

CITY OF COACHELLA
MAINTENANCE SERVICES AGREEMENT – PROJECT NO. 052522

1. PARTIES AND DATE.

This Agreement is made and entered into this 14th day of September, 2022, by and between the City of Coachella, a municipal corporation organized under the laws of the State of California with its principal place of business at 53-990 Enterprise Way, Coachella, California 92236 ("City") and US National Corp, a corporation, with its principal place of business at 10205 San Fernando Road, Pacoima, California 91331 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing painting maintenance services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of the City.

2.2 Project.

City desires to engage Contractor to render such services for the Painting Maintenance Services for City Facilities Project No. 052522 ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 Incorporation of Documents. The “Contract Documents” include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Contractor’s Bid Forms
- Contractor’s Certificate Regarding Workers’ Compensation
- Designation of Subcontractors
- Information Required of Bidders
- Non-Collusion Affidavit form
- Contract
- General Conditions
- Special Provisions (or Special Conditions)
- Technical Specifications
- Addenda
- Response to Request for Proposal
- Any other documents contained in or incorporated into the Contract

3.1.2 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the landscape maintenance 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.

3.1.3 Term. The term of this Agreement shall be from September 15, 2022 to September 14, 2024 unless earlier terminated as provided herein. Contractor 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 by one additional one-year term.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor 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 Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor 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. Contractor 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.

3.2.2 Schedule of Services. Contractor 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. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Contractor has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City 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 City, or who are determined by the City 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 Contractor at the request of the City. The key personnel for performance of this Agreement are as follows: Fred Jimenez.

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

3.2.6 Contractor's Representative. Contractor hereby designates Fred Jimenez, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor'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.

3.2.7 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, Contractors and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Contractor 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. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that

all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, 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, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-Contractors who is determined by the City 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 City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8.1 Period of Performance and Liquidated Damages.

Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor 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 City and Contractor ("Performance Milestones"). Contractor 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, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of **two hundred dollars (\$200.00) per day** for each and every calendar day of delay beyond the Performance Time or beyond any Project Milestones established pursuant to this Agreement.

3.2.9 Laws and Regulations. Contractor 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. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, 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 Insurance.

3.2.10.1 Time for Compliance. Contractor shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Contractor 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 Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors 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. Contractor 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.

3.2.10.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

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

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, 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 Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor'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 City, 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 Contractor.

(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 certified mail, return receipt requested, has been given to the City; 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 City, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.4 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 City, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Contractor shall

procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.10.6 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 City.

3.2.10.7 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. 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 City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

3.2.11 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor 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 subContractors, 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. Contractor 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 **two hundred thousand dollars and zero cents (\$200,000.00)** without written approval of City's City Council. 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. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. 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. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City 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. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Prevailing Wages. Contractor 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 1600, et seq., ("Prevailing Wage Laws"), which require, if applicable, the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If applicable the Services are being performed as part of an applicable "public works" or "maintenance" project, as

defined by the Prevailing Wage Laws, and if applicable the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor 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 Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, 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 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor 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.

3.5 General Provisions.

3.5.1 Termination of Agreement.

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

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

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

3.5.2 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:

Contractor:

US National Corp
10205 San Fernando Road
Pacoima, California 91331
Attn: Mary Martinez

City:

City of Coachella
53462 Enterprise Way
Coachella, CA 92236
Attn: Maritza Martinez, Public Works Department

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.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property.

This Agreement creates a non-exclusive and perpetual license for City 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 Contractor under this Agreement (“Documents & Data”). Contractor shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or provided to Contractor by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City’s sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor. Such materials shall not, without the prior written consent of City, be used by Contractor for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Contractor which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor shall not use City’s name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 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.

3.5.5 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.

3.5.6 Indemnification. Contractor shall defend, indemnify and hold the City, its 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, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, Contractors, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents, or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents, or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City 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. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.5.7 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.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

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

3.5.10 City's Right to Employ Other Contractors. City reserves right to employ other Contractors in connection with this Project.

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

3.5.12 Assignment or Transfer. Contractor 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 City. 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.

3.5.13 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 Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City 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.

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

3.5.15 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.

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

3.5.17 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.

3.5.18 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor 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 Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, 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. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Contractor 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.

3.5.21 Authority to Enter Agreement. Contractor 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.

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

3.6 Subcontracting.

3.6.1 Prior Approval Required. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

CITY OF COACHELLA

US NATIONAL CORP

By: _____

Dr. Gabriel D. Martin
City Manager

By: _____

Fred Jimenez
President

Attest:

City Clerk

Attest:

Approved as to form:

Best, Best & Krieger

EXHIBIT "A"

SCOPE OF SERVICES

OVERVIEW

The Building Maintenance and Park Maintenance Divisions of the Public Works Department are responsible for maintaining a portfolio of approximately 10 buildings, including offices, a fire station, community centers, park restrooms and equipment shops, that house various City activities.

The Company shall provide painting services at various locations as identified by the City. Services consists of providing all labor, materials, equipment, and supervision for the painting and finishing of new and existing interior and exterior surfaces, i.e., walls, doors, jambs, window frames, and other work as directed by the Project Manager. Work areas may be occupied and require moving and repositioning of office equipment and furniture.

The City reserves the right to prepare an individual Scope of Work and require a proposal with complete breakdown of material, equipment, and labor cost for each project consistent with the prices established per **COST PROPOSAL** above. The City reserves the right to furnish any and all equipment and/or supplies for projects. The City may solicit a quote for Services from one or more companies prior to assigning an individual project.

FIELD QUALITY CONTROL / STANDARD OF ACCEPTANCE

Painted surfaces shall be considered to lack uniformity and soundness if any of the following defects are apparent:

- a) Brush/roller marks, streaks, laps, runs, sags, drips, heavy stippling, hiding, or shadowing by inefficient application methods, skipped or missed areas, and foreign materials in paint coatings.
- b) Evidence of poor coverage at plate edges, lap joints, crevices, pockets, corners and re-entrant angles.
- c) Damage due to touching before paint is sufficiently dry or any other cause.
- d) Damage and/or contamination of paint due to blown contaminants (dust, spray paint, etc.)

Painted surfaces shall be considered unacceptable if any of the following are evident under final lighting source (including daylight) for interior surfaces:

- a) Visible defects are evident on vertical or horizontal surfaces when viewed at normal viewing angles from a distance of not less than 10000 mm (39").
- b) Visible defects are evident on ceiling, soffit, and other overhead surfaces when viewed at normal viewing angles.
- c) When the final coat on any surface exhibits a lack of uniformity of color, sheen, texture, and hiding across full surface area.

Painted surfaces rejected by the Project Manager shall be corrected at the expense of the Company. Small affected areas may be touched up. Large affected areas or areas without sufficient dry film thickness of paint shall be repainted. Runs, sags, or damaged paints shall be removed by scraper or by sanding prior to application of paint.

PREPARATION AND CLEANING

Perform preparation and cleaning procedures in strict accordance with coating manufacturer's instruction. Use applicators and techniques best suited for the material and surfaces to be applied. Apply paint only to dry, clean, and adequately prepared surfaces in areas where dust is no longer generated by activities such that airborne particles will not affect the quality of finished surfaces. Apply additional coats when undercoats or conditions show through final paint coat, until paint film is of uniform finish, color and appearance. Work must be evenly uniform in sheen, color and texture; free from brush marks, sags, crawls, runs, or other defects detrimental to appearance or performance. Paint surfaces behind movable equipment and furniture same as adjacent similar exposed surfaces unless otherwise directed by the Project Manager. Apply each material at no less than the manufacturer's recommended spreading rate.

SUBMITTALS

If requested by Project Manager, submit samples for City's approval of color and sheen. Samples shall be 12" X 12" on properly prepared print out cards or hardboard. Material Safety Data Sheets for each product used shall be maintained on the site as well as one copy furnished to the City.

STANDARD PROVISIONS

CHANGE ORDERS

Alterations or modifications to the work performed under a task order under the contract shall be made only by written Change Order between the company and the City Point of Contact prior to commencement of the altered or modified work. No claims for any extra work or materials will be allowed unless covered by written Change Order.

CLEAN UP

All clean up shall comply with all applicable Federal, State, and local laws and regulations. Company shall remove paint where spilled, splashed, splattered or sprayed as work progresses using means and materials that are not detrimental to affected surfaces.

Company shall, at all times, keep the site free from accumulation of waste materials, debris, or rubbish caused by his or her employees at work. Company shall remove from the site all tools, surplus materials, debris, or rubbish and shall leave the site and the work in a neat and orderly fashion at the completion of the work. Clean equipment and dispose of wash water/solvents as well as other cleaning and protective materials (e.g., rags, drop cloths, masking papers, etc.), paints, thinners, paint removers/strippers, etc., as directed by Project Manager. Whenever possible, clean up shall be conducted with water or water-based agents.

Companies may not utilize on-site office trash cans. Arrangements may be made in advance with the Project Manager for the use of City owned or leased waste containers for disposal of the above. Only fully dry paint residues may be disposed of in City containers. Opened cans of partially used paint may not be disposed of in City containers under any circumstances.

EMERGENCY CONTACT

Company personnel shall be reachable cell phone in urgent or emergency situations. The

Company shall provide at least two (2) local telephone numbers that may be used to contact the Company or his authorized representative in the event of an urgent or emergency situation after normal business hours.

EQUIPMENT

The Company shall have in its possession, or available, sufficient equipment, hand tools, materials, and supplies necessary to perform the work as outlined in this Scope of Services.

HAZARDOUS MATERIALS

If the Company encounters any materials considered or suspected of being hazardous, he shall immediately secure the area and contact the Charlotte-Mecklenburg Hazardous Materials Coordinator, telephone 704-336-2461 for further instructions.

MATERIALS AND EQUIPMENT STORAGE

The Company shall be responsible for locating and providing storage areas for construction materials and equipment. The material and equipment storage shall comply with all local and state ordinances throughout the contract period. The Company shall restore the storage area to its original condition upon completion of the Project or upon such time as directed by the City. Such restoration shall be at no additional cost to the City.

The Company shall be responsible for the safeguarding of materials and equipment against fire, theft and vandalism and shall not hold the City responsible in any way for the occurrences of same. The Company shall furnish and erect, at no additional cost, whatever works may be necessary for the protection of the public, including but not limited to barricades, fences, etc. Prior to final payment being made, the Company shall obtain a release from the property owner of the storage area utilized for the Project.

PROJECT LOCATION INSPECTIONS

All trades shall be performed by skilled craftsmen. Satisfactory work and housekeeping will be maintained by the Company at all times. The worksite conditions, progress of work, and quality of work at each Project location may be inspected by the City on a continual basis. Any condition or situation deemed by the City to be unsatisfactory shall be remedied as soon as logistically possible and no later than within 24 hours. During its inspection, the City may note whether each Project location is satisfactory or unsatisfactory.

PROTECTION OF PROPERTY

Company shall protect all surrounding furniture, surfaces (including glass, aluminum, wood, labels, signage, etc.), mechanical, electrical, computer hardware and other sensitive components from sanding dust, paint splatter, spills and/or overspray. Use sufficient drop cloths and coverings for the protection of floors, furnishings and adjacent surfaces. Company shall be responsible for providing and placement of barricades, drop cloths, tarps, plastic, flag tape and any other safety equipment required to protect the public and employees in the work area. Company shall be responsible for the security of its equipment and materials.

SAFETY

Provide a safe work environment in accordance with all local, state, Federal, and applicable OSHA regulations. Employees must wear OSHA required safety equipment while working.

STAFFING REQUIREMENTS AND IDENTIFICATION OF COMPANY PERSONNEL

The Company shall provide a sufficient work force and supervisory personnel to perform the specified services and to meet the requirements of the City. The City has the right to require any additional personnel that the City deems necessary to complete the Project. The City also has the right to require removal and replacement of any personnel deemed unsatisfactory by the City.

Personnel shall maintain a neat and clean appearance, with identification clearly identifying the person and the name of their company. Shirts must be worn at all times, with shirt tails tucked in. Tank tops are not permitted. All personnel must wear high visibility safety vests that meet ANSI standards while working in vehicular traffic areas.

SUBCONTRACTS

No portion of this contract shall be subcontracted without prior written consent of the City. The City shall retain the right of approval of all subcontractors.

SUPERVISION

One competent English speaking individual shall be available on-site at all times to supervise the work. This individual shall be a full time employee of the Company and shall be experienced in the type of work being performed. Additionally, the individual shall be fully capable of managing, directing, and coordinating the work; reading and thoroughly understanding the Contract; and receiving and carrying out directions from the City. This individual shall be reachable via cell phone during normal business hours (Monday – Friday, 8:00 AM to 5:00 PM).

WARRANTY OF MATERIALS AND WORKMANSHIP

All materials and equipment provided shall be listed and labeled for the purpose intended and must be in good working order. All work provided shall have, as a minimum, a one (1) year warranty from the date of final acceptance against any latent defects, materials, workmanship, and installation. All materials used shall be new and work must be performed by skilled tradesperson(s).

WORKING HOURS

Routine operations shall generally be performed between the hours of 8:00 AM to 5:00 PM,. Emergency or non-routine work shall be performed as necessary with prior approval from the City.

CONTRACTOR'S LICENSE REQUIREMENTS

- City of Coachella Business license (current)
- C-33 Painting Contractors License (current and active)

EXHIBIT "B"

SCHEDULE OF SERVICES

Services to be performed on an as needed on-call basis within the scope of services established in Exhibit "A"

EXHIBIT "C"

COMPENSATION

- Total not-to-exceed for Two Year Term
 - \$200,000
- Any additional work requested will be as provided by the Contractor in the response to the RFP for Project 052522