



COMMUNITY SERVICES DISTRICT

Proudly serving Jurupa Valley and Eastvale

JURUPA COMMUNITY SERVICES DISTRICT

REQUEST FOR PROPOSALS

For:

MCCUNE FAMILY PARK TENNIS COURTS LIGHTING DESIGN

Proposal Release Date

April 14, 2022

Proposal Submittal Due Date

May 5, 2022, at 5:00 p.m.

Prepared by:

JCSD Parks & Recreation Department

13820 Schleisman Road

Eastvale, CA 92880

Attn: Steve Lawson, Director of Parks & Recreation

(951) 727-3724

SECTION I

INVITATION

The Jurupa Community Services District (District) invites proposals from qualified consultants for:

McCune Family Park Tennis Courts Lighting Design

Please read this entire RFP package and include all requested information and forms in your proposal. Proposals must be signed by an authorized agent of the company submitting a proposal in order to be considered responsive.

Tentative RFP Schedule

(Subject to change at District's discretion)

- | | |
|---|----------------------------|
| 1. Issue RFP | April 14, 2022 |
| 2. Written Questions from Consultants due | April 21, 2022 @ 5:00 p.m. |
| 3. Responses from District Due | April 26, 2022 |
| 4. Proposals Due | May 5, 2022 @ 5:00 p.m. |
| 5. Review of RFPs | May 9-13, 2022 |
| 6. Consultant Selection | May 13, 2022 |
| 7. Anticipated Start Date | May 23, 2022 |

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SECTION II

RFP INSTRUCTIONS

A. Examination of Proposal Documents

By submitting a proposal, consultants represent that they have thoroughly examined and become familiar with the work required under this RFP and that they are capable of performing quality work to achieve the District's objectives.

B. Addenda

Substantive District changes to the requirements will be made by written addendum to this RFP and posted on the District's website (<https://www.jcsd.us/business/contracts-bid-opportunities>) by April 26, 2022. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting agreement. The District shall not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instruction.

C. Clarifications

1. Examination of Documents

Should a consultant require clarifications to this RFP, the consultant shall notify the District in writing in accordance with Section C.2 below. Should it be found that the point in question is not clearly and fully set forth in the RFP, the District may post a written addendum clarifying the matter.

2. Submitting Requests

- a. All consultant questions, clarifications or comments shall be submitted via **e-mail only** to Steve Lawson, Director of Parks & Recreation at slawson@jcsd.us and must be received by the District no later than April 21, 2022 @ 5:00 p.m.
- b. All correspondence shall be clearly marked in the Subject heading with "McCune Family Park Tennis Courts Lighting Design RFP Questions". The District is not responsible for failure to respond to a request that has not been labeled as such.
- c. Inquiries received after 5:00 p.m. on April 21, 2022, will not be accepted.

3. District Responses

Responses from the District will be communicated via e-mail directly to those consultants who e-mailed questions and also posted on the District's website (<https://www.jcsd.us/business/contracts-bid-opportunities>) by addendum no later than April 26, 2022.

D. Submission of Proposals

1. Date and Time

All proposals are to be submitted to the District no later than May 5, 2022, @ 5:00 p.m. Proposals received after that date and time will be rejected by the District as non-responsive and returned unopened.

2. Address

Proposals shall be addressed as follows:

**JCSD Parks & Recreation Department
Eastvale Community Center
Attn: Steve Lawson, Director of Parks & Recreation
13820 Schleisman Road
Eastvale, CA 92880**

Proposals may be delivered in person to the Parks & Recreation Department, at the address above.

Proposals shall not be sent via e-mail or fax.

3. Identification of Proposals

Consultant shall submit a proposal package consisting of:

- a) one (1) **signed original and [two (2)] copies** of its proposal, and
- b) a completed and signed Price Form in a **separate sealed envelope**, marked "Price Form".

The proposal package shall be addressed as shown above, bearing the consultant's name and address and clearly marked as follows:

“McCune Family Park Tennis Courts Lighting Design”

4 Acceptance of Proposals

- a. The District reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- b. The District reserves the right to withdraw this RFP at any time without prior notice and the District makes no representations that any contract will be awarded to any consultant responding to this RFP.
- c. The District reserves the right to postpone proposal opening for its own convenience.

E. Pre-Contractual Expenses

Pre-contractual expenses are defined as expenses incurred by the consultant in:

- 1. preparing its proposal in response to this RFP;
- 2. submitting the proposal to District;
- 3. negotiating with District any matter related to the proposal; or
- 4. any other expenses incurred by the consultant prior to date of award, if any, of the Agreement.

The District shall not, in any event, be liable for any pre-contractual expenses incurred by consultant in the preparation of its proposal. Consultant shall not include any such expenses as part of its proposal.

F. Contract Award

Issuance of this RFP and receipt of proposals does not commit the District to award an Agreement. The District reserves the right to postpone proposal opening for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with other than the selected consultant(s) should negotiations with the selected consultant(s) be terminated, to negotiate with more than one consultant simultaneously, or to cancel all or part of this RFP.

G. Acceptance of Order

The successful consultant(s) will be required to accept a Purchase Order and execute a written agreement (see Section VII, Sample JCSD Standard Agreement) in accordance with and including as a part thereof the published notice of Request for Proposals and this Request for Proposals, including all requirements, conditions and specifications contained herein, with no exceptions other than those specifically listed in the written purchase order and/or Agreement.

H. **Public Records**

Responses (proposals) to this RFP and the documents constituting any contract entered into thereafter become the exclusive property of the District and shall be subject to the California Public Records Act (Government Code Section 6250 et seq.). The District use and disclosure of its records are governed by this Act.

Those elements in each proposal which proposer considers to be trade secrets, as that term is defined in Civil Code Section 3426.1(d), or otherwise exempt by law from disclosure, should be prominently marked as "TRADE SECRET", "CONFIDENTIAL", or "PROPRIETARY" by proposer. The District will use its best efforts to inform proposer of any request for disclosure of any such document. The District, shall not in any way, be liable or responsible for the disclosure of any such records including, without limitation; those so marked if disclosure is deemed to be required by law or by an order of the Court.

In the event of litigation concerning disclosure of information the proposer considers exempt from disclosure, the District will act as a stakeholder only, holding the information until otherwise ordered by a court or other legal process. If the District is required to defend an action arising out of a Public Records Act request for any of the contents of a proposer's proposal marked "Confidential", "Proprietary", or "Trade Secret", proposer shall defend and indemnify the District from all liability, damages, costs, and expense, including attorneys' fees, in any action or proceeding arising under the Public Records Act.

To ensure confidentiality, proposers are instructed to enclose all "Confidential," "Proprietary," or "Trade Secret" data in separate sealed envelopes, which are then included with the proposal documents. Because the proposal documents are available for review by any person after award of a contract resulting from an RFP, the District shall not in any way be held responsible for disclosure of any "Confidential," Proprietary," or "Trade Secret" documents that are not contained in envelopes and prominently marked.

SECTION III

EVALUATION AND AWARD

The District is soliciting firms and/or individuals who have established knowledge and expertise in all aspects of the services requested in this RFP. Minimum requirements are as follows:

1. Have a minimum of three (3) similar projects within the last three (3) years providing the same or similar services requested in this RFP.
2. Have sufficient staff and/or sub-consultants available with experience in the disciplines required for this service.
3. Provide reference(s) of agencies you have contracted with, providing the same or similar services.
4. Have no outstanding or pending complaints as determined through the Better Business Bureau, State of California Department of Consumer Affairs.
5. Have the administrative and fiscal capability to provide and manage the proposed services.

A. EVALUATION CRITERIA

Selection among the proposals received shall be based upon (but not necessarily in the order given) the following: The firm's organization, history, reputation, location, and capability to perform all aspects of the work.

- Project Understanding and Approach, including the ability to provide innovative, creative, cost reducing alternatives to meet JCSD's needs.
- Thoroughness of the proposed scope of work and realistic plan for completion of the project.
- Reasonableness of the proposed project schedule, ability to commence work immediately after execution of the contract, and ability to complete the required work within the specified time.
- Qualifications and experience of the project team, including appropriate professional registrations, based on work performed on similar projects, capacity of the team to handle all aspects of the project, and capability in to manage the project.
- Firm's experience, including past performance on similar projects.
- Reasonableness of the proposed staffing work effort, including appropriate use of senior experts and QA/QC reviews for each task/deliverable.
- Exceptions to the request for proposals taken by the Consultant.

Each Consultant's Technical Proposal shall be evaluated and ranked based the technical criteria. Following the ranking of the proposals, the fee for the top ranked Consultant will be opened and reviewed for is its reasonableness relative to the proposed scope of work. District will then negotiate the final Scope of Work and fee estimate with the top ranked firm. If an agreement cannot be reached with the highest ranked firm, then negotiations will be terminated, and the firm will be informed in writing.

B. EVALUATION PROCEDURE

All proposals received as specified will be evaluated by District staff in accordance with the above criteria. During the evaluation period, the District may do any or all of the following: generate a "short list" and conduct interviews with the top candidates; conduct on-site visits and/or tours of the candidates' places of business; conduct negotiations with the most qualified candidate(s). Consultants should be aware, however, that award may be made without consultant visits, interviews, or further discussions or negotiations.

C. AWARD

If the District elects to proceed, final selection of consultant is expected to occur May 13, 2022. In addition, negotiations may or may not be conducted with consultants; therefore, the proposal submitted should contain your most favorable terms and conditions, since the selection and award may be made without discussion with any consultant.

SECTION IV

SCOPE OF WORK

A. Background

The District was formed in 1956 to provide wastewater services to the Jurupa Valley area of western Riverside County. Services expanded to include water system planning and operations in 1966. In 1996, the District created the Comprehensive Parks & Recreation Plan for a portion of its service area known as the Eastvale area, which included a detailed park system and funding mechanisms for development and ongoing maintenance through special assessments. In 2007, the JCSD Parks & Recreation Department was formally established. The District's current total service area is over 40 square miles and serves a population of over 133,000 residents and various commercial/industrial facilities.

The JCSD Parks & Recreation Department is currently responsible for providing recreation programs, services, and events; managing over 250 acres of parkland, including 15 parks, a 30,000 square foot Community Center, and a 5,000 square foot Activity Center; graffiti abatement for the cities of Eastvale and Jurupa Valley; and maintaining over 4 million square feet of frontage and median landscaping, as contracted by the City of Eastvale.

B. Project Overview

The District is seeking proposals from qualified electrical engineers to design an LED lighting system for two (2) existing tennis courts at McCune Family Park Mountain View Park (7450 Eastvale Parkway, Eastvale, CA 92880). See Section VIII Appendices within this RFP for the overhead view of the park.

This project requires that an electrical engineer, licensed in California, take the lead role in developing the subject plans and specifications.

C. Scope of Services

The following are the types of services that the consultant may need to perform; however, if additional services are needed, the consultant needs to indicate them in the proposal:

Project Initiation:

- Meet with District staff on project intent and planning process.
- Review and analyze existing site conditions
- Collect and review all relevant reports, records, data, maps, and other

documents relevant to designing the new LED lighting system.

Design Services:

- Design services and criteria shall include, but are not limited to, the following:
 - Adherence to the highest industry (LED outdoor lighting) standards, with the consideration of energy efficiency while maintaining the most effective luminance for the safety of all players and spectators involved and proper lighting for the game of tennis.
 - Light levels of a minimum twenty-five (25) years.
 - Spill light and glare shall be reduced as much as possible to protect against neighborhood disturbance.
 - Design shall provide for the best location for light poles. The tennis court playing surface shall be protected from damage at all times.
 - Design shall incorporate for the local weather conditions, so that the lights and poles shall be able to operate properly and effectively in the climatic/wind conditions of the region.
 - Upon the District's request and at any time prior to the District's final approval of the design, the consultant shall provide through explanation in response to any concerns or questions that may arise, and shall execute any and all modifications to the lighting design as directed by the District.

Construction Documents:

- Creation of electrical construction plans and specifications for LED lighting system for two (2) existing tennis courts:
 - Consultant shall submit the electrical plans to the District for routing and approval. Consultant shall expediently incorporate any changes required by the plan check process and resubmit. Schedule approximately 1-2 weeks to complete review/approval process for each submittal.
 - Consultant shall prepare a comprehensive bid schedule with quantities for the formal bidding process. These bid documents shall incorporate the District's Standard Specifications and Conditions. A copy of the entire specification package on a thumb drive(s) shall be delivered to the District with the completed bid set. The District will provide boiler plate information.
 - Develop a final and detailed cost estimate for construction.

- Deliverables: 1) Construction plans and specifications based on approved LED lighting system design; 2) construction cost estimates; and 3) bid schedule for bidding purposes.

Other:

- Consultant shall provide an activity schedule showing project milestones and completion time conforming to the project schedule. Cost proposal shall show payment compatible with the work schedule.
- Attend at a minimum the following meetings: Two (2) community meetings to receive public input regarding a conceptual design for the park; one (1) Parks & Recreation Commission meeting for approval of conceptual design; one (1) Planning Commission meeting for CUP for parking lot; and one (1) City Council meeting for approval of conceptual design.

D. District's Expectations of Consultant

1. Consultant will keep an open dialogue with staff and work closely with the Project Team to ensure the parks reflect the vision and priorities of the District.

SECTION V

PROPOSAL CONTENT AND FORMS

A. PROPOSAL FORMAT AND CONTENT

1. Presentation

Proposals shall be typed, double spaced, single-sided and submitted on 8-1/2" x 11" size paper, and bound with one staple. **Any other means of binding is highly discouraged.** Proposals should not include any plastic or oversized covers or binders, nor any unnecessarily elaborate or promotional material. Information should be presented in the order in which it is requested. Lengthy narrative is discouraged, and presentations should be brief and concise. Proposals should not exceed 30 pages in length, excluding any Appendix.

2. Letter of Transmittal

A Letter of Transmittal shall be included with the proposal, addressed to Steve Lawson, Director of Parks & Recreation, and must, at a minimum, contain the following:

- a. identification of consultant, including name, address and telephone number;
- b. proposed working relationship between consultant and subcontractors, if applicable;
- c. acknowledgment of receipt of all RFP addenda, if any;
- d. name, title, address and telephone number of consultant's contact person during period of proposal evaluation;
- e. a statement to the effect that the proposal shall remain valid for a period of not less than 90 days from the date of submittal; and
- f. signature of a person authorized to bind consultant to the terms of the proposal.

3. Technical Proposal

a. Qualifications, Related Experience and References

This section of the proposal should establish the ability of consultant to satisfactorily perform the required work by reasons of: experience

in performing work of a similar nature; demonstrated competence in the services to be provided; educational qualifications; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references.

Consultant shall:

- (1) provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; number of employees;
- (2) provide a general description of the firm's financial condition; identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede consultant's ability to complete the project;
- (3) describe the firm's experience in performing work of a similar nature to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to this project;
- (4) identify sub-consultants by company name, address, contact person, telephone number and project function and describe consultant's experience working with each sub-consultant; and
- (5) provide, at a minimum, three (3) references from the projects cited as related experience; reference shall furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. Consultant may also supply references from other work not cited in this section as related experience.

b. Proposed Staffing and Project Organization

This section of the proposal should establish the qualifications of the proposed project staff.

Consultant shall:

- (1) provide education, experience and applicable professional credentials of proposed project staff;
- (2) furnish brief resumes (not more than two [2] pages each) for the proposed Project Manager and other key personnel;

- (3) indicate adequacy of labor resources, utilizing a table projecting the labor-hour allocation to the project by individual task;
- (4) identify key personnel proposed to perform the work in the specified tasks and include major areas of sub-consultant work;
- (5) include a project organization chart which clearly delineates communication/reporting relationships among the project staff; and
- (6) include a statement that key personnel will be available to the extent proposed for the duration of the project acknowledging that no person designated as “key” to the project shall be removed or replaced without the prior written concurrence of the District.

c. Work Plan

Consultant shall provide a narrative, which addresses the Scope of Work, and shows consultant’s understanding of the District’s needs and requirements.

Consultant shall:

- (1) describe the approach to completing the tasks specified in the Scope of Work;
- (2) outline sequentially the activities that would be undertaken in completing the tasks and specify who would perform them; and
- (3) furnish a schedule for completing the tasks in terms of elapsed weeks from the commencement date.

Consultant may also propose enhancement or procedural or technical innovations to the Scope of Work, which do not materially deviate from the objectives or required content of the project.

d. Exceptions/Deviations

State any exceptions to or deviations from the requirements of this RFP and the terms and conditions of the Form of Agreement, segregating “technical” exceptions from “contractual” exceptions. Where consultant wishes to propose alternative approaches to

meeting the District's technical or contractual requirements, these should be thoroughly explained. The District reserves the right to accept or reject any or all exceptions / deviations at its sole discretion. Consultant shall be bound to accept all RFP requirements, terms, and conditions of the Form of Agreement not accepted in the proposal.

e. **Fee Proposal**

Consultant shall complete and sign the Price Form in Section VI below in its entirety. (Fee Proposal must be submitted in a sealed envelope separate from proposal documents and marked "Price Form").

4. **Appendix**

Information considered by consultant to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Consultants are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials; Appendix should be relevant and brief.

B. LICENSING AND CERTIFICATION REQUIREMENTS

By submitting a proposal, consultant warrants that any and all licenses and/or certifications required by law, statute, code or ordinance* in performing under the scope and specifications of this RFP are currently held by consultant, and are valid and in full force and effect. Copies or legitimate proof of such licensure and/or certification shall be included in consultant's proposal. Proposals lacking copies and/or proof of said licenses and/or certifications may be deemed non-responsive and may be rejected.

C. COST AND PRICE FORMS

Consultant shall complete the Price Form in its entirety including: 1) all individual tasks listed and total price; 2) basis on which prices are quoted; and 3) consultant's identification information including a binding signature.

SECTION VI

PRICE FORM

(To be submitted in a sealed envelope separate from proposal documents and marked "Price Form")

REQUEST FOR PROPOSALS: McCune Family Park Tennis Courts Lighting Design

DESCRIPTION OF WORK: Creation of electrical plans and specifications for a lighting system for two (2) existing tennis courts at McCune Family Park.

CONSULTANT'S NAME/ADDRESS: _____

NAME/TELEPHONE NO. OF AUTHORIZED REPRESENTATIVE: _____

Please provide detailed Firm Fixed Lump Sum Price and any other incidental or additional costs required in the spaces provided below to complete the Scope of Work requirements. Firm Fixed Prices to complete each task shall include the costs of all administration and overhead, project site visits, pre-production costs, telephone usage, mailings, mileage and other administrative costs. NOTE: Price proposals submitted on forms other than those provided herein may cause rejection of the proposal as non-responsive; however, you are still encouraged to submit an itemized detail of your do not exceed amount long with the Price Form.

Total Price, written in numbers: \$ _____

Total Price, written in words: _____

Are there any other additional or incidental costs, which will be required by your firm in order to meet the requirements of this RFP? Yes / No (circle one). If you answered "Yes", please provide detail of said additional costs: _____

Please indicate any elements of this RFP, which cannot be met by your firm.

Have you included in your proposal all requested informational items and forms? Yes / No (circle one). If you answered "No", please explain: _____

This offer shall remain firm for 90 days from RFP close date.

Terms and conditions as set forth in this RFP apply to this proposal.

In signing this proposal, Consultant warrants that all certifications and documents requested herein are attached and properly completed and signed.

From time to time, the District may issue one or more addenda to this RFP. Below, please indicate all Addenda to this RFP received by your firm, and the date said Addenda was/were received.

Verification of Addenda Received

Addenda No: _____ Received on: _____
Addenda No: _____ Received on: _____
Addenda No: _____ Received on: _____

AUTHORIZED SIGNATURE: _____

PRINT SIGNER'S NAME AND TITLE: _____

DATE SIGNED: _____

COMPANY NAME & ADDRESS: _____

PHONE: _____ FAX: _____

IF NOT SUBMITTING A PROPOSAL, PLEASE STATE REASON(S) BELOW:

End of Price Form

SECTION VII

SAMPLE JCSD STANDARD AGREEMENT
(Sample on following pages)

**JURUPA COMMUNITY SERVICES DISTRICT
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____ in the year Two Thousand 20, by and between the Jurupa Community Services District, an independent special district of the State of California with its principal place of business at 11201 Harrel Street, Jurupa Valley, California 91752 (“**District**”) and _____ with a place of business at _____ (“**Consultant**”). District and Consultant are sometimes individually referred to as “**Party**” and collectively as “**Parties**” in this Agreement.

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the District on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing the professional services described herein, is licensed in the State of California, and is familiar with the plans of District.

2.2 Project

District desires to engage Consultant to render such services for _____ (“**Project**”) as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform the _____ services necessary for the Project (“**Services**”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from _____ to _____, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the

means, methods and details of performing the Services subject to the requirements of this Agreement. District retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of District and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

322 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, District shall respond to Consultant's submittals in a timely manner. Upon request of District, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

323 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of District.

324 Substitution of Key Personnel. Consultant has represented to District that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of District. In the event that District and Consultant cannot agree as to the substitution of key personnel, District shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the District, or who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the District. Consultant's key personnel for performance of this Agreement are as follows:

325 District's Representative. The District hereby designates _____, or his or her designee, to act as its representative for the performance of this Agreement ("**District's Representative**"). District's Representative shall have the power to act on behalf of the District for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the District's Representative or his or her designee.

326 Consultant's Representative. Consultant hereby designates _____, or his or her designee, to act as its representative for the performance of this Agreement ("**Consultant's Representative**"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

327 Coordination of Services. Consultant agrees to work closely with District staff in the performance of Services and shall be available to District's staff, consultants and other staff at all reasonable times.

328 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the District, any services necessary to correct willful or negligent errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

329 Period of Performance and Damages. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("**Performance Time**"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the District and Consultant ("**Performance Milestones**"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Project Milestones developed pursuant to provisions of this Agreement due to Consultant's willful behavior or negligence, it is understood, acknowledged and agreed that the District will suffer damage.

32.10 Laws and Regulations; Employee/Labor Certifications. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the District, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold District, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state

and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Consultant shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the District or its representatives for inspection and copy at any time during normal business hours. The District shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. The persons executing this Agreement on behalf of Consultant verify that they are duly authorized officers of Consultant, and understand that any of the following shall be grounds for the District to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of District's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

32.11 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of District 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.

32.12 Insurance.

3.2.12.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the District that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the District to terminate this Agreement for cause.

3.2.12.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.12.3 Professional Liability. Errors and omissions coverage with limits of liability no less than \$1 million per occurrence.

3.2.12.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) the District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by mail has been given to the District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents, and volunteers.

3.2.12.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents, and volunteers.

3.2.12.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District. Consultant shall guarantee that, at the option of the District, either: (1) the insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects the District, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.12.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the District.

3.2.12.8 Verification of Coverage. Consultant shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.12.9 Reporting of Claims. Consultant shall report to the District, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.13 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed _____ without written approval of District. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to District a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. District shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

333 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by District.

334 Extra Work. At any time during the term of this Agreement, District may request that Consultant perform Extra Work. As used herein, “**Extra Work**” means any work which is determined by District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from District’s Representative.

335 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“**Prevailing Wage Laws**”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, including the requirement to be registered with the Department of Industrial Relations and to file certified payroll records electronically with the Department. District shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft; classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Termination of Agreement.

341 Grounds for Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

342 Effect of Termination. If this Agreement is terminated as provided herein, District may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

343 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5 Ownership of Materials and Confidentiality.

351 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for District to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“**Documents & Data**”). All Documents & Data shall be and remains the property of District, and shall not be used in whole or in substantial part by Consultant on other projects without the District's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to District reproducible copies of all Documents & Data, in a form and amount required by District. District reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by District at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to District upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to District any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to District upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify District and provide District with the opportunity to obtain the documents.

352 Subconsultants. Consultant shall require all subconsultants to agree in writing that District is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the District.

353 Right to Use. District shall not be limited in any way in its use or reuse of the Documents & Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at District's sole risk. If District uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the District upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

354 Indemnification. Consultant shall defend, indemnify and hold the District, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by District of the Documents & Data, including any method, process, product, or concept specified or depicted.

355 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of District, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use District'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 or other similar medium without the prior written consent of District.

3.6 General Provisions.

361 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

Attn: _____

District:

Jurupa Community Services District
11201 Harrel Street
Jurupa Valley, CA 91752
Attn: _____

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

362 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the District, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent caused by any willful or negligent acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.6.2.2 Indemnity Obligations. Consultant shall defend, with Counsel of District's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.6.2.1 that may be brought or instituted against District or its directors, officials, officers, employees, volunteers and agents to the extent such allegations are caused by Consultant's willful or negligent acts, errors or omissions. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse District for the cost of any settlement paid by District or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. In the event the subject action alleges willful behavior or negligence on the part of Consultant and/or the District, or any third parties not under contract with Consultant, Consultant's obligations regarding the District's defense under this paragraph include only the reimbursement of the District's defense costs incurred to the extent of Consultant's negligence. Such reimbursement shall include payment for attorney's fees and costs, including expert witness fees. Consultant shall reimburse District and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the District, its directors, officials, officers, employees, agents, or volunteers.

363 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the District. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the District.

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

365 District's Right to Employ Other Consultants. District reserves right to employ other consultants in connection with this Project.

366 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

367 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

368 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to District include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

369 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3610 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3611 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3612 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3613 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic

Interest with the District's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

36.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

36.15 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

36.16 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

36.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

36.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

SECTION VIII
APPENDICES

Appendix A – McCune Family Park Existing Site Plan

