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

NOTICE INVITING REQUESTS FOR PROPOSALS  
For  
Design and Engineering Services for Pawley Pool Aquatic Facility  

RFP # 16-01-001-AQ  

PUBLIC NOTICE IS HEREBY GIVEN that the Desert Recreation District (District) is issuing this Request for Proposal for Design and Engineering services for an Aquatic Facility at the existing Pawley Pool Site in Indio, CA 92201. 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 Friday, February 19, 2016.  

Firms or individuals interested in submitting proposals shall submit seven (7) copies of the proposal, with an accompanying CD, in a sealed envelope, labeled as follows: 

Desert Recreation District  
RE: Design Services for Pawley Pool Aquatic Facility  
RFP # 16-01-001-AQ  
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 # 16-01-001-AQ) are available from the Desert Recreation District (District) for a non-refundable fee of $20.00 per RFP. (RFP # 16-01-001-AQ)
can be obtained, free of charge, in electronic format by accessing the Desert Recreation District website [www.myrecreationdistrict.com/about-us/vendor-info](http://www.myrecreationdistrict.com/about-us/vendor-info) and downloading the documents.

A mandatory site visit will be held on Tuesday February 9, 2016 at 10:00 AM. The site location is 46-350 Jackson Street, Indio CA 92201. Only those who attend the site visit will be allowed to submit a proposal.

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 Thursday, February 11, 2016.

The document must be labeled; “Written Questions for RFP # 16-01-001-AQ“ 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:**

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Issue Date</td>
<td>Sunday, January 24, 2016</td>
</tr>
<tr>
<td>Mandatory Site Visit</td>
<td>Tuesday February 9, 2016</td>
</tr>
<tr>
<td>Request for Clarification Closing Date</td>
<td>Thursday, February 11, 2016</td>
</tr>
<tr>
<td>RFP Closing Date</td>
<td>Friday, February 19, 2016</td>
</tr>
<tr>
<td>Evaluation and Selection Complete</td>
<td>Friday, March 4, 2016</td>
</tr>
</tbody>
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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.
DESERT RECREATION DISTRICT

Request for Proposal (RFP)
January 2016

Design and Engineering Services for Pawley Pool Aquatic Facility

Introduction

The Desert Recreation District ("District"), 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. The purpose of the organization was 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 Design and Engineering Services for the Pawley Pool Aquatic facility. The District is seeking proposals from all qualified parties interested in performing the requested services. Responses are due by **4:00 p.m. on February 19, 2016**. The Fee Proposal must be delivered in a separate sealed envelope and labeled as follows:

Submit responses to:

**For Proposal Deliver To:**
Desert Recreation District  
RE: Design and Engineering Services for Pawley Pool Aquatic Facility  
Troy Strange, Director of Planning and Public Works  
45-305 Oasis Street  
Indio, CA  92201

**For Proposal Fee Deliver To:**
Desert Recreation District  
RE: Design and Engineering Services for Pawley Pool Aquatic Facility Fees  
Troy Strange, Director of Planning and Public Works  
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 Desert Recreation District (DRD) 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 “B”.

Experience and Qualifications

Consultants shall demonstrate the following minimum qualifications:

- Extensive experience with Aquatic Facility projects for Government and Public Agencies.

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.
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. This section shall specifically identify the licensed professional Architect(s). The specific experience, including projects for Government and Public Agencies related to Community Centers and Recreational Facilities. 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.

5. **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.

6. **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 architectural services similar to those required by the District. Please do not include information on projects that are not similar in scope and character to the proposed project.

**Selection Procedures**

Proposals will be evaluated by a selection committee, which may be comprised of District staff members, outside experts and other interested individuals. The method of selection will be based on the criteria and considerations set forth below.

1. Demonstrated competence and professional qualifications necessary for satisfactory performance of the services required by the District.

2. Experience in performing Design and Engineering services related to Aquatic Facilities for Government and Public Agencies.

3. Understanding of the work required by the District and proposed approach for the scope of work.

4. Quality and responsiveness of the proposal to the stated requirements.

5. References.


7. Proposed compensation.

8. 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 unique and unmatched 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 pm on Friday, February 19, 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 Works.

**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. Costs incurred in responding to the RFP are borne by the responding party. 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

2.1 CONSULTANT shall provide design and engineering services as hereinafter described for the following aquatic centers:

2.1.1 Pawley Pool Aquatic Center which includes the following elements: demolition of existing pool building, mechanical building, and swimming pool and pool deck; new bathhouse of approximately 3,642 SF; new utility points of connection; new activity swimming pool with two slide receiving pool, three lap lanes, and zero-depth entry area with climb on structure; new pool decks and deck drainage; new parking lot; new perimeter fencing and associated landscape.

2.1.2 CONSULTANT’s scope of work includes all work shown in 2.1.1 as well as design survey/ topographical survey, grading and drainage plans, hydrology report, water quality management plan, NPDES compliance and storm water pollution prevention plan, erosion control plan, and fugitive dust control plan. All reimbursable costs must be included in proposal fee.

3.0 SCOPE OF SERVICES

3.1 Schematic Design Phase:

3.1.1 CONSULTANT shall review the program furnished by CLIENT to ascertain the requirements of the project and shall arrive at a mutual understanding of such requirements with CLIENT.

3.1.2 Based upon the mutually agreed upon program, schedule and construction budget requirements, CONSULTANT shall prepare, for approval by CLIENT, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of project components. Schematic Design Phase deliverables shall include the following:
.1 Site plan views.
.2 Building plan views.
.3 Building longitudinal sections.
.4 Building elevations.
.5 Swimming pool plan views.
.6 Swimming pool longitudinal sections.
.7 Swimming pool decks and drainage details.
.8 Landscaping and hardscape details.
.9 Cost Estimate

3.1.3 CONSULTANT shall submit to CLIENT a rough order of magnitude estimate of probable construction cost based upon current area, volume, or other unit costs.

3.2 **Design Development Phase:**

3.2.1 Based upon the approved Schematic Design Documents and any adjustments authorized by CLIENT in the program, schedule or construction budget, CONSULTANT shall prepare, for approval by CLIENT, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. Design Development Phase deliverables shall include the following:

.1 Swimming pool plan views.
.2 Swimming pool longitudinal and cross-sections.
.3 Swimming pool finish details.
.4 Swimming pool rail goods / competitive equipment details.
.5 Site and building plan views.
.6 Building longitudinal sections.
.7 Building finish details.
.8 Landscaping and hardscape details.
.9 Outline specification in CSI format.
.10 Swimming pool decks and drainage details.
.11 Cost Estimate

3.2.2 CONSULTANT shall provide CLIENT with building and infrastructure requirements, including design criteria, as needed to service the swimming pool and building equipment, including:

.1 Swimming pool equipment room dimensions.
.2 Building mechanical room dimensions.
.3 Sanitary/storm sewer requirements and points of connection.
.4 Domestic water requirements and points of connection.
.5 Natural gas requirements and points of connection.
.6 HVAC requirements for swimming pool and building equipment including preliminary equipment selection and location, routing of major systems, and single line diagrams.
.7 Electrical requirements and points of connection for swimming pool and building equipment.
.8 Swimming pool decks and drainage details
.9 Landscaping and hardscape details.
.10 Cost Estimate
3.2.3 CONSULTANT shall advise CLIENT of any adjustments to the rough order of magnitude estimate of probable construction cost.

3.3 **Construction Documents Phase:**

3.3.1 Based upon the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by CLIENT, CONSULTANT shall prepare, for approval by CLIENT, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for construction of the swimming pools. Construction Documents Phase deliverables shall include the following:

1. **Architectural Drawings:**
   - Swimming pool plan views.
   - Swimming pool longitudinal and cross-sections.
   - Swimming pool finish details.
   - Swimming pool rail goods / competitive equipment details.
   - Swimming pool decks and drainage details.
   - Building plan view.
   - Site plan view.
   - Building longitudinal and cross-sections.
   - Building equipment details.

2. **Structural Drawings:**
   - Swimming pool / surge tank structural sections.
   - Swimming pool / surge tank reinforcement schedules.
   - Building structural sections.
3 Mechanical Drawings:
- Swimming pool piping plan.
- Swimming pool mechanical equipment piping plan.
- Swimming pool mechanical equipment sections.
- Building piping plan.
- Building equipment selections and layout.
- Building equipment piping plan and routing of all systems.
- Building mechanical equipment sections.
- Miscellaneous building and swimming pool mechanical details.

4 Electrical Drawings:
- Swimming pool underwater lighting plan.
- Swimming pool timing system / scoreboard plan.
- Swimming pool single phase panel schedule.
- Building electrical and lighting plan.
- Site electrical plan.
- Building marquee plan.
- Building panel schedule.
- Miscellaneous building and swimming pool electrical details.

5 Miscellaneous:
- Swimming pool / surge tank structural calculations.
- Final form swimming pool technical specifications in CSI format.
- Swimming pool decks and appurtenances details
- Off-site sewer, water, or street improvement plans
- Cost estimate

3.3.2 CONSULTANT shall advise CLIENT of any adjustments to previous estimates of construction cost indicated by changes in requirements or general market conditions.

3.3.3 CONSULTANT shall assist CLIENT in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and the Contractor, as it relates to the design program elements.

3.3.4 CONSULTANT shall assist CLIENT in connection with CLIENT’s responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.4 Construction Observation Phase:

3.4.1 CONSULTANT shall be a representative of and shall advise and consult with CLIENT:

1) during construction until final payment to the Contractor is due; and 2) as an Additional Service at CLIENT’s direction from time to time during the correction period described in the Contract for Construction. CONSULTANT shall have authority to act on behalf of CLIENT only to the extent provided in this proposal unless otherwise modified. CONSULTANT shall provide the following construction support services:

.1 Provide clarification, as required, of construction documents and respond to contractor requests for information.
.2 Review and approval of swimming pool-related sample and material submittals specified in Contract Documents.

.3 Assistance with the issuance and negotiation of change orders.

.4 Review of contractor-submitted Record Drawings for contract conformance and completeness based upon field observations.

3.4.2 CONSULTANT shall visit the site at intervals appropriate to the stage of construction or otherwise agreed by CLIENT and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. However, CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations, CONSULTANT shall keep CLIENT informed of the progress and quality of the Work, and shall endeavor to guard CLIENT against defects and deficiencies in the Work.

3.4.3 CONSULTANT shall visit the site at approximately eleven (11) months following the completion of project to conduct a warranty review / site walk with CLIENT and owner at no additional cost.

3.5 Visits to the Project Site:

3.5.1 CONSULTANT shall visit the offices of CLIENT and/or the Project Site in conformance with the following schedule:

. Schematic Development Phase ............ Three (3) site visits
. Design Development Phase ................ Three (3) site visits
. Construction Documents Phase .......... Four (4) site visits
. Construction Observation Phase ......... Sixteen (16) site visits
EXHIBIT B

Sample of Professional Services Agreement

Design Services for Pawley Pool Aquatic Facility
RFP # 16-01-001-AQ

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 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.

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 hold harmless the District 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.
Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California 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 of 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. 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 **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 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 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 three (3) 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 three (3) years after final payment under the Agreement.

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 _____________ ("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**

Kevin Kalman, General Manager

Attest:

Delia Granados, District Clerk

**CONSULTANT**

Approved as to Form:

Elizabeth Martyn, General Counsel