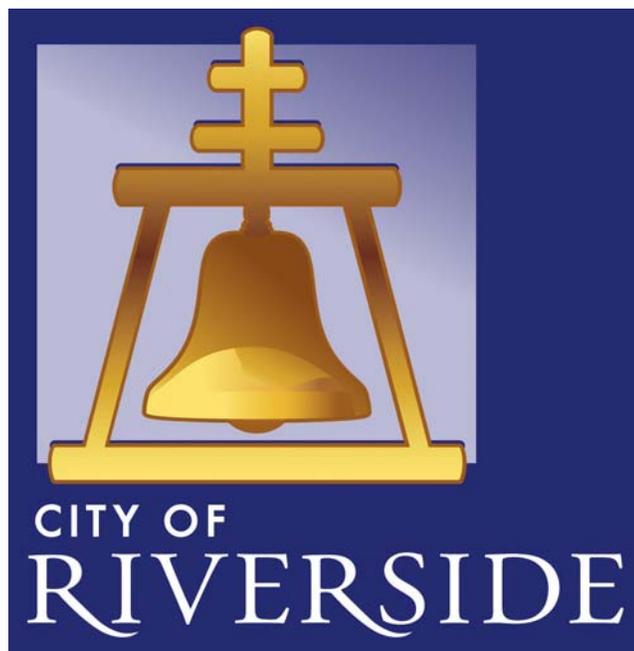

REQUEST FOR PROPOSAL

***An Executive Search Firm to Conduct a Recruitment for
The Position of Public Works Director for the City of Riverside***



***HUMAN RESOURCES DEPARTMENT
3900 MAIN STREET
RIVERSIDE, CA 92522***

PROPOSAL DUE: October 21, 2011

**CITY OF RIVERSIDE
REQUEST FOR PROPOSALS**

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CITY OF RIVERSIDE REQUEST FOR PROPOSALS

An Executive Search Firm to Conduct a Recruitment for the Position of Public Works Director for the City of Riverside

SECTION 1: INTRODUCTION

The City Council of the City of Riverside, hereafter referred to as “City,” is soliciting proposals from exceptionally qualified Executive Recruitment Firms and/or Public Sector consultants to conduct a comprehensive recruitment for the position of Public Works Director.

Selected Firm will be required to enter into a Professional Consultant Services Agreement (“Agreement”), a copy of which is attached hereto as Exhibit “A”. Portions of the Agencies proposal may be incorporated into the Professional Consultant Services Agreement. All terms and conditions of the Agreement are non-negotiable.

Failure to execute the Agreement and furnish the required insurance within the required time period shall be just cause for the rescission of the award. If the successful Firm refuses or fails to execute the Agreement, the City may award the Agreement to the next qualified Firm.

The City shall not be liable for any pre-contractual expenses incurred by any Firm in relation to the preparation or submittal of a proposal. Pre-contractual expenses include, but are not limited to, expenses by Firm in: preparing a proposal or related information in response to RFP; negotiations with City on any matter related to this RFP; and costs associated with interviews, meetings, travel or presentations. Additionally, the City shall not be liable for expenses incurred as a result of the City’s rejection of any proposals made in response to this RFP.

SECTION 2: GENERAL BACKGROUND AND DESCRIPTION

The City

Founded in 1870, Riverside was built on land that was once a Spanish rancho. By 1882, there were more than half a million citrus trees in California, almost half of which were in Riverside. Today, Riverside is a vibrant city of more than 300,000 residents. It is the 12th largest city in California and the County seat of Riverside County. Riverside offers a blend of small town charm and hospitality with the vision, energy and creativity of a rapidly developing metropolitan area, and is the hub of Inland Southern California. The City is ethnically and culturally diverse, with a large Hispanic/Latino population (49%). The foundation for the City’s economy is solid, with the region’s largest number of businesses and total jobs.

Riverside is approximately 60 miles east of downtown Los Angeles and 100 miles north of San Diego, and is strategically located among major transportation links including highways, commuter train stations and airports. It is centrally placed with convenient access from Palm Springs, the San Bernardino Mountains and Southern California beaches.

The City is near completion of the \$1.57 billion “Riverside Renaissance” initiative, investing in key projects throughout the City to enhance streets, medians, electric/water/sewer infrastructure, parks, libraries, police/fire facilities, arts/culture, as well as the downtown area. This one-of-a-kind

program also stimulates the regional economy and attracts significant private sector investments, further enhancing Riverside's reputation as Inland Southern California's preeminent community.

In 2009, Riverside became the first city in California to be designated as an "Emerald City" by the California Department of Conservation, in recognition of the City's sustainable green initiatives. It also has an award winning high-tech City Hall. City projects and initiatives include a 4.9 GHz wireless network for Police/Fire, free wireless connectivity across the City, and free wireless computers for low-income families. Riverside has received recognition as a Smart 21 Community by the Intelligent Community Forum (ICF) for the past three years in a row and this year was elevated to a Top 7 most intelligent international community due to excellence in broadband deployment, digital inclusion, knowledge workforce, innovation and advocacy. SmartRiverside is a non-profit chaired by the Mayor and the Chief Information Officer serves as the Executive Director which is the platform recognized by the ICF that collaborates on high tech initiatives between the schools, private sector and other government entities.

Riverside has nearly 64,000 K-12 students who are served by either the Alford Unified School District (AUSD) or the Riverside Unified School District (RUSD), both of which are dedicated to the very highest standards in education. The City is also home to four internationally recognized colleges and universities with a current student population of about 50,000, including the prestigious University of California, Riverside (the largest single employer in the City).

The City of Riverside is a focal point for tourism in the region. The Riverside tourism industry is supported by the Riverside Convention Center and a variety of local hotels, including the historic Mission Inn (favored by presidents, royalty and movie stars). An assortment of historical landmarks, a stunning performing arts center, museums, shops, restaurants and places of entertainment are available for visitors and residents to enjoy. The City also hosts many annual events, such as the nationally renowned Festival of Lights holiday extravaganza.

Riverside offers a broad mix of housing options from live-work condominiums in downtown to historic neighborhoods, to the sprawling Greenbelt area, to modern residential settings with dramatic views. Each option offers a range of pricing from affordable to high-end luxury. Quality homes are at their most affordable levels in many years, with the median price of a home in Riverside currently at \$200,000.

Through the City's Office of Historic Preservation, Riverside is committed to preserving its past as a firm foundation for the future. There are over 100 City Landmarks, 20 National Register Sites and two National Landmarks designated.

The unique City Raincross symbol is derived from combining a replica of the mass bell used by Father Junipero Serra, missionary priest and founder of the California Missions, and the cross to which the Navajo and Central American Indians prayed for rain. The Raincross is used extensively throughout Riverside in its architecture, and holds a prominent spot on the City flag. It has been identified with Riverside since 1907.

The Department

The Public Works Department maintains, operates, and improves the City's infrastructure, including a 40 million gallon a day sewerage treatment plant, 1,000 miles of sewers, 870 miles of streets, 300 miles of storm drains, and 360 traffic signals.

Infrastructure facilities are maintained and improved to provide adequate capacity for future growth as well as efficient, cost effective services for existing customers. In addition, infrastructure improvements are constructed to beautify neighborhoods and improve safety and neighborhood livability.

The Department also provides solid waste collection, street maintenance, and construction inspection services. Approximately two thirds of all residential customers receive City solid waste services, with the remaining customers receiving service from a private hauler. All commercial customers are serviced by one of three private waste haulers. The Street Services Division actively addresses public health issues through street sweeping, storm drain cleaning, and vector control services. The Solid Waste Collection System includes enhancements through the Clean Up Riverside's Environment (C.U.R.E.) program. The Department personnel also provide construction permitting, inspection, and plan checking services to assure compliance with City standards.

The Position

The Public Works Director is responsible for the planning, directing and reviewing of activities of all divisions within the Public Works Department as well as performs the statutory duties of City Engineer, which may be delegated to the Deputy Public Works Director. The department is comprised of nearly 400 employees in full-time and part-time positions in the divisions of Crossing Services, Engineering, Parking Services, Traffic Engineering, Streets, Solid Waste and Wastewater. The director's responsibilities include the planning and directing of public works engineering activities, transportation and traffic engineering activities, public works capital improvement programs as well as the development and implementation of the City's goals, objectives, policies, and procedures. Registration as a Professional Engineer is highly desirable. The Public Works Director reports to the City Manager and/or the Assistant City Manager.

SECTION 3: SCOPE OF SERVICES

The City Manager of the City of Riverside seeks to retain the services of a company, or an individual, who possesses executive recruitment experience for City government positions. In addition, the awarded Firm shall have considerable knowledge with regard to conducting a City government executive recruitment which includes the ability to recruit a diverse group of applicants. Further, the awarded Firm must be able to conduct an effective, prompt, and broad recruitment. Preference is given for Firms with experience recruiting executive-level positions in a California municipality with a population of approximately 300,000 or greater.

The awarded Firm shall provide applicable services consisting of, but not be limited to, the following tasks:

- Work with City of Riverside's Human Resources Department and City Manager to develop characteristics and attributes of the successful candidate, appropriate and necessary selection criteria, selection process, and timeline, representing a proposed initial path for selection of a Public Works Director.
- Develop recruitment materials and solicitations that describe the Public Works Director position, the City organization, and the community.
- Conduct a broad and thorough national recruitment utilizing professional publications including but not necessarily limited to APWA, Jobs Available and Western City Magazine.
- Conduct targeted recruitment of qualified individuals.
- Acknowledge receipt of candidates' application materials and maintain communication with all candidates throughout the recruitment process.
- Conduct initial screening of all candidates' applications.

- Develop a list of top candidates for presentation to the City Manager.
- Assist City Manager in the selection of finalists.
- Prepare and recommend appropriate interview questions and evaluation tools.
- Coordinate the final on-site selection process as determined at a time designated by City Manager. Tasks that should occur during this phase of the process include at a minimum formal interviews with City Manager. Other tasks may include facilitation of candidate meetings with existing executive level employees and tours of City facilities.
- Coordinate the on-site portion of the process including scheduling interviews and other activities, and making travel and lodging arrangements as directed by the City.
- Conduct all background and reference checks, including public records searches and credit checks, on the finalists.
- Negotiate and finalize an initial contract with the selected candidate following consent and approval and with the advice of the City Manager. If a contract cannot be successfully negotiated with the final candidate, the City Manager may select another candidate from the finalists and the firm may re-interview any previously selected final candidate.
- Provide notification to all candidates not selected as finalists for the position.
- Provide progress reports at least bi-weekly to the Human Resources Director. Periodic on-site meetings may be required to discuss ongoing progress and to determine the process for screening candidates.

Deliverables

- A detailed time line for completion of all of the services described in Section 3. Scope of Services, with expectation that the top candidates will be submitted to the City Manager no later than February 10, 2012.
- A "not to exceed" fee for all professional services and tasks described in Section 3, Scope of Services, as well as a specific "not to exceed" amount for expenses related to the professional services.
- A list of any additional activities and/or techniques that might be helpful to incorporate into the recruitment and selection process and the specific cost for adding such services.
- An hourly rate at which the City would be billed for any services that the City might request outside the scope of the items listed in the RFP.
- A written proposal that is responsive to Section 8 of this Request for Proposal.

SECTION 4: COMPLIANCE WITH THE LAW

The firm agrees to conduct its operation in full compliance with all applicable local, state and federal laws, rules and regulations governing such operations in effect at the time the Agreement is executed and as amended during the period the Agreement is in effect. The firm agrees to keep the City and its officers notified with respect to applicable changes or pending changes in those areas of law, regulations or case law which may affect the services provided by the firm as soon as information on such changes becomes available.

SECTION 5: INSURANCE REQUIREMENTS

The City of Riverside requires all vendors and contractors to submit proof of insurance coverage before beginning any jobs on City property.

The Insurance Certificate must show the dates of coverage, and the coverage amounts for Liability, Automobile, and Workers' Compensation. The City requires minimum coverage amounts of \$1,000,000 per occurrence and \$2,000,000 aggregate. The form should also show the City of Riverside as the Certificate Holder, at the bottom of the page. The City address shall be shown as 3900 Main Street, Riverside, CA. 92522. It is not necessary to list any names of City officials.

In addition to the Certificate of Insurance, the City requires an "Additional Endorsement", whereby the City of Riverside is named as an additional insured.

During the life of the contract, the firm shall purchase and maintain insurance coverage with carriers who are authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher. Failure to furnish acceptable evidence of insurance or lapse in the policy will be considered a material breach and grounds for termination of the contract.

The City requires that copies of the current Certificate of Insurance and Additional Endorsement forms, naming the City as the Certificate Holder and additional insured be provided upon contract execution. Subsequent insurance changes/renewals should be sent directly to the Purchasing Office.

Detailed insurance requirements can be found under Section 12 of the attached Agreement (Exhibit A).

SECTION 6: PERMITS AND LICENSES

Upon acceptance of the bid, the firm shall provide proof of the following:

- A. The firm has a valid Business Tax Registration and City Business License obtained from the City.
- B. Agents, servants, representatives, and employees of the firm who are to perform services for the City have valid licenses, permits, certificates, or other qualifications as required by law.

SECTION 7: PROPOSAL REQUIREMENTS

The firm shall provide their written proposal with the following information. Any additional information deemed pertinent may also be included. The Screening and Selection Committee may consider exceptions or alternative options to these specifications for consideration. Proposals should follow the sequence outlined herein.

- A. Letter of Transmittal
 1. Firm shall submit a one page letter of transmittal which describes the main features of the proposal.
- B. Company Information
 1. Background of the organization.

2. Location of Firm's principal officer and the office that will handle the contract. A complete listing of personnel who will be involved with the program and their specific role and qualifications.
 3. Experience with similar contracts, particularly with governmental agencies.
 4. Professional References including a listing of local and/or public sector clients for which similar programs have been developed and administered, including date of performance, addresses, telephone numbers and name of contact person.
 5. List any professional organizations(s) of which your firm is a current member.
- C. Scope of Services
1. Information in narrative form outlining your firm's approach to accomplishing the work cited in Section 3, Scope of Services. Information for all bulleted items must be addressed in the proposal. Approach should include the objectives and descriptions of detailed methodologies or techniques to be used.
 2. Detailed description of work activities (tasks) to be performed listing specific deliverables, timelines, milestones, and benchmarks for major reports/products.
 3. A description of the information and support required of City staff (timeline, payment schedule, and deliverables).
 4. Fee structure associated with accomplished tasks.
 5. Detailed time-line to accomplish the scope of work by the final due date of February 10, 2012.
 6. Final work product(s) to be provided to the City of Riverside upon conclusion of the study.
- D. Pricing and Price Adjustments
1. Costs for alternate approaches to conducting the study.
 2. Include any additional expense fees (e.g. travel costs and time to and from the City of Riverside, supplies and printed materials, if not included above).
 3. Include the rates for any additional services.
 4. Pricing shall remain firm for the period stated on the proposal sheet.
- E. Additional Items
1. Five (5) typed copies (1 original and 4 copies) of the Proposal must be submitted to the office listed below no later than 2 p.m. on October 21, 2011.
 2. If awarded contract:
 - Copy of Riverside business license

- Copy of Insurance Certificate for \$1,000,000 per occurrence and \$2,000,000 aggregate
 - Copy of Additional Insured Endorsement
 - Copy of Errors and Omissions Insurance Certificate
3. Statement of Placement Guarantee - If a candidate selected and appointed by the City of Riverside terminates employment for any reason before the completion of the first year of service as a result this recruitment, the selected firm will provide the City with the necessary consulting services required to secure a replacement. Professional consulting services will be provided at no cost to the City of Riverside.

SECTION 8: PROJECT SCHEDULE

By	10/21/11 -	Proposals submitted by interested firms
By	10/24/11 -	Selection Committee reviews proposals and identifies finalist(s)
By	10/26/11 -	Finalists invited for presentations/interviews
Around	11/04/11 -	Selection Committee conducts interviews
By	11/07/11 -	Reference checks conducted
By	11/11/11 -	Agreement with selected firm finalized
By	11/14/11 -	Work commences by consultant
By	02/10/12 -	Top candidates submitted to the City Manager

SECTION 9: INSTRUCTIONS FOR SUBMISSION OF PROPOSAL

All interested parties are encouraged to submit a timely proposal based on the information contained in this Request. If interested firms have questions that are not addressed in this proposal, they may call Rhonda Strout, Human Resources Director, at (951) 826-5271 or e-mail at rstrout@riversideca.gov. Firms shall send five (5) copies (1 original and 4 copies) of their proposal, no later than **2:00 p.m. on October 21, 2011** to:

**Rhonda Strout
Human Resources Director
Human Resources Department
City of Riverside
3900 Main Street, 2nd Floor
Riverside, CA 92522**

SECTION 10: BASIS OF AWARD

The City reserves the right to award the bid on the basis of primary contracts and secondary contracts.

- A. The award will take into consideration, but not be limited to, the following:
1. Professional Services Fee and Expenses
 2. Demonstrated experience in facilitating a recruitment for Public Works Director or other executive-level position in the State of California
 3. Extensive experience conducting recruitments for Public Works Director or other executive-level position for municipalities with a population equivalent to or greater than 300,000 in the State of California
 4. Professionalism of vendor
 5. Positive references
 6. Stability of firm
 7. Background, credentials and years of experience with executive level recruitment for local government
 8. Guarantees of performance and response time
 9. Completeness of bid package
 10. Project management approach and timeline
 11. Placement guarantee
- B. The City reserves the right to reject any and all proposals, to waive any technicalities, informalities, and irregularities, to accept or reject all or part of this proposal, and to be the sole judge of the suitability of the proposals offered.

SECTION 11: SELECTION PROCESS

- A. Following the close of the submission period, proposals will be reviewed by a Screening and Selection Committee.
- B. The selection of the firm for this project will be based on a variety of factors which may include the firm's recommended approach and methodology, the firm's qualifications as presented in its proposal, overall price, the experience and success of the firm in completing similar projects, the quality and presentation of the proposal, the firm's ability to provide the

services within the defined time-line, and the firm's ability to present a creative and effective approach to accomplishing the services, objectives, and results.

- C. Those selected as finalist(s) will be invited to make a presentation to the Committee in person tentatively scheduled for November 4, 2011. The presentation will not exceed 20 minutes, and will be followed by a question and answer period by the committee representatives.
- D. Following the presentations, the Committee will select the successful firm. All those who were interviewed will be notified of their status in the selection process.
- E. The City retains the right to modify any or all portions of this Request for Proposal, prior to the submittal date.
- F. The City reserves the right to award the contract in full or in part, or to reject all proposals without qualification, whichever proves to be in the City's best interest.

SECTION 12: GENERAL TERMS AND CONDITIONS

- A. The City shall not be liable for any expenses incurred by any proposer prior to issuing the contract.
- B. The proposal shall be signed by an official authorized to bind the firm. It should also include the name, title, address and telephone numbers of individuals with authority to negotiate and contractually bind the firm, and who may be contacted during the period of proposal evaluation. This Request for Proposal does not commit the City of Riverside to award a contract or to pay any costs incurred in the preparation of a proposal in response to this request. The City of Riverside reserves the right to negotiate the scope of services and the proposed contract price with the firm, or to cancel in part or in its entirety this Request for Proposal.
- C. The City reserves the right to reject all proposals without qualification. The firm, by submitting the proposal, waives all rights to protect or seek any legal remedy whatsoever regarding any aspect of the RFP, the City's selection process, the City's review of any proposals and any agreement that the City may enter into as a result of the proposals submitted. The proposal will be considered binding for 90 days after the proposal due date.
- D. The City Manager or designated representative shall administer the Agreement on behalf of the City.
- E. Independent Contractor: At all times during the term thereof and in the performance of the services to be rendered hereunder, Contractor and its agents, servants, representatives, and employees shall act as independent contractors, and shall not act as, and shall not be, and shall not in any manner be construed to be, agents, officers, representatives or employees of City.
- F. Workers' Compensation: The Vendor must certify that it is aware of and will comply with Labor Code 3700 of the State of California requiring every employer to be insured against liability for Workers' Compensation or to undertake self-insurance before commencing any of the work.
- G. Business Tax: Vendor understands that the activity described herein constitutes doing business in the City of Riverside and it therefore understands that it must register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code.

- H. Nondiscrimination: During its performance of the required services, the firm shall not discriminate on the grounds of race, color, religion, national origin, sex, sexual orientation, or disability, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any conditions related thereto, in the selection or retention of employees and sub-consultants and the procurement of materials and equipment.
- I. Ownership of Documents: All reports, drawings, and other contract documents prepared under this Agreement by consultant shall be and remain the property of the City upon the City's compensation of Consultant for its services as herein provided. Consultant shall not release to others information furnished by City without prior approval of the Human Resources Director.
- J. Successors and Assigns: It is mutually understood and agreed that this Agreement shall be binding upon City and its successors and upon Consultant and its successors. Neither this Agreement nor any part hereof nor any monies due or to become due hereunder may be assigned by Contractor without the prior consent of City.
- K. The terms and conditions contained in the attached Agreement (Exhibit "A") or, in the sole discretion of the City, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreements that results from this Request for Proposals.

SECTION 13: PUBLIC RECORDS

All Proposals submitted in response to this RFP become the property of the City and under the Public Records Act (Government Code § 6250 et. seq.) are public records, and as such may be subject to public review. However, the Proposals shall not be disclosed until negotiations are complete and a recommendation for selection and award is made to the City Council.

If a proposer claims a privilege against public disclosure for trade secret or other proprietary information, such information must be clearly identified in the proposal. Note that under California law, price proposal to a public firm is not a trade secret.

Exhibit A

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

[**Enter CONSULTANT'S Name**]

[**Enter in Description of Services**]

THIS PROFESSIONAL CONSULTANT SERVICES AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 20____ (“Effective Date”), by and between the CITY OF RIVERSIDE (“City”), a California charter city and municipal corporation and [**Enter in CONSULTANT'S NAME**], a [**Enter in entity, for example: a California corporation, a limited partnership, a limited liability company, etc.**] (“Consultant”).

1. **Scope of Services.** City agrees to retain and does hereby retain Consultant and Consultant agrees to provide the services more particularly described in Exhibit “A,” “Scope of Services” (“Services”), attached hereto and incorporated herein by reference, in conjunction with [**Enter in Name of Project**] (“Project”).

2. **Term.** This Agreement shall be effective on the date first written above unless otherwise provided in Exhibit “A” Scope of Services and the Agreement shall remain in effect until [**Enter in: termination date, for example: May, 3, 2009**], unless otherwise terminated pursuant to the provisions herein.

3. **Compensation/Payment.** Consultant shall perform the Services under this Agreement for the total sum not to exceed [**Enter in written dollar amount, for example: Two Thousand Five Hundred Dollars**] [**Enter in numeric dollar amount: for example: (\$2,500)**] payable in accordance with the terms set forth in Exhibit “B.” Said payment shall be made in accordance with City’s usual accounting procedures upon receipt and approval of an itemized invoice setting forth the services performed. The invoices shall be delivered to City at the address set forth in Section 4 hereof.

4. **Notices.** Any notices required to be given, hereunder shall be in writing and shall be personally served or given by mail. Any notice given by mail shall be deemed given when deposited in the United States Mail, certified and postage prepaid, addressed to the party to be served as follows:

To City

[**Enter in Department**]
City of Riverside
Attn: [**City Representative**]
[**Address**]
Riverside, CA [**ZIP**]

To Consultant

[**Name of Consultant or Company**]
Attn: [**Name of Representative**]
[**Address**]
[**City, STATE, ZIP**]

5. **Prevailing Wage.** If applicable, Consultant and all subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

6. **Contract Administration.** A designee of the City will be appointed in writing by the City Manager or Department Director to administer this Agreement on behalf of City and shall be referred to herein as Contract Administrator.

7. **Standard of Performance.** While performing the Services, Consultant shall exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Metropolitan Southern California Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise.

8. **Personnel.** Consultant shall furnish all personnel necessary to perform the Services and shall be responsible for their performance and compensation. Consultant recognizes that the qualifications and experience of the personnel to be used are vital to professional and timely completion of the Services. The key personnel listed in Exhibit "C" attached hereto and incorporated herein by this reference and assigned to perform portions of the Services shall remain assigned through completion of the Services, unless otherwise mutually agreed by the parties in writing, or caused by hardship or resignation in which case substitutes shall be subject to City approval.

9. **Assignment and Subcontracting.** Neither party shall assign any right, interest, or obligation in or under this Agreement to any other entity without prior written consent of the other party. In any event, no assignment shall be made unless the assignee expressly assumes the obligations of assignor under this Agreement, in a writing satisfactory to the parties. Consultant acknowledges that any assignment may, at the City's sole discretion, require City Manager and/or City Council approval. Consultant shall not subcontract any portion of the work required by this Agreement without prior written approval by the responsible City Contract Administrator. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including without limitation, the insurance obligations set forth in Section 12. The Consultant acknowledges and agrees that the City is an intended beneficiary of any work performed by any subcontractor for purposes of establishing a duty of care between any subcontractor and the City.

10. **Independent Contractor.** In the performance of this Agreement, Consultant, and Consultant's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Consultant acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Consultant, or to

Consultant's employees, subcontractors and agents. Consultant, as an independent contractor, shall be responsible for any and all taxes that apply to Consultant as an employer.

11. **Indemnification.**

11.1 **Design Professional Defined.** For purposes of this Agreement, "Design Professional" includes the following:

- A. An individual licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter.
- B. An individual licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, and a business entity offering landscape architectural services in accordance with that chapter.
- C. An individual registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter.
- D. An individual licensed as a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.

11.2 **Defense Obligation For Design Professional Liability.** Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, agents and council members (collectively the "Parties to be Defended") from and against any and all claims, allegations, lawsuits, arbitration proceedings, administrative proceedings, regulatory proceedings, or other legal proceedings to the extent the same arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, or anyone employed by or working under the Consultant or for services rendered to the Consultant in the performance of the Contract, notwithstanding that the City may have benefited from its work or services and whether or not caused in part by the negligence of an Indemnified Party. Consultant agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to City. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of Consultant and shall survive the termination of Consultant's Services under this Agreement.

11.3 **Indemnity For Design Professional Liability.** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect and hold harmless the City and the City's employees, officers, managers, agents, and Council Members ("Indemnified Parties") from and against any and all claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or

arbitration proceeding, damage, cost, expense (including counsel and expert fees), judgment, civil fines and penalties, liabilities or losses of any kind or nature whatsoever to the extent the same arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, or anyone employed by or working under the Consultant or for services rendered to the Consultant in the performance of the Contract, notwithstanding that the City may have benefited from its work or services and whether or not caused in part by the negligence of an Indemnified Party.

11.4 Defense Obligation For Other Than Design Professional Liability.

Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, agents and council members (collectively the "Parties to be Defended") from and against any and all claims, allegations, lawsuits, arbitration proceedings, administrative proceedings, regulatory proceedings, or other legal proceedings which arise out of, or relate to, or are in any way connected with: 1) the Services, work, activities, operations, or duties of the Consultant, or of anyone employed by or working under the Consultant, or 2) any breach of the Contract by the Consultant. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any or all of the Parties to be Defended were actively, passively, or concurrently negligent, or which otherwise assert that the Parties to be Defended are responsible, in whole or in part, for any loss, damage or injury. Consultant agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to City. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of Consultant and shall survive the termination of Consultant's Services under this Agreement.

11.5 Indemnity For Other Than Design Professional Liability. Except as to the sole negligence or willful misconduct of the City, Consultant agrees to indemnify, protect and hold harmless the Indemnified Parties from and against any claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding, damage, cost, expense (including counsel and expert fees), judgment, civil fine and penalties, liabilities or losses of any kind or nature whatsoever whether actual, threatened or alleged, which arise out of, pertain to, or relate to, or are a consequence of, or are attributable to, or are in any manner connected with the performance of the Services, work, activities, operations or duties of the Consultant, or anyone employed by or working under the Consultant or for services rendered to Consultant in the performance of this Agreement, notwithstanding that the City may have benefited from its work or services. This indemnification provision shall apply to any acts, omissions, negligence, recklessness, or willful misconduct, whether active or passive, on the part of the Consultant or anyone employed or working under the Consultant.

12. Insurance.

12.1 General Provisions. Prior to the City's execution of this Agreement, Consultant shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

12.1.1 **Limitations.** These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations under Section 11 hereof.

12.1.2 **Ratings.** Any insurance policy or coverage provided by Consultant or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

12.1.3 **Cancellation.** The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

12.1.4 **Adequacy.** The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. If Consultant believes that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage as Consultant deems adequate, at Consultant's sole expense.

12.2 **Workers' Compensation Insurance.** By executing this Agreement, Consultant certifies that Consultant is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Consultant shall carry the insurance or provide for self-insurance required by California law to protect said Consultant from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Consultant shall file with City either 1) a certificate of insurance showing that such insurance is in effect, or that Consultant is self-insured for such coverage, or 2) a certified statement that Consultant has no employees, and acknowledging that if Consultant does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days prior written notice before modification or cancellation thereof.

12.3 **Commercial General Liability and Automobile Insurance.** Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure Consultant against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Consultant. The City, and its officers, employees and agents, shall be named as additional insureds under the Consultant's insurance policies.

12.3.1 Consultant's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's

liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

12.3.2 Consultant's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Consultant's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Consultant's performance of this Agreement, which vehicles shall include, but are not limited to, Consultant owned vehicles, Consultant leased vehicles, Consultant's employee vehicles, non-Consultant owned vehicles and hired vehicles.

12.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

12.3.4 The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the City and its sub-consultants, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.
- c. The policy shall specify that the insurance provided by Consultant will be considered primary and not contributory to any other insurance available to the City.

12.4 **Errors and Omissions Insurance.** Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain during the term of this Agreement, errors and omissions professional liability insurance in the minimum amount of \$1,000,000 to protect the City from claims resulting from the Consultant's activities.

12.5 **Subcontractors' Insurance.** Consultant shall require all of its subcontractors to carry insurance, in an amount sufficient to cover the risk of injury, damage or loss that may be caused by the subcontractors' scope of work and activities provided in

furtherance of this Agreement, including, but without limitation, the following coverages: Workers Compensation, Commercial General Liability, Errors and Omissions, and Automobile liability. Upon City's request, Consultant shall provide City with satisfactory evidence that Subcontractors have obtained insurance policies and coverages required by this section.

13. **Business Tax.** Consultant understands that the Services performed under this Agreement constitutes doing business in the City of Riverside, and Consultant agrees that Consultant will register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code and keep such tax certificate current during the term of this Agreement.

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

15. **City's Right to Employ Other Consultants.** City reserves the right to employ other Consultants in connection with the Project. If the City is required to employ another consultant to complete Consultant's work, due to the failure of the Consultant to perform, or due to the breach of any of the provisions of this Agreement, the City reserves the right to seek reimbursement from Consultant.

16. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be clearly identifiable. Consultant 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. Consultant 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.

17. **Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant, except as otherwise directed by City's Contract Administrator. Nothing furnished to Consultant which is otherwise known to the Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production, website, or other similar medium without the prior written consent of the City.

18. **Ownership of Documents.** All reports, maps, drawings and other contract deliverables prepared under this Agreement by Consultant shall be and remain the property of City. Consultant shall not release to others information furnished by City without prior express written approval of City.

19. **Copyrights.** Consultant agrees that any work prepared for City which is eligible for copyright protection in the United States or elsewhere shall be a work made for hire. If any such work is deemed for any reason not to be a work made for hire, Consultant assigns all right,

title and interest in the copyright in such work, and all extensions and renewals thereof, to City, and agrees to provide all assistance reasonably requested by City in the establishment, preservation and enforcement of its copyright in such work, such assistance to be provided at City's expense but without any additional compensation to Consultant. Consultant agrees to waive all moral rights relating to the work developed or produced, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

20. **Conflict of Interest.** Consultant, for itself and on behalf of the individuals listed in Exhibit "C", represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Project affected by the above-described Services. Consultant further warrants that neither Consultant, nor the individuals listed in Exhibit "C" have any real property, business interests or income interests that will be affected by this project or, alternatively, that Consultant will file with the City an affidavit disclosing any such interest.

21. **Solicitation.** Consultant warrants that Consultant has not employed or retained any person or agency to solicit or secure this Agreement, nor has it entered into any agreement or understanding for a commission, percentage, brokerage, or contingent fee to be paid to secure this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement without liability and pay Consultant only for the value of work Consultant has actually performed, or, in its sole discretion, to deduct from the Agreement price or otherwise recover from Consultant the full amount of such commission, percentage, brokerage or commission fee. The remedies specified in this section shall be in addition to and not in lieu of those remedies otherwise specified in this Agreement.

22. **General Compliance With Laws.** Consultant shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of services by Consultant pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations. Consultant represents and warrants that Consultant has obtained all necessary licenses to perform the Scope of Services and that such licenses are in good standing. Consultant further represents and warrants that the services provided herein shall conform to all ordinances, policies and practices of the City of Riverside.

23. **Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute approval of or acquiescence in any breach thereunder, except as may be specifically, provided in this Agreement or as may be otherwise agreed in writing.

24. **Amendments.** This Agreement may be modified or amended only by a written agreement and/or change order executed by the Consultant and City.

25. **Termination.** City, by notifying Consultant in writing, shall have the right to terminate any or all of Consultant's services and work covered by this Agreement at any time. In the event of such termination, Consultant may submit Consultant's final written statement of the

amount of Consultant's services as of the date of such termination based upon the ratio that the work completed bears to the total work required to make the report complete, subject to the City's rights under Sections 15 and 25 hereof. In ascertaining the work actually rendered through the termination date, City shall consider completed work, work in progress and complete and incomplete reports and other documents only after delivered to City.

25.1 Other than as stated below, City shall give Consultant thirty (30) days prior written notice prior to termination.

25.2 City may terminate this Agreement upon fifteen (15) days written notice to Consultant, in the event:

25.2.1 Consultant substantially fails to perform or materially breaches the Agreement; or

25.2.2 City decides to abandon or postpone the Project.

26. **Offsets.** Consultant acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which Consultant owes or may owe to the City, City reserves the right to withhold and offset said amounts from payments or refunds or reimbursements owed by City to Consultant. Notice of such withholding and offset, shall promptly be given to Consultant by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to the City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

27. **Successors and Assigns.** This Agreement shall be binding upon City and its successors and assigns, and upon Consultant and its permitted successors and assigns, and shall not be assigned by Consultant, either in whole or in part, except as otherwise provided in paragraph 9 of this Agreement.

28. **Venue and Attorneys' Fees.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs thereof, including reasonable attorneys' fees, to be set by the court in such action.

29. **Nondiscrimination.** During Consultant's performance of this Agreement, Consultant shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section

12940 of the California Government Code. Further, Consultant agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

30. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, of this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement, and the remainder of the Agreement shall continue in full force and effect.

31. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions hereof and thereof.

32. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

33. **Interpretation.** City and Consultant acknowledge and agree that this Agreement is the product of mutual arms-length negotiations and accordingly, the rule of construction, which provides that the ambiguities in a document shall be construed against the drafter of that document, shall have no application to the interpretation and enforcement of this Agreement.

33.1 Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of the Agreement or any of its terms. Reference to section numbers, are to sections in the Agreement unless expressly stated otherwise.

33.2 This Agreement shall be governed by and construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.

33.3 In the event of a conflict between the body of this Agreement and Exhibit "A" - Scope of Services hereto, the terms contained in Exhibit "A" shall be controlling.

34. **Exhibits.** The following exhibits attached hereto are incorporated herein to this Agreement by this reference:

Exhibit "A" - Scope of Services
Exhibit "B" - Compensation
Exhibit "C" - Key Personnel

(Signatures on following page)

IN WITNESS WHEREOF, City and Consultant have caused this Agreement to be duly executed the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

[**CONSULTANT'S NAME**],
a California corporation

By: _____
City Manager

By: _____

Attest: _____
City Clerk

[Printed Name]

[Title]

Certified as to Availability of Funds:

By: _____

By: _____
Finance Director

[Printed Name]

[Title]

Approved as to Form:

By: _____
Deputy City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

EXHIBIT "B"
COMPENSATION

EXHIBIT "C"

KEY PERSONNEL