

ORIGINAL

TOWN OF YUCCA VALLEY

CONTRACT SERVICES AGREEMENT FOR
ARCHITECTURAL DESIGN AND ENGINEERING SERVICES
(SOUTH SIDE COMMUNITY PARK)

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement"), is made and entered into this 28th day of MAY, 2009, by and between the TOWN OF YUCCA VALLEY, (herein "Town") and RHA Landscape Architects Planners, Inc., a California corporation (herein "Architect"). (The term Architect includes professionals performing in a consulting capacity.) The parties hereto agree as follows:

1.0 SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, the Architect shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the Town entering into this Agreement, Architect represents that it is experienced in performing the work and services contemplated herein, and that it can and will at all times perform hereunder in a first class, professional manner, meaning that Architect's services shall be satisfied in accordance with standards of practice recognized for architectural firms of similar size, quality, experience and expertise as Architect, performing similar work under similar circumstances.

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

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

1.4 Licenses. Architect shall obtain at its sole cost and expense such professional licensees as may be required by law to perform the professional services required of Architect by this Agreement. Architect shall assist the general contractor in, but not be responsible for, obtaining building permits. Architect shall have the sole obligation to pay for any licensing fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Architect's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless the Town against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against Town hereunder. Town or its construction contractor shall pay for all permits, fees and plan check costs required for project construction.

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

1.6 Care of Work. The Architect shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to Architect's work, materials, papers, documents, plans, studies and/or other instruments of Architect's services to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by the Town, except such losses or damages as may be caused by the Town's own negligence.

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

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

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. With the exception of Section 4.3, in the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, the Architect shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of Two Hundred Ninety-Thousand Seven Hundred Fifteen Dollars (\$290,715.00) (herein "Contract Sum"), except as provided in Section 1.8. The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with the percentage of completion of the services, (iii) payment for time and materials based upon the Architect's rates as specified in the Schedule of Compensation, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expense, transportation expense approved by the Contract Officer in advance, and no other expenses and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Architect at all project meetings reasonably deemed necessary by the Town; Architect shall not be entitled to any additional compensation for attending said meetings. Reimbursable expenses shall be paid to Architect as stated in "Schedule of Compensation" Exhibit "C".

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

3.0 PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. Architect shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D", if any, and incorporated herein by this reference. When requested by the Architect, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding ninety (90) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Architect, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Town, if the Architect shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall

ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Architect be entitled to recover damages against the Town for any delay in the performance of this Agreement, however caused, Architect's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term. Unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services, as determined by the Town, but not exceeding twenty-four (24) months from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

4.0 COORDINATION OF WORK

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

Sara Rowland, Project Manager
(If Ms. Rowland is unavailable, then
Doug Grove, Principal-in-Charge

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for Town to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Architect and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Architect without the express written approval of the Town.

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

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability and reputation of Architect, its principals and employees were a substantial inducement for the Town to enter into this Agreement. Therefore, Architect shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Town. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written

approval of Town. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Architect, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Architect or any surety of Architect of any liability hereunder without the express consent of Town.

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

5.0 INSURANCE, INDEMNIFICATION AND BONDS

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

(a) Comprehensive General Liability Insurance. A policy of comprehensive broad form general liability insurance written on a per occurrence basis. The policy of insurance shall be in an amount not less than either (i) a combined single limit of \$1,000,000 for bodily injury, death and property damage or (ii) bodily injury limits of \$500,000 per person, \$1,000,000 per occurrence and \$1,000,000 products and completed operations and property damage limits of \$500,000 per occurrence. If the Contract Sum is greater than \$100,000, the policy of insurance shall be in an amount not less than \$2,000,000 combined single limit.

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

(c) Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of \$500,000 per person and \$1,000,000 per occurrence and property damage liability limits of \$250,000 per occurrence and \$500,000 in the aggregate or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non owned, leased and hired cars.

(d) Professional Liability. A policy of errors and omissions professional liability insurance in an amount not less than \$1,000,000.

All of the above policies of insurance shall be primary insurance and shall name the Town, its officers, employees as additional insureds, except that the Town shall not be named as an additional insured for the worker's compensation insurance nor the professional liability insurance. The insurer shall waive all rights of subrogation and contribution it may have against the Town, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to the Town. In the event any of said policies of insurance are canceled, the Architect shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Architect has provided the Town with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the Town.

Except for the worker's compensation and professional liability insurance, all certificates shall name the Town as additional insured (providing the appropriate endorsement), be signed by an authorized agent of the insurer, and shall contain the following "cancellation" notice:

"CANCELLATION: Should any of the above described policies be cancelled before the expiration date thereof, the issuing company shall mail an advance 30-day written notice to the Certificate holder named herein."

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

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

5.2 Indemnification.

(a) Town Held Harmless - General Liability. Except for the sole negligence of Town, Architect undertakes and agrees to defend, indemnify and hold harmless Town, and any and all of Town's boards, officers, employees, agents, and successors in interest, from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, reasonable attorney's fees and reasonable costs of litigation, damages(s) or liability of any nature whatsoever, for death or injury to any person, including Architect's employees and agents, or for damage to, or destruction of, any property of either party hereto, or of third persons, in any manner to the extent arising by reasons of the acts or omissions in the performance of this Agreement on the part of Architect, or any of Architect's subcontractor's, employees, or anyone for whom Architect has obligated itself under this Contract, whether or not

contributed to by any act or omission of Town or any of the Town's boards, officers or employees.

(b) Town Held Harmless - Professional Liability. Architect undertakes and agrees to indemnify and hold harmless Town, and any and all of Town's boards, officers, employees, and agents from and against all losses and expenses, including, but not limited to, reasonable attorney's fees and reasonable costs of litigation, damage(s) or liability of any nature whatsoever, for death or injury to any person, including Architect's employees and agents, or for damage to, or destruction of, any property of third persons, in any manner to the extent caused by the negligent acts or omissions in performance of the professional services under this Agreement on the part of Architect."

5.3 Performance Bond. Not applicable.

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

6.0 REPORTS AND RECORDS

6.1 Reports. Architect shall periodically, and no less than monthly, prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Architect hereby acknowledges that the Town is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Architect agrees that if Architect becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Architect is providing design services, the cost of the project being designed, Architect shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Architect is providing design services, the estimated increased or decreased cost estimate for the project being designed.

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

completion of the services hereunder, and the Town shall have access to such records in the event any audit is required.

6.3 Ownership of Documents. Town acknowledges the drawings, specifications and other documents prepared by Architect, its employees, subcontractors and consultants pursuant to this Agreement are instruments of professional service ("Instruments"). Upon payment in full of all undisputed monies due Architect, the Instruments shall become the property of Town. Architect shall have no claim for further employment or additional compensation as a result of the exercise by Town of its full rights of ownership of the Instruments; provided, however, that any modification of the Instruments or use for other projects for which Architect is not retained and does not provide professional services shall be at Town's sole risk and without liability to Architect, and shall require the removal of Architect's title block and indicia from the Instruments unless otherwise agreed in writing by Architect. Town shall indemnify and hold harmless Architect, its officers, directors and employees from and against any loss, damage, liability, claims, demands, suits and expenses, including but not limited to reasonable attorneys' fees and costs, resulting from use of the Instruments as aforementioned, without agreement in writing from Architect.

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

7.0 ENFORCEMENT OF AGREEMENT

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

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

7.3 Retention of Funds. Architect hereby authorizes Town to deduct from any amount payable to Architect (whether or not arising out of this Agreement) (i) any amounts

the payment of which are in dispute hereunder or which are necessary to compensate Town for any losses, costs, liabilities, or damages suffered by Town, and (ii) all amounts for which Town may be liable to third parties, by reason of Architect's acts or omissions in performing or failing to perform Architect's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Architect, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, Town may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. Notwithstanding anything in this Agreement to the contrary, Architect does not waive, relinquish or release any claims or rights it may have to any amounts deducted hereunder, and shall be entitled to seek recourse for collection against Town for any amounts deducted (i) the payment of which should not have been disputed and/or (ii) are not necessary to compensate Town for any losses, costs, liabilities or damages, either suffered by Town or for which Town is liable to third parties, by reason of Architect's acts or omissions in connection with this Agreement. The failure of Town to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Architect to insure, indemnify, and protect Town as elsewhere provided herein.

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

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

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

7.7 Liquidated Damages. Not applicable.

7.8 Termination Prior to Expiration Of Term. This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The Town reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Architect, except that where termination is due to the fault of the Architect, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Architect reserves the right to terminate this Agreement at any time upon, with or without cause, upon sixty (60) days' written notice to Town, except that where termination is due to the fault of the Town, the period of notice may be

such shorter time as the Architect may determine. Upon receipt of any notice of termination, Architect shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Architect has initiated termination, the Architect shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Architect has initiated termination, the Architect shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure.

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

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

8.0 TOWN AGENCY OFFICERS, EMPLOYEES AND AGENTS; NON DISCRIMINATION

8.1 Non liability of Town Officers, Employees, and Agents. No officer, employee, or agent of the Town shall be personally liable to the Architect, or any successor in interest, in the event of any default or breach by the Town or for any amount which may become due to the Architect or to its successor, or for breach of any obligation of the terms of this Agreement.

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

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

9.0 MISCELLANEOUS PROVISIONS

9.1 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first class mail, in the case of the Town, to Contract Officer Duane Gasaway, 58928 Business Center Drive, Yucca Valley, CA 92284, with copy to Town Manager, 57090 Twentynine Palms Highway, Yucca Valley, CA 92284; and in the case of the Architect, to the person at the address designated at the first page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy two (72) hours from the time of mailing if mailed as provided in this Section.

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

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

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

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

9.6 Construction Means and Methods. Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, schedules, sequences, procedures, fabrication, procurement, shipment, delivery, receipt or installation, or for safety precautions or programs in connection with the work provided by the construction contractor or its subcontractors since such are solely the construction contractor's and its subcontractor's responsibility under the contract for construction. Architect is not responsible for the construction contractor's or its subcontractor's failure to carry out the work in accordance with the Contract Documents.

[Signatures on following page]

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

"TOWN"

ATTEST:

TOWN OF YUCCA VALLEY

By: [Signature]
Town Clerk

By: [Signature]
Mayor

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

[Signature]
Town Attorney

"ARCHITECT"

RHA Landscape Architects Planners, Inc.
6216 Brockton Avenue, #212
Riverside, CA 92506

By: [Signature]
Signature

RANDOLPH HUBBICK, PRESIDENT
Print Name and Title

By: [Signature]
Signature

RANDOLPH HUBBICK, SECRETARY
Print Name and Title

(Corporations require two signatures; *one from each* of the following: A. Chairman of Board, President, any Vice President; *AND B.* Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.)

[End of Signatures]

EXHIBIT "A"
SCOPE OF SERVICES

Architect shall provide professional landscape architectural design and related engineering and other services to develop an approximately 20-acre South Side Community Park. The services will include the preparation of conceptual plan, site plan, topographic survey, grading and drainage plan, street improvement plans for Joshua Lane and Warren Vista Avenue adjacent to the site, landscape and irrigation plan, native plant inventory, architectural building plans and all other bid ready improvement plans, and supporting studies and analysis including soil report, hydrology/hydraulic analysis, geotechnical analysis, bid ready special and technical specifications, and related documents.

INTRODUCTION

The Town of Yucca Valley solicits a California licensed professional landscape architectural-planning firm to develop a Conceptual Plan and Site Plan for the 20 acre South Side Community Park including but not limited to practice fields, playgrounds, dog park, picnic areas, tot lot, splash park, restrooms, horse trail trailhead, park maintenance equipment storage building, 5 acre reserved area for future fire substation, and to organize, coordinate and lead a design team to prepare street plans and specifications for full width improvement of adjacent Joshua Lane and Warren Vista Avenue, landscape and irrigation plan, native plant inventory, architectural building plans and all other improvement plans, topographic survey, grading and drainage plan to Town standards, soils analysis, geotechnical analysis, hydrologic/hydraulic analysis, geotechnical analysis and such other supporting studies and analysis as may be necessary, and complete, bid ready construction drawings and specifications for the construction of the park further described in the Scope of Services.

South Side Community Park is an undeveloped public park site located at the northwest corner of Joshua Lane and Warren Vista Avenue in the Town of Yucca Valley.

Total funding for the Scope of Services has not been appropriated as of the preparation and advertisement of the Request for Qualifications/Request for Proposal. Bidding and construction of the facility is not included in the Scope of Services, however the Consultant should anticipate being available to answer questions and provide advice during construction of the facility.

SCOPE OF SERVICES

The scope of Services generally consists of preparing a conceptual plan and site plan of the park site for presentation to and approval of the Department of Community Services staff, the Parks, Recreational and Cultural Commission, and where applicable Town Council; the preparation of construction plans including the facility including but not limited to engineered street improvement plans and grading and drainage plans with supporting documents such as soils, geotechnical, and hydrology analysis, and architectural building plans for park facilities and structures, and special and technical specifications for the park improvements. The engineered drawings and specifications shall be complete and suitable for bidding. The Scope of Work includes, but is not limited to, the following:

Tasks:

1. **Conceptual Plan.** The Consultant will prepare a Conceptual Plan for the park site. The Consultant will expand upon the brief description of the South Side Community Park set forth in the Town of Yucca Valley Master Park Plan to develop a Conceptual Plan with supporting narrative that provides for multi-purpose practice fields, playgrounds, dog park, picnic areas, tot lot, splash park, restrooms, horse trail trailhead, parking areas, park maintenance equipment storage building, 5 acre reserved area for future fire substation, street plans and specifications for full width improvement of adjacent Joshua Lane and Warren Vista Avenue.

The Consultant shall present the Conceptual Plan to the Director of Community Services for review and approval by Community Services staff and the Town of Yucca Valley Parks, Recreation and Cultural Commission. Consultant's proposal shall allow for a minimum of two (2) meetings with Town Staff, one (1) meeting with the Parks, Recreation and Cultural Commission, and one (1) meeting with Town Council.

2. **Site Plan.** The Consultant will prepare a Site Plan of the park site. The Consultant will prepare a Site Plan that indicates the specific locations and dimensions and acreages devoted to multi-purpose practice fields, playgrounds, dog park, picnic areas, tot lot, splash park, restrooms, horse trail trailhead, parking areas, park maintenance equipment storage building, 5 acre reserved area for future fire substation, street plans and specifications for full width improvement of adjacent Joshua Lane and Warren Vista Avenue.

The Consultant shall present the Site Plan to the Director of Community Services for review and approval by Community Services staff and the Town of Yucca Valley Parks, Recreation and Cultural Commission. Consultant's proposal shall allow for a minimum of two (2) meetings with Town Staff, one (1) meeting with the Parks, Recreation and Cultural Commission. Upon completion of Tasks 1 and 2, Consultant shall proceed with the balance of the Scope of Services.

3. **Topographic Survey.** Consultant shall provide a topographic survey of the 20 acre park site and the 5 acre site to be reserved of a fire substation for review and approval of the Town Surveyor. Consultant shall perform field surveys as necessary to control the design and provide accurate quantity and estimates. Consultant shall submit copies of all field notes to the Town.

4. **Grading and Drainage Plan.** Consultant shall prepare and submit grading and drainage plans of the 20 acre park site and 5 acre site to be reserved for a fire substation to the Town of Yucca Valley for plan check and approval by the Town Engineer.

5. **Street Improvement Plans for Joshua Lane and Warren Vista Avenue.** Consultant shall prepare and submit street improvement plans for the ultimate width of Joshua Lane and Warren Vista Avenue to the Town of Yucca Valley for plan check and approval by the Town Engineer.

↳ For UP to 21400 LF

6. **Landscape and Irrigation Plan.** Consultant shall prepare and submit landscape and irrigation plans to the Town of Yucca Valley for review and approval.

7. **Native Plant Inventory.** Several species of plants within the Town of Yucca Valley are protected by the Native Plant Protection Ordinance. Consultant shall prepare an inventory of Native Plants Plan identifying the number, type, and location of protected native plant species on the site and those plants that must be relocated in order to develop the park site in conformance with the approved Conceptual Plan and Site Plan.

8. **Architectural Building Plans and All Other Improvement Plans.** Consultant shall prepare architectural building plans sufficient for building permit review and issuance for all structures and facilities requiring a building permit. Consultant shall prepare all other improvement plans necessary for development of the site including water, sewer, and electrical. *BURNINGS SHALL BE PRE FABRICATED TYPE AS NOTED IN PROPOSAL DATED 11/18/08*

9. **Estimate of Probable Cost of Construction.** Consultant shall provide a preliminary and final estimate of the probable cost of construction by components, i.e., street, grading and drainage facilities; landscape and irrigation; water, sewer/on-site treatment, and electrical systems; park facilities, structures, and parking/trailhead; etc., for Town review and approval.

10. **Specialized Studies/ Analysis.** Consultant shall prepare and submit special studies and analyses to be submitted concurrently with grading and drainage plans and street improvement plans, including but not limited to the following:

Soils Analysis

Hydrology/Hydraulics Analysis: West Burnt Mountain Wash traverses the park site from Warren Vista Avenue northwesterly to West Burnt Mountain Basin, a future facility shown on the Master Plan of Drainage. Consultant shall provide investigations required to control and convey storm flows away from the proposed facilities and to prevent ponding of water and soil erosion. The Consultant shall document this work.

Geotechnical Analysis: This analysis shall include site investigation and to determine the existence of earthquake fault zones on the site and the extent of any constraints upon the development of the site pursuant to the Alquist-Priolo Earthquake Fault Zoning Act (Public Resources Code, Section 2621. et. seq.)

11. **Coordination with affected Regulatory and Utility agencies.** Consultant shall coordinate with all other affected regulatory and utility agencies. Consultant shall perform all required utility research and coordination as required. Consultant shall contact the Hi-Desert Water Agency and all utilities by written correspondence to determine existing utility line locations. Consultant shall provide the Town copies of all correspondence to and from regulatory, utility agencies. Consultant to provide research (including sub-surface pot holing) as required to complete any removal, relocation, or adjustment to any existing utility facilities where conflicts are anticipated. All existing utility facilities shall be shown on the plans and any probable conflicts shall be noted. The Consultant shall document this work, and any regulatory or utility issues that need to be addressed.

12. **Preliminary Design Submittal.** Consultant shall develop preliminary 90% plan design for review by Town staff, grading and drainage plan, landscape and irrigation plan, and native plant inventory. After review of the 90% plan design by Town staff, Consultant shall make any required revisions & changes and resubmit 90% plan design for review and approval by Town staff. After review and approval of the 90% plan design by Town staff, Consultant shall submit 100% complete design drawings for Town plan check and approval.

13. **Special and Technical Provisions.** Consultant shall prepare and submit bid ready Technical and Special provisions to accompany bid ready design drawings.

Deliverables

The Consultant will deliver the following, at a minimum, to the Town upon completion of the work:

1. Reproducible mylars of the project plans, signed and sealed including grading and drainage plan, street improvement plans, site plan, landscape and irrigation plan, native plant inventory plan, and architectural building plans and all other plans. The mylars shall include a title sheet, signature blocks, Town logo, numbered pages, etc. in Town approved format ready for public bidding.

2. One unbound copy of the following portions of the Specifications & Contract Documents in Microsoft Word Format:

Special Provisions
Technical Provisions

3. Four (4) blue-line copies of the following plans edge bound on left:

Conceptual Plan
Site Plan
Topographic Survey
Grading and Drainage Plan
Street Improvement Plans
Parking Area/Trailhead Plan
Architectural Building Plan and Other Improvement Plans

4. One (1) copy of the preliminary "Engineer's/Architect's Estimate of Probable Costs".

5. One (1) copy of the final "Engineer's/Architect's Estimate of Probable Costs".

6. One (1) electronic copy of all project plans on disk in most current AutoCAD 2009 format.

7. One (1) electronic copy of the Special and Technical Provisions of the Specifications & Contract Documents on disk in Microsoft Word format.

8. Four (4) wet stamped, signed copies preliminary and final hydrology/hydraulics analysis of the site including existing and 100 year flow.

9. Two (2) colored copies of the Conceptual Plan.

The Town of Yucca Valley will provide the following:

1. Copy of the Master Plan of Parks
2. Copy of Master Plan of Drainage
3. Copy of standard drawings and specifications.
4. Project bidding services and construction management.
5. Payment of application, permit, or any other fees required by any regulatory agency.
6. Town Standard Special and Technical Provisions.

Project Phases/Tasks

1.0 Project Management and Coordination

Ongoing throughout project

2.1 Data Collection and Field Reconnaissance

Review of available data from Town and other agencies and field reconnaissance sufficient to complete the Scope of Work.

2.2 Conceptual and Site Planning

The development of a conceptual site plan.

Product: Conceptual site plan

3.1 Construction Documents

3.2 Structural Engineering

3.3 Opinion of Probable Cost of Construction

3.4 Technical Specifications

4.1 Topographic Survey

- 4.2 Boundary Survey
- 4.3 Street Improvement Plans
- 4.4 Signing and Striping Plans
- 4.5 Drainage Study
- 4.6 Septic System Design
- 4.7 Engineer's Report
- 4.8 Precise Grading Plan
- 4.9 SWPP Plan
- 4.10 Dust Control Plan
- 4.11 Fire and Water Plan
- 4.12 Preliminary Opinion of Probable Cost of Construction
- 4.13 Project Manual Inclusions
- 4.14 Meetings and Consultations
- 5.1 Site Electrical Plan
- 5.2 Practice Field Lighting
- 6.1 Fault Hazard Investigation
- 6.2 Geotechnical Investigation and Percolation Testing
- 8.0 Reimbursable Expenses
- 9.0 Meetings

EXHIBIT "B"
SPECIAL REQUIREMENTS

Architect has been hired to perform the services described in this Agreement, which include the creation of one or more designs, drawings, or plans ("Designs"). Within the scope of the services under this Agreement, Architect is developing an estimate for the construction phase of the Project shown or described in the Designs ("Construction Budget").

Architect shall be responsible to do Project estimating to create Designs which will enable the Project to be constructed within an amount which shall not exceed the Construction Budget by more than ten percent (10%). Should Town solicit bids for construction of the Project, as such Project has been designed by Architect, and the lowest responsible bid exceeds the Construction Budget by more than ten percent (10%), Architect agrees to revise the previous Designs, or to create new Designs, at no additional cost to Town, so that a new price can be negotiated or the Project can be re-bid so that the Project does not exceed the Construction Budget by more than ten percent (10%). Notwithstanding the foregoing, Architect is not responsible for changes in the Project scope initiated by Town and all such changes shall include appropriate mutually agreed changes to the Construction Budget. Architect is also not responsible for increased cost of materials, labor, transportation, taxes or other costs associated with material shortages, strikes, wars, natural disasters or any other act not directly under the control of the Architect, and all such changes shall include appropriate mutually agreed changes to the Construction Budget.

EXHIBIT "C"
SCHEDULE OF COMPENSATION

Architect shall be compensated pursuant to Section 2.2 of the Agreement based upon satisfactory completion of the work, as determined by the Town's Contract Officer. The total compensation to Architect shall not exceed the Contract Sum of \$290,715.00.

The Schedule of Compensation for each task shall be as follows:

1.0 Project Management and Coordination	\$4,525.00	Lump Sum
2.1 Data Collection and Field Reconnaissance	\$3,880.00	Lump Sum
2.2 Conceptual and Site Planning	\$9,230.00	Lump Sum
3.1 Construction Documents	\$43,900.00	Lump Sum
3.2 Structural Engineering	\$3,500.00	Lump Sum
3.3 Opinion of Probable Cost of Construction	\$5,700.00	Lump Sum
3.4 Technical Specifications	\$2,480.00	Lump Sum
4.1 Topographic Survey	\$4,500.00	Lump Sum
4.2 Boundary Survey	\$6,210.00	Lump Sum
4.3 Street Improvement Plans	\$16,500.00	Lump Sum
4.4 Signing and Striping Plans	\$6,000.00	Lump Sum
4.5 Drainage Study	\$7,000.00	Lump Sum
4.6 Septic System Design	\$5,000.00	Lump Sum
4.7 Engineer's Report	\$15,000.00	Lump Sum
4.8 Precise Grading Plan	\$24,000.00	Lump Sum
4.9 SWPPP	\$5,000.00	Lump Sum
4.10 Dust Control Plan	\$2,500.00	Lump Sum
4.11 Fire and Water Plan	\$9,000.00	Lump Sum
4.12 Preliminary Opinion of Probable Cost of		

Construction	\$1,450.00	Lump Sum
4.13 Project Manual Inclusions	\$4,280.00	Lump Sum
4.14 Meetings/Consultations (15 meetings estimated)	\$8,820.00	Lump Sum
5.1 Site Electrical	\$12,000.00	Lump Sum
5.2 Practice Field Lighting	\$6,000.00	Lump Sum
6.1 Fault Hazard Investigation	\$59,000.00	Lump Sum
6.2 Geotechnical Investigation and Percolation Testing	\$6,000.00	Lump Sum
8.0 Reimbursable Expenses	\$12,000.00	Not To Exceed
9.0 Meetings (15 meetings estimated)	\$7,000.00	Hourly Not To Exceed

The Contract Sum is inclusive of all costs and fees.

Fees for any additional services requested by the Town beyond those set forth in the Scope of Services at Exhibit "A" of this Agreement shall be provided by the Architect based on the following information set forth below:

Senior Principal	\$190.00 per hour
Principal Landscape Architect	\$150.00 per hour
Associate Landscape Architect	\$130.00 per hour
Landscape Architect/Project Manager/Senior Designer	\$95.00 per hour
Designer II/CAD Operator II/Project Captain	\$85.00 per hour
Designer/CAD Operator/Administrative Personnel	\$75.00 per hour
Clerical/Professional Staff	\$65.00 per hour

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

The Architect shall amend and update the proposed design schedule in Architect's Proposal for Town approval at the pre-design kickoff meeting. Upon Town approval of the schedule the Town will issue a Notice to Proceed. The Architect shall complete all services under this Agreement pursuant to the final design schedule approved by the Town at the predesign kickoff meeting, subject to any subsequent amendment of the final design schedule by the Contract Officer after consultation with the Architect.