

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN
THE CITY OF CATHEDRAL CITY, CALIFORNIA
AND
NAI CONSULTING, INC.**

This Agreement for Design Professional Services ("Agreement") is entered into as of July 1, 2017 ("Effective Date") by and between the City of Cathedral City, a municipal corporation ("City") and NAI Consulting, Inc., a California Corporation ("Design Professional"). City and Design Professional are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

A. City has sought, by request for proposals, the performance of the engineering services defined and described particularly in Section 2 of this Agreement.

B. Design Professional, following submission of a proposal for the performance of the services defined and described particularly in Section 2 of this Agreement, was selected by the City to perform those services.

C. Design Professional was selected by the City on the basis of Design Professional's demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.

D. Pursuant to the City of Cathedral City's Municipal Code, City has authority to enter into this Design Professional Services Agreement and the City Manager has authority to execute this Agreement.

E. The Parties desire to formalize the selection of Design Professional for performance of those services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of Section 21 "Termination of Agreement" of this Agreement, the Term of this Agreement is for two (2) years, with options for two-one year extensions, commencing on the Effective Date.

SECTION 2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.

(a) Scope of Services. Design Professional agrees to perform the services set forth in Exhibit "A" "Scope of Services" (hereinafter, the "Services") and made a part of this Agreement by this reference.

(b) Schedule of Performance. The Services shall be completed pursuant to the schedule specified in Exhibit "A." Should the Services not be completed pursuant to that schedule, the Design Professional shall be deemed to be in Default of this Agreement. The City, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Design Professional to continue performing the Services.

SECTION 3. ADDITIONAL SERVICES.

Design Professional shall not be compensated for any work rendered in connection with its performance of this Agreement that are in addition to or outside of the Services unless such additional services are authorized in advance and in writing in accordance with Section 27 "Administration and Implementation" or Section 29 "Amendment" of this Agreement. If and when such additional work is authorized, such additional work shall be deemed to be part of the Services.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Design Professional the amounts specified in Exhibit "B" "Compensation" and made a part of this Agreement by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed One Hundred Fifty Thousand dollars (\$150,000), unless additional compensation is approved in writing in accordance with Section 27 "Administration and Implementation" or Section 29 "Amendment" of this Agreement.

(b) Each month Design Professional shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-Design Professional contracts. Sub-Design Professional charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. If the compensation set forth in subsection (a) and Exhibit "B" include payment of labor on an hourly basis (as opposed to labor and materials being paid as a lump sum), the labor category in each invoice shall include detailed descriptions of task performed and the amount of time incurred for or allocated to that task. City shall independently review each invoice submitted by the Design Professional to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Design Professional for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by Design Professional which are disputed by City, City will use its best efforts to cause Design Professional to be paid within forty-five (45) days of receipt of Design Professional's correct and undisputed invoice.

(d) Payment to Design Professional for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Design Professional.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

City may inspect and accept or reject any of Design Professional's work under this Agreement, either during performance or when completed. City shall reject or finally accept Design Professional's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Design Professional's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Design Professional's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 17 "Indemnification" and Section 18 "Insurance."

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Design Professional in the course of providing the Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Design Professional. Upon completion, expiration or termination of this Agreement, Design Professional shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Design Professional in the course of providing the Services pursuant to this Agreement, Design Professional's guarantees and warranties in Section 9 "Standard of Performance; Familiarity With Work" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

SECTION 7. DESIGN PROFESSIONAL'S BOOKS AND RECORDS.

(a) Design Professional shall maintain any and all documents and records demonstrating or relating to Design Professional's performance of the Services. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Design Professional pursuant to this Agreement. Any and all such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Design Professional's address indicated for receipt of notices in this Agreement.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Design

Professional's business, City may, by written request, require that custody of such documents or records be given to the City. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

SECTION 8. INDEPENDENT CONTRACTOR.

(a) Design Professional is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Design Professional shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

(b) The personnel performing the Services under this Agreement on behalf of Design Professional shall at all times be under Design Professional's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Design Professional or any of Design Professional's officers, employees, or agents except as set forth in this Agreement. Design Professional shall not at any time or in any manner represent that Design Professional or any of Design Professional's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

(c) Neither Design Professional, nor any of Design Professional's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Design Professional expressly waives any claim Design Professional may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE; FAMILIARITY WITH WORK.

(a) Design Professional represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Design Professional shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services. In meeting its obligations under this Agreement, Design Professional shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Design Professional under this Agreement, and shall use such skill, prudence, and diligence as other members of Design Professional's profession commonly possess and exercise. In addition to the general standards of performance set forth in this section, additional specific standards of performance and performance criteria may be set forth in Exhibit "A" "Scope of Work" that shall also be applicable to Design Professionals work under this Agreement. Where there is a conflict between a general and a specific standard of performance or performance criteria, the specific standard or criteria shall prevail over the general.

(b) Design Professional warrants that (1) it has thoroughly investigated and considered the work to be performed, (2) it has investigated the issues, regarding the scope of services to be provided, (3) it has carefully considered how the work should be performed, and (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

Design Professional shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Design Professional shall obtain any and all licenses, permits and authorizations necessary

to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Design Professional to comply with this section.

SECTION 11. PREVAILING WAGE LAWS.

(a) **Covenant to Comply.** Consultant covenants that it shall fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). For purposes of this Section 25(a) only, the term “subcontractors” shall not include suppliers, manufacturers, or distributors. Consultant further covenants that it shall take all practicable steps to ensure that its subcontractors comply with Prevailing Wage Laws if applicable to work performed by subcontractors. References to “Covered Services” hereinafter shall designate such Services as are subject to Prevailing Wage Laws.

(b) **Payroll Records.** Consultant and all subcontractors performing Covered Services shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey person, apprentice, or other employee. All payroll records shall be certified as being true and correct by Consultant or the subcontractors performing Covered Services keeping such records; and the payroll records shall be available for inspection at all reasonable hours at Consultant’s principal office.

(c) **Subcontracts.** Any subcontract entered into as a result of this Agreement if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

SECTION 12. NONDISCRIMINATION.

Design Professional shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation - Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the selection and retention of Subconsultants, including procurement of material and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

SECTION 13. DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION

(a) This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

(b) The goal for DBE participation for this Agreement is 0%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto in Exhibit D and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

(c) DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.

(d) Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.

(e) A DBE firm may be terminated only with prior written approval from the City and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting City consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

(f) A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

(g) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

(h) If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

(i) Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business

address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

(j) Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

(k) If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to the City's Contract Administrator within 30 days.

SECTION 14. COST PRINCIPLES

(a) Notwithstanding any other provision of this Agreement, Consultant agrees that the Contract Cost Principles and Procedures set forth in 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

(b) In providing the services under this Agreement, Consultant agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(c) Consultant acknowledges that payments made by City to Consultant under this Agreement are subject to audit by the California Department of Transportation ("Caltrans") and/or the federal government. The Consultant agrees to adhere to the Accounting and Auditing Guidelines for contracts with Caltrans available at dot.ca.gov, as well as the federal guidelines set forth herein. Any cost for which payment has been made to Consultant that is determined by a subsequent audit to be unallowable under 49 CFR, Part 18, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., or under Caltrans auditing principals is subject to repayment by Consultant to the City. In such case, the City shall provide Consultant with a copy of the audit findings and Consultant shall make the payment within ten days of City's request.

SECTION 15. CONFLICTS OF INTEREST.

(a) Design Professional covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Design Professional's performance of the Services. Design Professional further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express

written consent of the City Manager. Design Professional agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

(b) City may determine that Design Professional must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests. If such a determination is made, Design Professional shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk within ten (10) days of the request.

(c) City understands and acknowledges that Design Professional is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Design Professional is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

(d) City understands and acknowledges that Design Professional will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

SECTION 16. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by Design Professional in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Design Professional. Design Professional shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

(b) Design Professional, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Design Professional gives City notice of such court order or subpoena.

(c) If Design Professional, or any officer, employee, agent or subcontractor of Design Professional, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Design Professional for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Design Professional's conduct.

(d) Design Professional shall promptly notify City should Design Professional, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Design Professional or be present at any deposition, hearing or similar proceeding. Design Professional agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Design Professional. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

SECTION 17. INDEMNIFICATION.

(a) Indemnification by Design Professional. As provided under Civil Code Section 2782.8, Design Professional shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, actions and proceedings (whether at law or equity, administrative or judicial), demands, orders, judgments, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, (collectively "Claims") to the extent same arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional, its officers, agents, employees or sub-consultants (or any entity or individual that Design Professional shall bear the legal liability thereof) in the performance of professional services under this Agreement, with the understanding that in the event Claims are found by the trier of fact to have been caused by the joint or concurrent negligence of the City and its contractors and Design Professionals, and Design Professional, damages and expenses from both indemnity and duty to defend obligations shall be borne by each party in proportion to its negligence.

(b) Indemnification from Subcontractors. Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-consultant, subcontractor or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Design Professional fails to obtain such indemnity obligations from others as required here, Design Professional agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Design Professional and shall survive the termination of this Agreement or this section.

(c) City's Negligence. The provisions of this section do not apply to Claims occurring as a result of City's sole negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.

SECTION 18. INSURANCE.

Design Professional agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "C" "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. Design Professional agrees to provide City with copies of required policies upon request.

SECTION 19. ASSIGNMENT.

The expertise and experience of Design Professional are material considerations for this Agreement. City has an interest in the qualifications and capability of the persons and entities who will fulfill the duties and obligations imposed upon Design Professional under this Agreement. In recognition of that interest, Design Professional shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Design Professional's duties or obligations under this Agreement without the prior written consent of the City. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement pursuant to Section 21

“Termination of Agreement.” City acknowledges, however, that Design Professional, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

SECTION 20. CONTINUITY OF PERSONNEL.

Design Professional shall make every reasonable effort to maintain the stability and continuity of Design Professional’s staff and subcontractors, if any, assigned to perform the Services. Design Professional shall notify City of any changes in Design Professional’s staff and subcontractors, if any, assigned to perform the Services prior to and during any such performance.

SECTION 21. TERMINATION OF AGREEMENT.

(a) City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Design Professional. In the event such notice is given, Design Professional shall cease immediately all work in progress.

(b) Design Professional may terminate this Agreement for cause at any time upon thirty (30) days written notice of termination to City.

(c) If either Design Professional or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Design Professional, or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Design Professional or City, all property belonging exclusively to City which is in Design Professional’s possession shall be returned to City. Design Professional shall furnish to City a final invoice for work performed and expenses incurred by Design Professional, prepared as set forth in Section 4 “Compensation and Method of Payment” of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 “Compensation and Method of Payment” of this Agreement.

SECTION 22. DEFAULT.

In the event that Design Professional is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Design Professional for any work performed after the date of default. Instead, the City may give notice to Design Professional of the default and the reasons for the default. The notice shall include the timeframe in which Design Professional may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Design Professional is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Design Professional does not cure the default, the City may take necessary steps to terminate this Agreement under Section 19 “Termination of Agreement.” Any failure on the part of the City to give notice of the Design Professional’s default shall not be deemed to result in a waiver of the City’s legal rights or any rights arising out of any provision of this Agreement.

SECTION 23. EXCUSABLE DELAYS.

Design Professional shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Design Professional.

Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

SECTION 24. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Services shall be furnished to Design Professional in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

SECTION 25. NOTICES.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City:	City of Cathedral City Attn: City Manager 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234
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To Design Professional:	Lloyd Nickerson, President NAI Consulting, Inc. 68-955 Adelina Road Cathedral City, CA 92234
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Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 26. AUTHORITY TO EXECUTE.

The person or persons executing this Agreement on behalf of Design Professional represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Design Professional to the performance of its obligations hereunder.

SECTION 27. ADMINISTRATION AND IMPLEMENTATION.

This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 27 "Amendment" and the City Manager's contracting authority under the Cathedral City Municipal Code.

SECTION 28. BINDING EFFECT.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

SECTION 29. AMENDMENT.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Design Professional and by the City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City Manager's contracting authority under the Cathedral City Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 30. WAIVER.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Design Professional shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 31. LAW TO GOVERN; VENUE.

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

SECTION 32. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 33. ENTIRE AGREEMENT.

This Agreement, including the attached Exhibits "A" through "C", is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Design Professional and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding.

SECTION 34. SEVERABILITY.

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 35. CONFLICTING TERMS.

Except as otherwise stated herein, if the terms of this Agreement conflict with the terms of any Exhibit hereto, or with the terms of any document incorporated by reference into this Agreement, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

CITY OF CATHEDRAL CITY

NAI CONSULTING< INC>

Charles P. McClendon
City Manager

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

Gary F. Howell
City Clerk

APPROVED AS TO FORM

Eric S. Vail
City Attorney

NOTE: DESIGN PROFESSIONAL'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DESIGN PROFESSIONAL'S BUSINESS ENTITY.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)

On _____, 2017, before me, _____,
Date Name And Title Of Officer (e.g.,

“Jane Doe, Notary Public”)

personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

DESCRIPTION OF ATTACHED DOCUMENT

Signer's Name: _____

- .. Individual
- .. Corporate Officer

Title(s)

- .. Partner(s) .. Limited
- .. General

- .. Attorney-In-Fact
- .. Trustee(s)
- .. Guardian/Conservator
- .. Other: _____

Title or Type of Document

Number Of Pages

Signer is representing:
Name Of Person(s) Or Entity(ies)

Date Of Document

Signer(s) Other Than Named Above

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Signer(s) Other Than Named Above

EXHIBIT "A"
SCOPE OF SERVICES

SCOPE OF WORK

TASK 1: Assist in Writing Grant Applications

The first step in managing grant funded projects is to secure the regional, state, or federal funding. Besides CVAG's well known 75% project funding support for projects listed in the Transportation Project Prioritization Study (TPPS) report, there are numerous other grant opportunities.

Common transportation grant opportunities include:

1. TOA Article 3 (SB821) Bicycle and Pedestrian Facilities through RCTC
2. Congestion Mitigation and Air Quality (CMAQ) through CVAG
3. Surface Transportation Funding (STP) through RCTC
4. Highway Safety Improvement Program (HSIP) through Caltrans
5. Active Transportation Program (ATP) through CTC
6. Highway Bridge Program (HBP) through Caltrans
7. State Transportation Improvement Program (STIP) through CTC

As grant opportunities arise, NAI will work with the City in drafting the language in the application and preparing all information necessary for successful application.

TASK 2: Coordination with RCTC

The Riverside County Transportation Commission (RCTC) acts as the Regional Transportation Planning Agency (RTPA) for Riverside County. They are the liaisons to the Southern California Association of Governments (SCAG) who are mandated by federal law to operate and maintain the Federal Transportation Improvement Plan (FTIP) for several counties in Southern California including Riverside County. Local agencies must work directly with RCTC in order to properly fund and manage their projects in the FTIP.

Common coordination activities include: updating the FTIP with appropriate project changes; provide a general City update to RCTC every two years; provide a list of projects to be included in the Regional Transportation Plan (RTP); and provide any funding, invoice, or other project related update request by RCTC.

TASK 3: Coordination with Caltrans Local Assistance

The California Department of Transportation (Caltrans) Department of Local Assistance has oversight for federally funded projects. As the stewards for the Federal Highway Administration (FHWA) in enforcing federal regulations, many funding and other project related approvals must be obtained from Caltrans before a project can move forward.

Common coordination activities include document submittals, meeting requests, and maintaining an open communication channel. NAI shall contact Caltrans Local Assistance when preparing a document to discuss their initial feedback and to inform them of the pending submittal. In this way, Caltrans will be aware of the document being sent for approval. After submittal, follow up with Caltrans persistently to receive the needed approval. If any comments are received, correct the documents and return to Caltrans so that the projects are kept on schedule.

TASK 4: Coordination with CTC

The California Transportation Commission (CTC) oversees all state funded projects. While the submittals still go through Caltrans, the CTC will approve most project related information including funding, environmental documents, and ROW clearance. Unlike Caltrans approvals, the CTC only meets monthly and to get an approval on the agenda, local agencies must submit the appropriate documents to Caltrans two (2) months before the desired CTC meeting.

For state funded projects, NAI will assist the City in coordinating with the CTC to ensure correct and on-time submittals. In coordinating with the CTC, NAI shall work with both Caltrans and RCTC to ensure all project details are correctly outlined.

TASK 5: Assist with State and Federal Project Invoicing

Throughout the project, any state or federally funded phase requires diligent project invoicing. All state and federal funding agreements are reimbursement agreements, meaning the City must first pay the contractor or consultant invoice then request reimbursement from Caltrans. Diligent project invoicing is not only required by state and federal funding agreements, but is also beneficial to the City.

Caltrans reimbursement requests shall be submitted at least once every six (6) months, but not more frequently than once per month. Submitted invoices will follow the procedures outlined in LAPM Chapter 5, "Invoicing". City shall furnish NAI a copy of all invoices and signed checks paid to contractors and consultants requesting reimbursement. NAI will prepare the invoice backup and tracking log and bring to the City for signature prior to transmitting to Caltrans. NAI will quickly respond to any Caltrans comment and keep the City informed of all progress.

TASK 6: Assist with Project Funding Cost Adjustments

Throughout the life a capital improvement project, the funding may need to be adjusted. This could occur if the City has cost overruns and requests additional funding from the grant administrator, or if funds require adjustment within a specific phase of work, i.e. from Construction Engineering to the Construction Contract. NAI will prepare the finance letter and other appropriate documentation required for the cost adjustments and bring to the City for signature before transmitting to Caltrans.

TASK 7: Prepare and Submit Request for Federal Project Number

A federal project number is required for all federally funded projects. Before any documents are submitted for Caltrans approval a federal project number must be obtained. The request for federal project number will follow the procedures outlined in LAPM Chapter 3, "Project Authorization". A field review form performed in accordance with LAPM Chapter 7, "Field Review", must be included with the request for federal project number.

TASK 8: Prepare and Submit Request for Allocation (State Funded Projects)

A request for funding allocation is required for all state funded phases of a project. Typical phases of a capital improvement project subject to state funding include the Project Approval and Environmental Document (PA&ED) Phase; the Plans, Specifications, and Estimate (PS&E) Phase, the Right-of-Way (ROW) Phase, and the Construction (CON) Phase. Allocation is required prior to performing any reimbursable work beginning with the date that the CTC meets to approve the allocation.

The request for allocations will follow the currently adopted guidelines established in the LAPG for each particular state funding source.

TASK 9: Prepare and Submit RFA for Federally Funded Projects

The request for authorization (RFA) is required for all federally funded phases of a project. Typical phases of a capital improvement project subject to federal funding include Preliminary Engineering (PE), ROW, Utility Relocations, and CON. Authorization is required prior to beginning any reimbursable work beginning with the date that the FHWA representative signs the project authorization document (E-76).

TASK 10: Review PES and Environmental Technical Studies

The first task of any capital improvement project is receiving approved environmental clearance. For regional and state funded projects, a CEQA document is required which is the responsibility of the local agency. However, when federal funds are involved, the City is required to receive NEPA clearance as well. The NEPA document is provided by Caltrans as part of their stewardship agreement with FHWA. As such, the City must submit a Preliminary Environmental Study (PES) to Caltrans that outlines the environmental setting for the project. The PES identifies any technical studies that may be necessary and the level of environmental document required (CE, EA, or EIS).

As necessary, NAI will provide assistance in reviewing the PES form and any technical studies that may be required. NAI shall apply prior experience in managing projects through the NEPA process and scope the environmental setting in the PES to avoid unnecessary and costly technical studies. NAI will also review any required technical study to ensure the study is scoped properly to avoid unnecessary mitigation measures. All reviews will follow the guidelines outlined in LAPM Chapter 6, "Environmental Procedures", and the Caltrans Standard Environmental Reference (SER).

TASK 11: Prepare the PS&E, and Engineer's Estimate for Minor Capital Projects

As directed by the City Engineer, NAI shall assist the City in preparing plans and specification for basic capital improvement projects, such as ADA upgrades, pavement rehabilitation, and restriping projects. Work with the City to identify the full scope of work, prepare any plans necessary on full size sheets or just exhibits as the project dictates, prepare the technical specifications required for any material or methods being used on the project in conformance with the Standard Specifications for Public Works Construction or other standard specifications as necessary, and determine the estimate of probable construction costs for budgeting purposes.

TASK 12: Prepare Project Specifications with State and Federal Provisions

One of the main components of the design phase of a capital improvement project is preparing the project specifications for the contractors to bid. For state and federal aid projects, these specifications must include numerous additional provisions, including establishing DBE goals, and forms for the bid to remain eligible for federal reimbursement.

NAI shall work with the currently adopted standard specifications for the City to include the additional provisions and forms. The additional clauses can either be inserted into the general specifications section or create a new section titled "Special Federal Specifications". All language will be added in accordance with LAPM Chapter 12, "Plans, Specifications, and Estimate".

TASK 13: Review/Draft Utility Agreements

Many capital improvement projects require either the relocation or adjustment of utility facilities. When state and federal funds are involved in the project, the City must determine who is fiscally responsible for the utility relocation or adjustment and have a utility agreement defining the roles of each agency. If the utility is responsible for adjusting their facilities (City has prior rights) then a simple utility notification is adequate. If the City is responsible for adjusting the facility (utility has prior rights) then a Caltrans specific utility agreement is required along with Specific Authorization from FHWA for the relocation to be eligible for federal reimbursement.

Depending on the complexity of the project, NAI will either assist the City in drafting utility agreements or review utility agreements prepared by others for conformance with Caltrans procedures. Utility agreements must be executed prior to receiving ROW Certification. All utility agreements will be prepared per the guidelines outlined in LAPM Chapter 14, "Utility Relocations".

TASK 14: Review/Draft ROW Certification

Before any federal project can begin the construction phase, the City must certify that it has secured all proper rights and easements to all properties being accessed. This Right-of-Way (ROW) Certification is then submitted to Caltrans for review and approval. The ROW Certification could include full acquisitions with relocation assistance, possession and use agreements, temporary construction easements, and/or utility agreements among other items.

Depending on the complexity of the project, NAI will either assist the City in drafting the ROW Certifications or review ROW Certifications prepared by others for conformance with Caltrans procedures. All ROW Certifications will be prepared per the guidelines outlined in LAPM Chapter 13 "Right of Way".

TASK 15: Review/Draft PS&E Certification

Another step that must be completed for federal aid capital improvement projects before beginning the construction phase is for the City to certify that the PS&E is prepared in accordance with all applicable local, state, and federal standards. Depending on the type of construction, whether or not the project is on the National Highway System (NHS), and the size of the project, Caltrans may or may not specify what design standards to use per LAPM Chapter 11, "Design Standards". This PS&E Certification also includes a checklist of federal contract language that must be included in the standard specifications.

NAI will work with the City from the beginning of a design project to ensure proper design standards are used, and will review existing PS&E documents to ensure all items in the PS&E Certifications are completed adequately. This may include securing any design exceptions as needed. The PS&E Certification will be completed in accordance with the guidelines outlined in LAPM Chapter 12, "Plans, Specifications, and Estimate".

TASK 16: Assist with Bidding Procedures and Provide Construction Support

For federally funded projects, there are many challenges that cities face once the authorization to proceed with construction (E-76) is received. From following the proper bid advertising criteria, to reviewing DBE good faith efforts, to proper construction management and inspection, navigating the federal regulations and paperwork can be daunting.

Before construction begins, NAI shall meet with the City and outline all federal construction requirements. Advise the City in establishing bid advertising procedures as required, attending any pre-bid meetings, reviewing bid documents for federal compliance, preparing bid summary sheets, reviewing DBE goals and good faith efforts, and submitting the award package to Caltrans. During construction, we will assist the construction management team by reviewing subcontractor request forms, labor compliance, progress payments, and contract change orders. We will ensure that the City complies with all guidelines outlined in LAPM Chapter 15, "Advertise and Award Project", Chapter 16, "Administer Construction Contracts", and the Caltrans Construction Manual as necessary.

TASK 17: Prepare and Submit Final Report of Expenditures

NAI shall prepare and submit the Final Report of Expenditures for federal aid projects for the City. Work with the City to ensure the material certification is filled out properly noting any exceptions. We will compile the contract change order summary, final detail estimate, and final inspection form.

Ensure the contractor submits final DBE paperwork prior to the City issuing the Notice of Completion to Include in the Final Report of Expenditures.

TASK 18: Assist with Ancillary State and Federal Requirements

Assist the City in maintaining good standing with Caltrans Local Assistance . We will be responsible to track and update the DBE/ADA annual forms in accordance with LAPM Chapter 9 "Civil Rights and Disadvantaged Business Enterprises", and ensure the City's QAP is in compliance with Caltrans procedures outlined in the Caltrans OAP Manual.



EXHIBIT "B"
COMPENSATION

The following billing rates shall be used for the initial duration of this Agreement, July 1 2017 to June 30, 2019:

Principal	\$150.00/hour
Senior Engineer	\$140.00/hour
Engineering Assistant	\$80.00/hour
Office Manager	\$75.00/hour

EXHIBIT "C"

INSURANCE

A. Insurance Coverages. Service Provider shall provide and maintain insurance, acceptable to the City, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Service Provider, its agents, representatives or employees. Service Provider shall procure and maintain the following scope and limits of insurance:

Only the following “marked” requirements are applicable:

X **Commercial General Liability (CGL):** Insurance written on an occurrence basis to protect Service Provider and City against liability or claims of liability which may arise out of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). Coverage shall be at least as broad as Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. additional insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

X **Vehicle Liability Insurance:** Vehicle liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars (\$1,000,000). A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits. Coverage shall be at least as broad as Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the approval of the City.

X **Workers’ Compensation Insurance:** Workers’ Compensation insurance that includes a minimum of one million dollars (\$1,000,000) of employers’ liability coverage. Service Provider shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers’ Compensation Act is filed against City by a bona fide employee of Service Provider participating under this Agreement, Service Provider is to defend and indemnify the City from such claim.

X **Professional Liability Insurance:** Professional liability insurance appropriate to the Service Provider’s profession in an amount not less than one million dollars \$1,000,000 per occurrence. This coverage may be written on a “claims made” basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to Services performed under this Agreement. The insurance must be maintained for at least three (3) consecutive years following the completion of Service Provider’s services or the termination of this Agreement. During this additional three (3) year period, Service Provider shall annually and upon request of the City submit written evidence of this continuous coverage.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Coverages.

a. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to City.

b. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

2. Commercial General Liability and Automobile Liability Coverages.

a. City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Service Provider performs; products and completed operations of Service Provider; premises owned, occupied or used by Service Provider; or automobiles owned, leased, hired or borrowed by Service Provider. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, or employees.

b. Service Provider's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Service Provider's insurance.

c. Service Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. Any failure to comply with the reporting or other provisions of the insurance policies, including breaches of warranties, shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

e. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.

3. Workers' Compensation Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Service Provider.

C. Other Requirements. Service Provider agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City may require that Service Provider furnish City with copies of original endorsements effecting coverage required by this Exhibit "C". The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Service Provider shall furnish certificates and endorsements from each sub-contractor identical to those Service Provider provides.

2. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers, or the Service Provider shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Service Provider's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.