders, potential claims and the percentage of completion.
- Review the contractor's progress control schedule and updates and submit to the District monthly reports on construction progress that include current activities, proposed activities for the coming month, and identification of any known pending or anticipated problems. Throughout the construction phase, review the construction progress and make recommendations, if requested, on potential ways and means the time schedule may be improved and options to avert material procurement delays.

15. Inspection and Quality Control

- Observe the work of contractor for delivery and installation of the approved materials, defects in materials and deficiencies in construction. Ascertain that the quality of workmanship and materials used in all aspects of the project site work, such as foundations, building, electrical, plumbing and mechanical systems conform to the contract documents, applicable building codes, and State and federal legal requirements.
- Observe field testing and evaluate test results with Architect. Report known deficiencies to the contractor, Architect and to the District. Coordinate the work of the inspectors, testing program and the preparation of inspection reports. Assist the inspector and Architect in maintaining the quality of materials and craftsmanship as required by the contract documents. Coordinate

regular monitoring and frequent inspection of work to determine progress and conformance with contract documents.

- Coordinate removal and replacement of incorrect or defective installed materials.
- Perform daily field observation of contract work.
- Review the results of laboratory, shop, and mill test reports of materials.
- Document all independent testing and record results.
- Prepare and maintain a daily Project log of all events, including manpower, equipment, construction progress, visitors, weather, changed conditions, accidents and other significant events.
- Read and study project specifications, plans and drawings to become familiar with the Project prior to inspection; ensures that structural or architectural changes, including changes to mechanical, electrical, and plumbing systems have been stamped as approved by the appropriate authority; and periodically check record drawings for accuracy and updates.
- Oversee special inspections such as masonry, structural steel and welding and reinforced concrete, and technical inspections such as electrical, mechanical, landscaping, welding, soil testing, concrete and asphalt mixes, and reinforcing steel, checking test results for conformance to specification requirements.
- Issue inspection notices and notices of non-compliance to contractors on incorrect construction methods or materials found during inspection, conferring with the contractor on plans and specifications and issuing correction notices if contractor fails to make acceptable corrections.
- Prepare the Daily Inspection Reports by recording all significant construction related activities and events such as work completed, work crew on-site, weather conditions, change orders, accidents, etc.
- Provide chronological and factual history of inspection on an assigned construction project.
- May appear as a witness in court cases where disputed contract provisions are in litigation.
- Perform detailed inspections of structural and welding features on all types of building construction and alteration projects.
- Monitor compliance with NPDES. Monitor compliance with all other local, state and federal laws and regulations.

16. Cost Control and Reports

- Maintain cost-accounting records of the work, the value of the work in place, materials delivered and stored in accordance with contract requirements, construction grant cash flow requirements, and change order status.
- Prepare cash flow projection prior to bidding; and again upon receipt of the contractor's Schedule of Values as loaded into the construction schedule.
- Prepare monthly reports depicting the financial status of the project as a function of completion, including analysis of actual versus budgeted costs, and status of construction contingency funds.

17. Contractor's Progress Payment

Review and process all progress and final payment applications and make recommendations to the District for approval or rejection thereof. Review project invoices. Recommend and submit to the District for payment. Maintain construction project cost accounting.

18. Daily Log

Document all events occurring on the job site or connected with the progress of the project as is normally maintained on projects of similar size, scope and complexity. Coordinate the information so it is stored in one place and easily retrieved either in hardcopy and/or electronically.

19. District's Consultants

Assist the District in evaluating proposals for special surveys, testing services and special inspection as may be required. Coordinate with and update Kounkey Design Initiative.

20. Permit Compliance

Enforce environmental mitigation monitoring requirements of the environmental review for the project. Monitor and assure permit compliance throughout the Project with all required permit provisions.

21. Utilities

Ensure timely prior notification, coordination, and scheduling by the contractor for work with utility companies for relocation, abandonment, and upgrade work. Ensure all work is scheduled and completed in a timely manner. Manage all work to be performed by utility agencies that is not part of the construction contractor's responsibilities.

22. Miscellaneous

Prepare and present items to the General Manager as deemed necessary by District to keep the General Manager and through him Board of Directors adequately informed. Meet weekly with the District's Director of Planning and Public Works or his designee to review project progress, problems and Potential Contract Change Orders (PCOs). Assist the District with the preparation and submission application for "Permit to Construct" to the Southern California Air Quality Management District requiring their jurisdictional review. Amendments to the "Permit to Construct" after award of the construction agreement are the responsibility of the general contractor.

Be flexible in approach and work with volunteers or temporary employees hired by District through labor surplus area firms.

23. Health and Safety Program

Review the safety program developed by the construction contractor for compliance with its contract and all applicable health and safety standards and regulations including Cal-OSHA. Maintain awareness of health and safety requirements Monitor the construction contractor's compliance and document for any deviations or exceptions from the Contract requirements for District's review. Coordinate safety concerns and issues with Contractor and District.

Post-Construction Phase

24. Project Completion

Assist the construction contractor and Consultants in the commissioning of systems and equipment, proper operations, testing and official start-up. Coordinate transfer of documentation to District staff. Assist the District and the Consultants in determining final completion. Assist the Architect in assuring that all documents, guarantees, affidavits, releases, bonds, waivers, operations manuals, warranty bonds are secured and turned over to the District. Issue preliminary and final punch list- include schedule for punch list completion. Monitor and follow through with contractor until completion of all punch list items. Monitor the completion of the punch list items. Evaluate completion of work and recommend to District when work is ready for final inspection. Conduct final inspection/walk through with District staff. Review contractor's request for final payment and provide recommendation for release of retention. Deliver project files to District (one set in hard copy format and another in a flash drive)

Comply with the additional federal requirements attached to the Professional Services Agreement.

EXHIBIT B

Sample of Professional Services Agreement Construction Management Services for The North Shore Community Park RFP # 15-11-001-PDCC

THIS AGREEMENT for Professional Services ("Agreement") is made this _____ day of _____, 20__ ("Effective Date") by and between DESERT RECREATION DISTRICT ("District") and _____ ("Consultant") (together sometimes referred to the "Parties").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to District the services described in the Scope of Work attached as **Exhibit A**, and incorporated here. Such work shall be provided at the time and place and in the manner specified in Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____, which is the date of completion specified in Exhibit A. Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the District's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement on the terms and conditions set out here and in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and to the satisfaction of the Contract Administrator. In addition, consultant shall comply with the additional federal requirements in Exhibit "B" to the extent such requirements are applicable here. Such requirements shall supplement those in this Agreement.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to Agreement. In the event that District, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from District of such desire of District, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to satisfy Consultant's obligations hereunder.

1.5 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 2. COMPENSATION. District hereby agrees to pay Consultant a sum not to exceed _____ notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Exhibit A, regarding the amount of compensation, this Agreement shall prevail. District shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from District to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to District in the manner specified herein. Except as specifically authorized in advance by District, Consultant shall not bill District for duplicate services performed by more than one person.

2.1 Invoices. Consultant shall submit invoices monthly during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information as applicable:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.,
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At District's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder necessary to complete the work described in Exhibit A;
- Receipts for expenses to be reimbursed;
- The Consultant's signature.

2.2 Monthly Payment. District shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. District shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

- 2.3 Final Payment.** District shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to District of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** District shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. District shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified in writing prior to the submission of such an invoice.
- 2.5 Hourly Fees.** Any fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the fee schedule included with Exhibit A.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are included within the maximum amount of the contract.
- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the District or Consultant terminates this Agreement pursuant to Section 8, the District shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

Section 3. FACILITIES AND EQUIPMENT. Except as otherwise provided, Consultant shall, at its sole cost and expense, provide all facilities, supplies and equipment necessary to perform the services required by this Agreement. District shall make available to Consultant only physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with District employees and reviewing records and the information in possession of the District. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of District. In no event shall District be required to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance checked below and provide Certificates of Insurance, indicating that Consultant has obtained or currently maintains insurance that meets the requirements of this section and which is satisfactory, in all respects, to the District. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's compensation. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant

has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to District. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. All insurance coverage and limits provided by Consultant and available or applicable under this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the District and its officers, officials, employees, and authorized volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General Liability Insurance
 Automobile Liability Insurance

4.2.1 Commercial General Liability Insurance: Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage of \$2,000,000 in the general aggregate, for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (per occurrence). Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (per accident). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to District and its officers, employees, agents, and volunteers.

□ **4.3 Professional Liability Insurance.**

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The District shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the District prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A-: VI.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish District with Certificates of Insurance, and upon request, complete certified copies of all policies, including complete certified copies of all endorsements. All copies of policies and certified endorsements

shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

4.4.3 Notice of Reduction in or Cancellation of Coverage. A certified endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified, mail, return receipt requested, has been given to the District. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, Consultant shall provide written notice to District at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change in coverage.

4.4.4 Additional insured; primary insurance. District and its officers, employees, agents, and authorized volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to District or its officers, employees, agents, or authorized volunteers.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to the District and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the District shall be called upon to contribute to a loss under the coverage.

4.4.5 Deductibles and Self-insured Retentions. Consultant shall disclose to and obtain the approval of District for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Consultant may increase such deductibles or self-insured retentions with respect to District, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for

each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.7 Variation. Contract Administrator may approve in writing a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the District's interests are otherwise fully protected.

4.4.8 No policy required hereunder shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnitees set out below in Section 5.

4.5 Remedies. In addition to any other remedies District may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies District may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION

Consultant shall indemnify, defend with counsel acceptable to District and County of Riverside and hold harmless the District and County of Riverside and its officials, officers, employees, agents and authorized volunteers from and against any and all losses, liabilities, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, damages and expenses of any kind, whether actual or threatened, (including but not limited to attorneys' 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 (or the failure to perform) by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property or violation of law arises wholly from the negligence or willful misconduct of the District or its officers, employees, agents or authorized volunteers and (2) the actions of Consultant or its employees, subcontractors or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law.

It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by District of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of District. District shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise District shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other District, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to any compensation, benefit, or any incident of employment by District, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of District and entitlement to any contribution to be paid by District for employer contributions and/or employee contributions for PERS benefits.
- 6.2** The Consultant is subject to and shall comply with the District's Conflict of Interest Code.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California and the incorporated federal laws and regulations shall govern this agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractor shall comply with all applicable local, state and federal laws and regulations applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Consultant represents and warrants to District that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to District that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term or this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses as required by local cities in the District.

Section 8. **DISPUTE RESOLUTION, TERMINATION AND MODIFICATION.**

8.1 **Termination.** District may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to District and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; District, however, may condition payment of such compensation upon Consultant delivering to District any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the District in connection with this Agreement.

8.2 **Extension.** District may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if District grants such an extension, District shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, District shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** District and Consultant recognize and agree that this Agreement contemplates performance by Consultant and is based upon a determination of Consultant's unique competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator. In the event that key personnel leave Consultant's employ, Consultant shall notify District immediately.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and Consultant shall survive the termination of this Agreement.

8.6 **Dispute Resolution; Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, District's remedies shall include, but not be limited to, any or all of the following:

- 8.6.1 Enter into informal discussions with the Consultant to cure the breach as soon as possible. Such discussions shall not continue for longer than 20 calendar days or 5 calendar days in the event of a health and safety emergency.
- 8.6.2 Immediately terminate the Agreement;
- 8.6.3 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- 8.6.4 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.6.5 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that District would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. Consultant hereby agrees to deliver those documents to the District upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the District and are not necessarily suitable for any future or other use. District and Consultant agree that, until final approval by District, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties unless required by law.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the District under this Agreement for a minimum of five (5) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of, the District. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of

five (5) years after final payment under the Agreement or longer as required by federal law.

9.4 Compliance with Federal Law and Regulations. In addition to the District requirements for recordkeeping, Consultant shall comply with any and all applicable requirements for recordkeeping for CDBG funding. County, HUD and the Comptroller General of the United States or any of their duly authorized representatives shall be granted access to any books, documents, papers and records of contractor which are directly pertinent to the contract.

9.5 AUDIT, RETENTION AND INSPECTION OF RECORDS: The contractor agrees that the District, the County of Riverside, the Department of Housing and Community Development, the Federal Department of Housing and Urban Development (HUD), or its designee will have the right to review, obtain, and copy all records pertaining to performance of this project. The contractor agrees to provide any relevant information requested and shall permit the District, the County of Riverside, the Department of Housing and Community Development, the Federal Department of Housing and Urban Development (HUD), or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq.

The contractor further agrees to maintain such records for a period of five (5) years after final payment under this project, and that on or before the end of the five (5) year audit/retention period, the consultant shall release and deliver to the District and/or the County of San Luis Obispo all original records and related documentation.

Section 10. MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If either party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in Riverside County, Indio Division.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 Consultant Representative. All matters under this Agreement shall be handled for Consultant by _____.

10.7 District Contract Administration. This Agreement shall be administered by a District Staff Member ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.8 Notices. Any written notice to Consultant shall be sent to:

Any written notice to District shall be sent to the Contract Administrator with a copy to:

10.9 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between District and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[Signature blocks follow on next page]

The Parties have executed this Agreement as of the Effective Date.

DESERT RECREATION DISTRICT

CONSULTANT

Kevin Kalman, General Manager

Attest:

Delia Granados, District Clerk

Approved as to Form:

Elizabeth Martyn, General Counsel

Additional Federal Requirements

Whereas, the work under this Agreement is subject to applicable Federal, State, and local laws and regulations, including but not limited to the regulations pertaining to the Community Development Block Grant program (24 CFR Part 84, Part 85, and Part 570). Contractor, sub-contractors, Consultants, and sub-consultants agree to comply with, and are subject to, all applicable requirements as follows:

1. **Equal Employment Opportunity** - Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). The Contractor/Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor/Consultant will ensure that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. The Contractor/Consultant will take affirmative action to ensure that applicants are employed and the employees are treated during employment, without regard to their race color, religion, sex, or national origin. Such actions shall include, but are not limited to, the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor/Consultant agrees to post in a conspicuous place, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this non-discriminating clause.

2. **Copeland "Anti-Kickback" Act** (18 U.S.C. 874 and 40 U.S.C. 276c: All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to HUD.

3. **Davis-Bacon Act, as amended** (40 U.S.C. 276a to a-7: When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

4. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 327 through 333: Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be

required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. ***Rights to Inventions Made Under a Contract or Agreement***— Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by HUD.

6. ***Rights to Data and Copyrights*** – Contractors and consultants agree to comply with all applicable provisions pertaining to the use of data and copyrights pursuant to 48 CFR Part 27.4, Federal Acquisition Regulations (FAR).

7. ***Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)***, as amended—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).

8. ***Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)***— Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

9. ***Debarment and Suspension (E.O.s 12549 and 12689)***—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, “Debarment and Suspension,” as set forth at 24 CFR part 24. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

10. ***Drug-Free Workplace Requirements***—The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

11. ***Access to Records and Records Retention***: The Consultant or Contractor, and any sub-consultants or sub-contractors, shall allow all duly authorized Federal, State, and/or County officials or authorized representatives

access to the work area, as well as all books, documents, materials, papers, and records of the Consultant or Contractor, and any sub-consultants or sub-contractors, that are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions. The Consultant or Contractor, and any sub-consultants or sub-contractors, further agree to maintain and keep such books, documents, materials, papers, and records, on a current basis, recording all transactions pertaining to this agreement in a form in accordance with generally acceptable accounting principles. All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter periods of retention, all books, records, and supporting detail shall be retained for a period of at least four (4) years after the expiration of the term of this Agreement.

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

13. **Energy Efficiency:** Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871).