



# Request for Proposal For Fund Developer

City of Riverside  
Development Department

August 11, 2008

The City of Riverside is currently seeking proposals from qualified organizations/individuals that can raise sponsorship funds and grants for City events, programs and projects. The sponsorship and/or grants needs to target appropriate businesses/organizations for the specific special events, programs and/or projects. The organization/individual will need to identify, engage and successfully solicit corporations, businesses and individuals for the purpose of securing and increasing sponsorships and/or grants. The goal of fund development is to increase funding from outside resources and decrease dependence on the General Fund. We are seeking an organization/individual who can work with the Arts & Cultural Affairs Division of the Development Department to increase the visibility and prominence of special events, programs and projects.

Enclosed is a Request for Proposals. Included in this request are the due dates, qualifications, requirements, and a sample of a Professional Services Agreement (PSA).

If you have any questions, please contact Jonathan Yorba at 951-826-5608 or [iyorba@riversideca.gov](mailto:iyorba@riversideca.gov)

Sincerely,

Jonathan Yorba  
Arts & Cultural Affairs Manager  
City of Riverside

**Fund Developer  
Request for Proposal**

**Issue Date: August 8, 2008**

The Request for Proposal is set up in the following format:

SECTION I: Introduction  
SECTION II: Performance Requirements  
SECTION III: Questionnaire  
SECTION IV : Sample PSA

**SECTION I INTRODUCTION**

**1. PURPOSE**

The City of Riverside is soliciting proposals from organizations/individuals that are experienced and have the capability to develop and produce event sponsorships, grant writing, gifts and donations.

**2. PROPOSAL TIME SCHEDULE**

August 11, 2008	Request for Proposal (RFP) mailing
August 25, 2008	Discrepancies and/or questions of substance pertaining to this Request for Proposal
August 28, 2008	Request for Proposal Due Before 4 pm to Development Department
September 4, 2008	Evaluation of Proposals
September 18, 2008	Award Job
October 2008	Start

\* The timeline and dates set forth herein are Approximations only. Proposer should not rely on any assumption that this preliminary timeline or any specific dates are firm.

**3. SUBMITTAL OF PROPOSALS**

A. Submit four (4) copies of your sealed proposal no later than Thursday, August 28, 2008 before 4:00 pm, addressed to:

City of Riverside  
Development Department, 5<sup>th</sup> Floor  
Attn: Jonathan Yorba  
3900 Main Street  
Riverside, CA 92522

It shall be the responsibility of the organization/individual submitting proposals to carefully review this Request for Proposal and to seek the necessary clarification prior to submitting their proposal. Discrepancies and/or questions of substance pertaining to this Request for Proposal shall be submitted in writing (3900 Main Street, 5<sup>th</sup> Floor, Riverside, CA 92501) or by faxing (951-826-2591) a letter to Jonathan Yorba, Arts & Cultural Affairs Manager, on or before August 25, 2008.

A written statement must be submitted to the City of Riverside reflecting the contractor's understanding of the scope of duties for the event sponsorship, grant writing and marketing collateral implementation. Contractor shall also provide a list of four (4) references (agency name, contact person, title, address, and telephone number) from organizations/businesses with comparable event sponsorship, grant writing and marketing collateral that contractor has completed, verifying the contractor's ability to provide a contracted product.

Proposals must be accompanied by a cover letter signed by an individual authorized to bind the proposing entity. The proposal must include a statement which acknowledges acceptance of all the terms and conditions of the Request for Proposal. Any exceptions to the terms and conditions must be clearly identified within the response to the Request for Proposal.

#### **4. Public Records Act**

All Proposals submitted in response to this RFP become the property of the City and under the Public Records Act (Government Code § 6250 et seq.) are public records, and as such may be subject to public review. However, the proposals shall not be disclosed until negotiations are complete and a recommendation for selection and award is made to the City Council. Proposals will be available for public review at least 10 days before selection and award.

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

#### **5. EVALUATION PROCESS AND CRITERIA**

Proposals will be evaluated according to the responses given to all questions and the extent to which requirements are met in this RFP and should include the information listed below.

The City will use the following criteria in its evaluation:

- A. Proposal from organization/individual
- B. References
- C. Ability to support timelines
- D. Ability to develop, implement and manage multiple fund development projects
- E. Ability to develop, implement and manage gifts, donations and funding compliance requirements
- F. Ability to budget for marketing materials/sponsorship packages
- G. Ability, experience, reliability, and expertise of company/individual
- H. The City's past experience with the organization/individual, if applicable

#### **6. CONTRACT TERMS**

A Professional Consultant Services Agreement (a sample of which is included as Attachment 1) shall be signed by the successful Consultant in duplicate counterpart and returned, together with the certification of the specified insurance, within 15 days from the date the City mails, or by other means delivers, the contract documents to the Consultant. No agreement shall be binding upon the City until the documents are completely executed by the Consultant, executed by the City, and approved by the City Attorney. The terms of the Agreement are non-negotiable. Failure to execute and return the contract agreement and acceptable insurance in a timely manner may be just cause for the City to rescind the award.

A. Errors and Omissions Insurance

The Consultant shall obtain and maintain errors and omissions professional liability insurance in the minimum amount of \$1,000,000 to protect the City from claims resulting from the Consultant's design engineering activities. This minimum amount of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations.

B. Liability Insurance

The Consultant shall obtain and maintain the liability insurance coverage and amounts set forth in the attached sample agreement.

C. Workers' Compensation Insurance

The Consultant shall comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing the project. Prior to City's execution of the Agreement, Consultant shall file with City either (1) a certificate of insurance showing that such insurance is in effect, or that Consultant is self-insured for such coverage, or (2) a certified statement that Consultant has no employees, and acknowledging that if Consultant does employ any person, the necessary certificate of insurance will immediately be filed with City.

D. Permits and Local Licenses

The Consultant shall obtain and pay for all licenses necessitated by his operations. Prior to starting any work, the Consultant including all sub-consultants is required to have a City of Riverside Business Tax Registration valid for the life of the contract.

E. Method of Compensation

While individual tasks and associated charges may vary for each submittal required for the project, the selected Consultant and the City will agree on a not-to-exceed price for the overall project.

As the work proceeds, the Consultant shall submit to the City monthly requests for payment that describe in detail the services actually rendered during the preceding month and the paid invoice cost of expenses directly related to this project.

## **7. CONTRACT AWARD**

All proposals shall be firm and irrevocable for a 90 calendar day period in order to allow time for evaluations, interviews, selection and contract award by the City.

The City reserves the right to withdraw this RFP at anytime without prior notice or to reject any or all of the proposals submitted. Further, the City makes no representation that any agreement will be awarded to any proposer responding to this RFP.

The City shall not be liable for any costs and expenses incurred by the proposer in preparing and submitting a response to this RFP.

The proposer, by submitting a proposal, waives all rights to appeal or seek any legal remedy whatsoever regarding any aspect of the RFP, the selection process, the City's review of the proposal, and any agreement that the City may enter into as a result of the proposal submitted.

This RFP can be used for contract renewal up to 2 (two) years of its effective date.

## **SECTION II PERFORMANCE REQUIREMENTS**

### **A. Scope of Work**

1. The Arts & Cultural Affairs Manager will monitor the services provided by the contractor. If the services are not deemed satisfactory, the Contractor will be given written notice. This may affect the future use of the organization/individual by the City.
2. The production of this job is time sensitive and deadlines must be met, which will be indicated in a timeline submitted to the contractor prior to the start of the job.
3. Job specifications for the **Fund Developer** will be as follows:
  - a. Overall Program
    - i. Develop and implement a strategy to increase and diversify sponsorships for City projects and programs to expand the City's sponsorship program; including business categories and revenue-based partnership initiatives;
    - ii. Develop and manage gifts and donations;
    - iii. Conduct negotiations and develop sponsorship agreements with potential sponsors. (The City has the right to reject any potential business partner or proposed event sponsor.);
    - iv. Assist City Staff, as necessary, in presenting the proposed sponsorship agreement(s), gifts and/or donations to City Council Members, City officials, and/or the media;
    - v. Assist in the management and monitor compliance requirements of the executed sponsorship/advertising agreement(s), gifts and or donations;
    - vi. The City must give written approval before approach to potential sponsors and/or donors is made;
    - vii. The City must give written approval on all printed material and information prior to distribution;
    - viii. Fund Developer remuneration is to be a 10% commission of all funds raised, developed, acquired and processed by finance by the contractor on behalf of the City

### SECTION III QUESTIONNAIRE

#### Proposer Information Questionnaire

Name of Proposer:

Address of Proposer:	
Contact Name:	Title:
Phone Number:	
Email:	

Who would be the lead contact on this project?

<b>Name:</b>
Address:
Phone:
Fax:
Email:

With whom should financial activities be discussed?

<b>Name:</b>
Address:
Phone:
Fax:
Email:

**REFERENCES**

Names, addresses and telephone numbers of four (4) other agencies within the vicinity of Riverside or Southern California area for whom you have supplied similar services for the past twelve (12) months:

<b>Business Name:</b>
-----------------------

Address:
Contact Name:
Phone Number:
Email:

<b>Business Name:</b>
Address:
Contact Name:
Phone Number:
Email:

<b>Business Name:</b>
Address:
Contact Name:
Phone Number:
Email:

<b>Business Name:</b>
Address:
Contact Name:
Phone Number:
Email:

Attach color copies of similar work completed as requested in this proposal.

Attach any additional information as you see needed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

---

Printed Name

---

Title

---

Company Name

**SECTION IV SAMPLE PSA**

(SEE ATTACHMENT)

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

[\*\*Enter Consultant's Name\*\*]

[\*\*Enter in Description of Services\*\*]

THIS PROFESSIONAL CONSULTANT SERVICES AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, ("Effective Date") by and between the CITY OF RIVERSIDE ("City"), a California charter city and municipal corporation and [\*\*Enter in CONSULTANT'S NAME\*\*], a [\*\*Enter in entity, for example: a California corporation, a limited partnership, a limited liability company, etc.\*\*] ("Consultant").

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

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

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

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

To City

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

To Consultant

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

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

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

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

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

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

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

## 11. Indemnification.

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

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

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

11.3 **Indemnity For Design Professional Liability.** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect and hold harmless the City and the City's employees, officers, managers, agents, and Council Members ("Indemnified Parties") from and against any and all claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding, damage, cost, expense (including counsel and expert fees), judgment, civil fines and penalties, liabilities or losses of any kind or nature whatsoever to the extent the same arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, or anyone employed by or

working under the Consultant or for services rendered to the Consultant in the performance of the Contract, notwithstanding that the City may have benefited from its work or services and whether or not caused in part by the negligence of an Indemnified Party.

**11.4 Defense Obligation For Other Than Design Professional Liability.**

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

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

**12. Insurance.**

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

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

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

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

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

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

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

**12.3.1** Consultant's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

**12.3.2** Consultant's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of

not less than \$1,000,000. All of Consultant's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Consultant's performance of this Agreement, which vehicles shall include, but are not limited to, Consultant owned vehicles, Consultant leased vehicles, Consultant's employee vehicles, non-Consultant owned vehicles and hired vehicles.

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

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

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

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

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

12.5 **Subcontractors' Insurance.** Consultant shall require all of its subcontractors to carry insurance, in an amount sufficient to cover the risk of injury, damage or loss, that may be caused by the subcontractors' scope of work and activities provided in furtherance of this Agreement, including, but without limitation, the following coverages: Workers Compensation, Commercial General Liability, Errors and Omissions, and Automobile liability. Upon City's request, Consultant shall provide City with satisfactory evidence that Subcontractors have obtained insurance policies and coverages required by this section.

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

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

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

16. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

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

18. **Ownership of Documents.** All reports, maps, drawings and other contract deliverables prepared under this Agreement by Consultant shall be and remain the property of City upon City's compensation to Consultant for its services as herein provided. Consultant shall not release to others information furnished by City without prior express written approval of City.

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

20. **Solicitation.** Consultant warrants that Consultant has not employed or retained any person or agency to solicit or secure this Agreement, nor has it entered into any agreement or

understanding for a commission, percentage, brokerage, or contingent fee to be paid to secure this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement without liability and pay Consultant only for the value of work Consultant has actually performed, or, in its sole discretion, to deduct from the Agreement price or otherwise recover from Consultant the full amount of such commission, percentage, brokerage or commission fee. The remedies specified in this section shall be in addition to and not in lieu of those remedies otherwise specified in this Agreement.

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

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

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

**24. Termination.** City, by notifying Consultant in writing, shall have the right to terminate any or all of Consultant's services and work covered by this Agreement at any time. In the event of such termination, Consultant may submit Consultant's final written statement of the amount of Consultant's services as of the date of such termination based upon the ratio that the work completed bears to the total work required to make the report complete, subject to the City's rights under Sections 15 and 24 hereof. In ascertaining the work actually rendered through the termination date, City shall consider completed work, work in progress and complete and incomplete reports and other documents only after delivered to City.

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

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

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

24.2.2 City decides to abandon or postpone the Project.

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

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

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

28. **Nondiscrimination.** During Consultant's performance of this Agreement, Consultant shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Consultant agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

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

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

31. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the

parties. Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

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

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

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

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

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

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

(Signatures on following page)

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

CITY OF RIVERSIDE, a California  
charter city and municipal corporation

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

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name]

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
[Title]

CONCURS:

By: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[\*\*Department\*\*] Director

\_\_\_\_\_  
[Title]

CERTIFIED AS TO FUNDS AVAILABILITY:

\_\_\_\_\_  
Assistant City Manager/Chief Financial Officer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deputy City Attorney

Master Template  
as of 4/17/08

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**EXHIBIT "B"**  
**COMPENSATION**

**EXHIBIT "C"**

**KEY PERSONNEL**