



**REQUEST FOR PROPOSALS**  
**TO PREPARE AN ENVIRONMENTAL IMPACT REPORT**  
**FOR**  
**KAISER PERMANENTE MEDICAL OFFICE FACILITY**  
**IN THE CITY OF IRWINDALE**

**January 27, 2016**

**City of Irwindale**  
**Community Development Department**  
**5050 N. Irwindale Avenue**  
**Irwindale, CA 91706**

The City of Irwindale (City) is requesting proposals from highly qualified firms to prepare an Environmental Impact Report to assess the potential environmental impacts associated with a proposed development by Kaiser Permanente of a 90,000 square-foot medical office building and associated parking located at 12761 Schabarum Avenue in the City of Irwindale. The project application and plans are available for review in the Community Development Department, located at 16102 Arrow Highway, 2<sup>nd</sup> Floor, Irwindale, CA 91706.

**Schedule:**

Release of the RFP: January 27, 2016

Pre-Proposal Meeting: Wednesday, February 3, 2016 – 2:00p.m., City Council Chambers, 5050 N. Irwindale Avenue, Irwindale, CA 91706 (an opportunity will be given to go to the project site after this initial briefing)

Proposals Due Date: **No later than 5:00 p.m., February 18, 2016** (Postmarks will not be accepted)

Interviews: February 23, 2016

City Council Action on Consultant Services Agreement: March 9, 2016

**1. Project Description/Approvals Needed**

Kaiser Permanente, Applicant, proposes to demolish an existing vacant cold storage warehouse and surface parking on a Project Site located at 12761 Schabarum Avenue in the City of Irwindale (Assessor Parcel Number 8546-031-090) in order to develop a new 90,000 square-foot, multi-story, certified LEED Gold or equivalent, outpatient medical office building and 450 on-site parking spaces to be provided within structured parking and surface lots. The Project Site is zoned M-2 (Heavy Manufacturing) and was formerly occupied by Jacmar Foods prior to their relocation to the City of Industry.

The Project will require the following discretionary approvals from the City:

1. Conditional Use Permit to allow the outpatient medical office use in the M-2 (Heavy Manufacturing) Zone.
2. Site Plan and Design Review Permit to address the site configuration, design, location, and impact of the proposed use and the compliance of the Project with the established Zoning Code standards and the “City of Irwindale Commercial and Industrial Design Guidelines.”

**2. Scope of Services**

The Scope of Services to be provided by the Consultant shall include, but not be limited to, the tasks and deliverables listed below.

- a. Review the entitlement application package and any supporting technical studies provided by the Applicant and prepare additional technical reports for City review on the following topics:

**Aesthetics** – The Project will be required to be consistent with the City’s Commercial and Industrial Design Guidelines in terms of the site layout, architectural treatments, and landscaping.

**Air Quality and Greenhouse Gas Emissions (GHG)** – Construction and operation of the project could generate emissions and/or dust that may have a significant effect on local and/or regional air quality. Assessment of contribution to GHG is also required by CEQA.

**Geotechnical and Soils** – The project site is adjacent to the existing Durban Pit, an open pit mining operation. As a result, the Project could require retaining and buffering from the pit and possibly soils remediation. The Applicant will prepare a geotechnical study and soils report for the Project Site. These studies will be made available to the EIR consultant for review and incorporation into the EIR.

**Land Use Planning** – Development of the Project site has the potential to result in adverse impacts to surrounding communities or conflict with existing land use plans.

**Traffic and Circulation** – Construction and operation of the Project has the potential to result in adverse impacts on roadway segments and intersections, particularly adjacent I-605 Freeway on- and off-ramps. The Applicant will prepare a traffic study for the proposed Project, which will be made available to the EIR consultant for review and incorporation into the Project EIR.

- b. Optional tasks including but not limited to the preparation of the preliminary Water Quality Management Plan, hydrology study, and the health risk assessment.
- c. Prepare and distribute the Notice of Preparation; Notice of Completion/Notice of Availability; and Notice of Determination.
- d. Recommend whether a scoping meeting is necessary or advisable and, if so, prepare the Notice of Scoping Meeting and related documents and assist with Scoping meeting.
- e. Consistent with the requirements of CEQA, identify, discuss and develop appropriate mitigation monitoring programs for short-term and/or long-term impacts associated with the proposed Project.

- f. Prepare the first Administrative Draft EIR (ADEIR) for City staff review.
- g. Make all revisions to the ADEIR and prepare the screencheck Draft EIR, including appendices and exhibits, which incorporate staff's written recommendations and revisions to the ADEIR.
- h. Prepare the City-approved public review Draft EIR with appendices, exhibits, and Mitigation Summary.
- i. Respond to comments made during the Draft EIR public review period. Prepare the Administrative Final EIR (AFEIR) document addressing all comments on the Draft EIR.
- j. Prepare the screencheck Final EIR, including appendices and exhibits, which will incorporate staff's written recommendations and revisions to the AFEIR, and a Mitigation Monitoring and Reporting Program.
- k. Prepare the City-approved Final EIR with appendices and exhibits.
- l. Attend up to eight (8) meetings, including but not limited to: one kick-off meeting with City staff; one scoping meeting (if needed) up to four (4) meetings with staff to discuss issues regarding the preparation of the Administrative Draft EIR, Draft EIR, responses to public comments and the Final EIR; and two public hearings before the Planning Commission (one hearing) and City Council (one hearing).

### **3. Proposal Contents and Submittal Requirements**

The Consultant's Technical Proposal package shall contain the following:

#### **a. Introduction**

Introduction of Project proposal including a statement of Project understanding, a discussion of how the objective of the scope of work will be accomplished, the name of the firm submitting the proposal, its mailing address, telephone number, and the name of the individual to contact, if further information is require. Any participating firms and proposed sub-consultants shall be identified and included in the proposal.

#### **b. Statement of Qualifications**

1. A description of the firm's capabilities and experience on similar projects.
2. Identification of staff's capabilities and the Project Manager assigned to oversee the work; an Organization Chart showing the proposed relationships between all key personnel and the support staff assigned to the Project; the proposed responsibilities of each person on the chart, and brief resumes of all personnel assigned to the Project.

3. A description of firm's key personnel's present activities and their availability to accomplish the required services within the project schedule.
4. Identification of any sub-consultants to be used. Information shall include the name and address of the sub-consultant, resumes of key staff proposed for the Project and the tasks to be carried out.  
All sub-consultants must be approved by the City.

c. Scope of Work

A description of the approach and methodology to provide the required services. Identify any supplemental tasks deemed necessary or alternatives, which may enhance the Project, reduce costs, or expedite delivery. The consultant should also identify any tasks not identified and/or mentioned in this document that would otherwise affect the successful realization of the Project.

d. Conflict of Interest

The Consultant shall disclose any financial, business, or other relationships with the City that may have an impact on the outcome of this contract or any resulting construction Project. The property owner and applicant is Kaiser Permanente. The Consultant shall disclose any financial, business or other relationships with these individuals and firms. The City reserves the right to cancel the award, if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the process. The City determination regarding any question of conflict of interest shall be final.

e. Limits of General and Professional Liability Insurance

The Consultant shall disclose any financial, business or other relationships with the City that may have an impact on the outcome of this contract or any resulting construction Project. The City reserves the right to cancel the reward if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program. The City determination regarding any question of conflict of interest shall be final.

f. References

The consultant shall provide three professional references for the project manager and the company.

g. Schedule of Services

Provide an EIR completion schedule with project milestones. The completion schedule must show a completion and EIR certification date, no later than 12

months after contract award.

The Consultant's cost proposal shall contain the following:

- a. Firm's rate schedule for the duration of the contract.
- b. Firm's total cost to perform the work in its entirety, including a breakdown of the costs for each individual work task.
- c. Listing of any other costs charged by firm in providing EIR consultant services.

The Technical Proposal and Cost Proposal shall be transmitted separately, with a cover letter that must be signed by an official authorized to bind the consultant contractually, and shall contain a statement that the proposals are firm offers for a 90-day period. The letter accompanying the Technical Proposal shall also provide the following: name, title, address, telephone number and email address of individuals with the authority to negotiate and contractually bind the Consultant. The cover letter constitutes certification by Consultant, under penalty of perjury, that the Consultant complies with nondiscrimination requirements of the State and the Federal Government. An unsigned proposal or one signed by an individual unauthorized to bind the consultant may be rejected.

### **PROPOSAL SUBMITTAL REQUIREMENTS**

Interested firms shall submit eight (8) bound copies and one CD of the Technical Proposal and eight (8) hard copies of the Cost Proposal to:

Brandi Jones, Associate Planner  
Attn: Planning Division  
City of Irwindale  
5050 N. Irwindale Avenue  
Irwindale, CA 91706

Late proposals and postmarks will not be accepted. The Cost Proposal must be submitted separately from the Technical Proposal, in a sealed package or envelope and shall be marked "Cost Proposal for the Kaiser Permanente Irwindale Medical Office Building – Do Not Open"

### **2. RFP Questions**

Questions regarding this RFP will be answered at the Pre-Proposal Meeting; any additional questions that follow should be directed to Brandi Jones at 626.430.2260 or via email at [bjones@ci.irwindale.ca.us](mailto:bjones@ci.irwindale.ca.us).

### **3. Professional Services Agreement**

Attached is a copy of a sample Professional Services Agreement. Proposers should review this agreement and provide the City with a written statement of their willingness

to accept the terms of the agreement. If a proposer is unwilling to accept any terms of the agreement, the proposer should identify the term(s) and the reason(s) that such term(s) are unacceptable.

#### **4. Selection Process and Criteria**

The Community Development Director will review all proposals. Finalists will be asked to participate in an interview with an interview panel. Proposals will be reviewed and judged on the following criteria:

- Understanding of the Scope of Work;
- Experience with similar projects;
- Knowledge of CEQA and planning and zoning laws;
- Consultant qualifications, background, and experience;
- Qualifications and experience of Project Manager and related staff assigned to this Project;
- Qualifications of sub-consultant(s) and their role in this Project (if applicable);
- Timeline to complete; and
- Cost of services.

The City of Irwindale reserves the right to:

- Reject any and/ or all of the submittals;
- Waive any of the provisions of this RFP;
- Issue subsequent RFPs;
- Cancel the RFP;
- Waive technical errors in responses to this RFP; and
- Negotiate with any, all, or none of the respondents to the RFP on terms that vary from those provided in any Proposal.
- Award the services to a provider in the City's sole discretion based on the City's evaluation of all of the above criteria and not solely based on the proposed cost.

**ATTACHMENT:** Sample Agreement

**CITY OF IRWINDALE**  
**CONTRACT SERVICES AGREEMENT FOR**

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THIS CONTRACT SERVICES AGREEMENT (herein “Agreement”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF IRWINDALE, a municipal corporation, (herein “City”) and \_\_\_\_\_ (herein “Contractor”). (The term Contractor includes professionals performing in a consulting capacity.) The parties hereto agree as follows:

**1.0 SERVICES OF CONTRACTOR**

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which services may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor’s Proposal.

The Scope of Service shall include the Contractor’s proposal or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor’s performance of the services required by this Agreement, and shall

indemnify, defend and hold harmless City against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or

time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.9 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit “B” and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit “B” and any other provisions of this Agreement, the provisions of Exhibit “B” shall govern.

**2.0 COMPENSATION**

2.1 Contract Sum.

For the services rendered pursuant to this Agreement, the Contractor shall be compensated in accordance with the “Schedule of Compensation” attached hereto as Exhibit ”C” and incorporated herein by this reference, but not exceeding the maximum contract amount of \_\_\_\_\_ (\$\_\_\_\_\_) (herein “Contract Sum”), except as provided in Section 1.8. The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor’s rates as specified in the Schedule of Compensation, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expense, transportation expense approved by the Contract Officer in advance, and no other expenses and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City; Contractor shall not be entitled to any additional compensation for attending said meetings.

2.2 Method of Payments.

Unless some other method of payment is specified in the Schedule of Compensation, in any month in which Contractor wishes to receive payment, no later than the first (1st) working day of such month, Contractor shall submit to the City in the form approved by the City’s Director of Finance, an invoice for services rendered prior to the date of the invoice. Except as provided in Section 7.3, City shall pay Contractor for all expenses stated thereon which are approved by City pursuant to this Agreement no later than the last working day of the month.

**3.0 PERFORMANCE SCHEDULE**

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D", if any, and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

Unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance.

**4.0 COORDINATION OF WORK**

4.1 Representative of Contractor.

The following principals of Contractor are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for

directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

#### 4.2 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.3 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

#### 4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

## 5.0 INSURANCE, INDEMNIFICATION AND BONDS

### 5.1 Insurance.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

(a) Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis. If the Contract Sum is \$25,000.00 or less, the policy of insurance shall be written in an amount not less than either (i) a combined single limit of \$500,000.00 or (ii) bodily injury limits of \$250,000.00 per person, \$500,000.00 per occurrence and \$500,000.00 products and completed operations and property damage limits of \$100,000.00 per occurrence and \$100,000.00 in the aggregate. If the Contract Sum is greater than \$25,000.00 but less than or equal to \$100,000.00, the policy of insurance shall be in an amount not less than either (i) a combined single limit of \$1,000,000.00 for bodily injury, death and property damage or (ii) bodily injury limits of \$500,000.00 per person, \$1,000,000.00 per occurrence and \$1,000,000.00 products and completed operations and property damage limits of \$500,000.00 per occurrence and \$500,000.00 in the aggregate. If the Contract Sum is greater than \$100,000.00, the policy of insurance shall be in an amount not less than \$5,000,000.00 combined single limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of \$250,000.00 per person and \$500,000.00 per occurrence and property damage liability limits of \$100,000.00 per occurrence and \$250,000.00 in the aggregate or (ii) combined single limit liability of \$500,000.00. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Additional Insurance. Policies of such other insurance, including professional liability insurance, as may be required in the Special Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its officers, employees and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence

until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Agent Initials

The Contractor agrees that the provisions of this Section 5.1 shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.3 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section 5.1.

5.2 Indemnification.

Contractor agrees to indemnify the City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the negligent acts or omissions of Contractor hereunder, or arising from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of the City, its officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents or employees, who are directly responsible to the City, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in

connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

### 5.3 Performance Bond.

Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement, unless such requirement is waived by the Contract Officer. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

### 5.4 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. In the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by this Section 5 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

## **6.0 RECORDS AND REPORTS**

### 6.1 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor

shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

## 6.2 Records.

Contractor shall keep, and require subcontractors to keep, such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

## 6.3 Ownership of Documents.

All drawings, specifications, reports, records, documents and other materials prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and the City shall indemnify the Contractor for all damages resulting therefrom. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

## 6.4 Release of Documents.

The drawings, specifications, reports, records, documents and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

# **7.0 ENFORCEMENT OF AGREEMENT**

## 7.1 California Law.

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

## 7.2 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefor. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's or the Contractor's right to terminate this Agreement without cause pursuant to Section 7.8.

## 7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

## 7.4 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

## 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of \_\_\_\_\_ (\$\_\_\_\_\_) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### 7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **8.0 CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### 8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

#### 8.2 Conflict of Interest.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

#### 8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

### **9.0 MISCELLANEOUS PROVISIONS**

#### 9.1 Notice.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF IRWINDALE, 5050 N. Irwindale

Ave., Irwindale, CA 91706, and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

#### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

#### 9.3 Integration; Amendment.

It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

#### 9.4 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

#### 9.5 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

**CITY:**

CITY OF IRWINDALE  
a municipal corporation

\_\_\_\_\_  
Mayor \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
City Attorney

**CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[END OF SIGNTURES]

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**EXHIBIT “B”**  
**SPECIAL REQUIREMENTS**

**EXHIBIT “C”**  
**SCHEDULE OF COMPENSATION**

**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**