

CITY OF COACHELLA

PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 2019 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 1515 6th Street, Coachella, California 92236 (öCityö) and **Angenious Engineering Services, Inc.** with its principal place of business at 16 Egret Lane, Aliso Viejo, California 92656. City and Consultant are sometimes individually referred to as öPartyö and collectively as öParties.ö

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing [Preliminary Engineering, Project Report/Environmental Document, Plans, Specifications and Estimates, and Construction Management, Materials Testing, Construction Surveying and Public Outreach] services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such services for the **Engineering and Right of Way Acquisition Support Services for Avenue 50 Bridge over the Whitewater Storm Channel, St-69 & the SR-86/Avenue 50 New Interchange, ST-81** as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

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

3.1.2 Performance Period.

A This Agreement shall go into effect on _____, contingent upon approval by City, and Consultant shall commence work after notification to proceed by City's Agreement Administrator.

The Agreement shall end on **June 30, 2022**, unless extended by Agreement amendment.

- B Consultant is advised that any recommendation for Agreement award is not binding on City until the Agreement is fully executed and approved by City.

3.2 Responsibilities of Consultant.

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

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit B attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant 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 Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant 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, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant 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 Consultant at the request of the City. The key personnel for performance of this Agreement are as follows:

Andy Cheah-Project Manager.

3.2.5 City's Representative. The City hereby designates William Pattison-City

Manager, or his or her designee, to act as its representative for the performance of this Agreement (öCityö Representativeö). Cityö Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than the Cityö Representative or his or her designee.

3.2.6 Consultantö Representative. Consultant hereby designates Andy Cheah, PE-Project Manager, or his or her designee, to act as its representative for the performance of this Agreement (öConsultantö Representativeö). Consultantö Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultantö 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. Consultant agrees to work closely with City staff in the performance of Services and shall be available to Cityö staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, 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, Consultant 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 Consultantö failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the 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 Consultant 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. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above (öPerformance Periodö). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits öAö or öBö attached hereto, or which may be separately agreed upon in writing by the City and Consultant (öPerformance Milestonesö).

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting

the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant 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.

3.2.9.1. Statement of Compliance.

- A Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B During the performance of this Agreement, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- C The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation ó Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity

by the recipients of federal assistance or their assignees and successors in interest.

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

3.2.9.2. Debarment and Suspension Certification.

- A Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to City.
- B Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

3.2.10 Insurance.

- 3.2.10.1. Time for Compliance. Consultant 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, Consultant shall not allow any subconsultant to commence work on any subagreement until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required

under this section.

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

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

B Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: Two Million Dollars (\$2,000,000) 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*: One Million Dollars (\$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. Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of three (3) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim, and shall include contractual liability for liability Consultant would have in the absence of a contract, only.

3.2.10.4. Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant 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 Consultant, 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 Consultant'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 Consultant'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 Consultant or for which the Consultant 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 Consultant'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 Consultant's insurance and shall not be called upon to contribute with it in any way.

C Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the 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 Consultant.

D All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by 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.

3.2.10.5. Separation of Insureds; No Special Limitations. All insurance required by this section, with the exception of Professional Liability, 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.

- 3.2.10.6. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant 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 Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.
- 3.2.10.7. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best[®] rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.
- 3.2.10.8. Verification of Coverage. Consultant 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.
- 3.2.10.9. Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.
- 3.2.10.10. Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Allowable Costs and Payments.

- A The method of payment for this Agreement will be based on actual cost plus a fixed fee. City will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant Cost Proposal in Exhibit C, unless additional reimbursement is provided for by Agreement amendment. In no event, will Consultant be reimbursed for overhead costs at a rate that exceeds City's approved overhead rate set forth in the Cost Proposal. In the event, that City determines that a change to the work from that specified in the Cost Proposal and Agreement is required, the Agreement time or actual costs reimbursable by City shall be adjusted by Agreement amendment to accommodate the changed work. The maximum total cost as specified in Paragraph 5 shall not be exceeded, unless authorized by Agreement amendment.
- B In addition to the allowable incurred costs, City will pay Consultant a fixed fee of **Zero Dollars (\$0.00)**. The fixed fee is nonadjustable for the term of the Agreement, except in the event of a significant change in the scope of work and such adjustment is made by Agreement amendment.
- C Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Agreement Administrator before exceeding such cost estimate.
- E Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Consultant's fixed fee will be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, City shall have the right to delay payment or terminate this Agreement in accordance with the provisions in Section 3.5.1.
- F No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.
- G Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by City's Agreement Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format

stipulated for the approved Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due City including any equipment purchased under the provisions of Section 3.7 Equipment Purchase of this Agreement. The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to City's Agreement Administrator at the following address:

Johnathan Hoy
1515 Sixth Street, Coachella, CA 92236

- H The total amount payable by City including the fixed fee shall not exceed **One Hundred Forty-Eight Thousand Dollars (\$148,000.00)**.
- I Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by City's Agreement Administrator.
For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- J All subagreements in excess of \$25,000 shall contain the above provisions.

3.3.2 Cost Principles and Administrative Requirements.

- A Consultant agrees that the Agreement Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to City.

3.3.3 State Prevailing Wage Rates.

- A Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B Any subagreement entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000

for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

- C When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

3.4 Accounting Records.

3.4.1 Retention of Records/Audit. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and the City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, the City, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

3.4.2 Audit Review Procedures.

- A Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by Agreement, shall be reviewed by City's Finance Director.
- B Not later than 30 days after issuance of the final audit report, Consultant may request a review by City's Finance Director of unresolved audit issues. The request for review will be submitted in writing.
- C Neither the pendency of a dispute nor its consideration by City will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.
- D Consultant and subconsultant agreements, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a Agreement audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The

Agreement, cost proposal, and ICR shall be adjusted by Consultant and approved by City Agreement manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by City at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

3.5 General Provisions.

3.5.1 Termination.

- A City reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.
- B City may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, City may proceed with the work in any manner deemed proper by City. If City terminates this Agreement with Consultant, City shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to City exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
- C The maximum amount for which the City shall be liable if this Agreement is terminated is **One Hundred Forty-Eight Thousand Dollars (\$148,000.00)**.
- D If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.
- E If this Agreement is terminated for convenience, Consultant shall be compensated only for those Services which have been adequately rendered to City. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

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:

City:

City of Coachella
1515 6th Street
Coachella, CA 92236
Attn: William Pattison
City Manager

Consultant:

Angenious Engineering Services, Inc.
16 Egret Ln
Aliso Viejo, CA 92656
Attn: Andy Cheah, PE
Project Manager

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 Consultant under this Agreement (Documents & Data). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant 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 Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant 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 Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use 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. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City and Dillon Road Joint Powers Authority (JPA), 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 of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subconsultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

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 Consultants. City reserves right to employ other consultants 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. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the 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 Consultant include all personnel, employees, agents, and subconsultants of Consultant, 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. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the 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. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of 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, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

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

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

3.5.23 Conflict of Interest.

- A Consultant shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this Agreement, or any ensuing City construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing City construction project, which will follow.
- B Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
- C Any subagreement in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

3.5.24 Rebates, Kickbacks or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

3.5.25 Prohibition of Expending City State or Federal Funds for Lobbying.

- A Consultant certifies to the best of his or her knowledge and belief that:
 - 1 No state, federal or City appropriated funds have been paid, or will be paid by-or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal Agreement; the making of

any state or federal grant; the making of any state or federal loan; the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal Agreement, grant, loan, or cooperative Agreement.

2 If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal Agreement, grant, loan, or cooperative Agreement; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subagreements, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

3.6 Subcontracting.

A Nothing contained in this Agreement or otherwise, shall create any contractual relation between City and any subconsultant(s), and no subagreement shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from City's obligation to make payments to the Consultant.

B Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by City's Agreement Administrator, except that, which is expressly identified in the approved Cost Proposal.

C Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by City.

D Any subagreement in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement

to be applicable to subconsultants.

- E Any substitution of subconsultant(s) must be approved in writing by City's Agreement Administrator prior to the start of work by the subconsultant(s).

3.7 Equipment Purchase.

- A Prior authorization in writing, by City's Agreement Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subagreement exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- B For purchase of any item, service or consulting work not covered in Consultant Cost Proposal and exceeding \$5,000 prior authorization by City's Agreement Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C Any equipment purchased as a result of this Agreement is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit City in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by City and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

CITY OF COACHELLA

**Consultant:
Angenious Engineering Services, Inc.**

By: _____

By: _____

City Manager

Date: _____

Date: _____

Approved As to Form:

Attest:

Carlos Campos, City Attorney

Date: _____

Attest:

City Clerk

Date: _____

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT "B"
SCHEDULE OF SERVICES

EXHIBIT "C"
COMPENSATION

November 5, 2019

Mr. Jon Hoy, PE
Project Construction Manager
City of Coachella, Engineering Department
53990 Enterprise Way,
Coachella, CA 92236

RE: **Cost Proposal for the SR-86/Avenue 50 New Interchange**
For City project No. **ST-81**

Dear Mr. Hoy:

AnGenious Engineering Services, Inc. (AES) would like to sincerely thank you for this opportunity to serve the City on the above-referenced project. We are pleased to submit our Cost proposal.

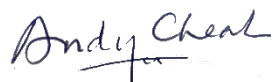
Our fee proposal is based upon an estimated labor hours of the staffing plan with other direct costs. The total "Maximum Not-to Exceed" fee for these initial services to be rendered is **\$49,991.10**. AES, a certified DBE/SBE firm, will provide **100%** of the contract value, which exceeds the contract's DBE goal of 15%. Please refer to the attached spreadsheet, which consists of the following requested details:

1. Cost proposal using Caltrans Exhibit 10-H1 template, with a maximum total fee for all services to be rendered and all materials.
2. Cost breakdown by task showing labor hours with hourly labor rates

With our **ingenious ideas, client focused solutions** and combined with **sensible cost approach**, AES is definitely the **"Right Team"** to deliver this project on time and within budget for the City. AES always strives and commits to optimize quality, utilization, and productivity in our sustainable engineering services. Hence, we guarantee that you will receive the highest quality of services for the same allocated budget.

We look forward to meeting with you to review our fee proposal, and we are willing to make any necessary staffing plan adjustments to suit the City's needs. Should you have any questions, please feel free to contact me at (949) 599-5400 or via email at Andy.Cheah@AnGenious-ES.com.

Sincerely,



Andy Cheah, PE
Principal/ Project Manager

Attachments

C. File

CITY OF COACHELLA

SR-86/Avenue 50 New Intercahnge

SCOPE OF WORK - ESTIMATED HOURS WORKSHEET

Fully Loaded Hourly Rate (Direct Labor, overhead, and profit)			\$288.75	\$88.94	TOTAL HOURS	TOTAL FULLY LOADED LABOR COST PER TASK
TASKS	Task No.	Staff Name	Andy Cheah	Darren Cheah		
		Staff Classification	Project Manager	Engineer I		
1	Project Management Services		108	0	108	\$31,185.00
	1.1	Administration	40		40	\$11,550.00
	1.2	Coordination and Meetings	48		48	\$13,860.00
	1.3	Quality Assurance and Quality Control	8		8	\$2,310.00
	1.4	Project Schedule	12		12	\$3,465.00
2	State and Federal Funding Assistance		40	60	100	\$16,886.10
	2.1	Prepare Funding Applications	40	60	100	\$16,886.10
TOTAL HOURS FOR PROJECT			148	60	208	\$48,071.10
TOTAL FULLY LOADED LABOR COST PER CLASSIFICATION			\$42,735.00	\$5,336.10		\$48,071.10

OTHER DIRECT COSTS (ODC)

Description	Unit(s)	Unit Cost	Total
Copy/Reprographics	120 Page	1	120
Mails	6 Each	10	60
Mileage	3000 Miles	1	\$1,740
TOTAL OTHER DIRECT COSTS			\$1,920

Subconsultant(s):

TOTAL SUBCONSULTANT'S COSTS	

GRAND TOTAL COSTS	\$49,991.10
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November 5, 2019

Mr. Jon Hoy, PE
Project Construction Manager
City of Coachella, Engineering Department
53990 Enterprise Way,
Coachella, CA 92236

RE: **Cost Proposal for the Avenue 50 Bridge over Coachella Valley Stormwater Channel**
For City project No. **ST-69**

Dear Mr. Hoy:

AnGenious Engineering Services, Inc. (AES) would like to sincerely thank you for this opportunity to serve the City on the above-referenced project. We are pleased to submit our Cost proposal.

Our fee proposal is based upon an estimated labor hours of the staffing plan with other direct costs. The total "Maximum Not-to Exceed" fee for these initial services to be rendered is **\$63,211.10**. AES, a certified DBE/SBE firm, will provide **65.79%** of the contract value, which exceeds the contract's DBE goal of 15%. Please refer to the attached spreadsheet, which consists of the following requested details:

1. Cost proposal using Caltrans Exhibit 10-H1 template, with a maximum total fee for all services to be rendered and all materials.
2. Cost breakdown by task showing labor hours with hourly labor rates

With our **ingenious ideas, client focused solutions** and combined with **sensible cost approach**, AES is definitely the "**Right Team**" to deliver this project on time and within budget for the City. AES always strives and commits to optimize quality, utilization, and productivity in our sustainable engineering services. Hence, we guarantee that you will receive the highest quality of services for the same allocated budget.

We look forward to meeting with you to review our fee proposal, and we are willing to make any necessary staffing plan adjustments to suit the City's needs. Should you have any questions, please feel free to contact me at (949) 599-5400 or via email at Andy.Cheah@AnGenious-ES.com.

Sincerely,



Andy Cheah, PE
Principal/ Project Manager

Attachments

C. File

CITY OF COACHELLA

Avenue 50 Bridge Over CVSC

SCOPE OF WORK - ESTIMATED HOURS WORKSHEET

Fully Loaded Hourly Rate (Direct Labor, overhead, and profit)			\$288.75	\$88.94	TOTAL HOURS	TOTAL FULLY LOADED LABOR COST PER TASK
TASKS	Task No.	Staff Name	Andy Cheah	Darren Cheah		
		Staff Classification	Project Manager	Engineer I		
1	Project Management Services		100	0	100	\$28,875.00
	1.1	Administration	32		32	\$9,240.00
	1.2	Coordination and Meetings	48		48	\$13,860.00
	1.3	Quality Assurance and Quality Control	8		8	\$2,310.00
	1.4	Project Schedule	12		12	\$3,465.00
2	State and Federal Funding Assistance		20	60	80	\$11,111.10
	2.1	Prepare Funding Applications	20	60	80	\$11,111.10
TOTAL HOURS FOR PROJECT			120	60	180	\$39,986.10
TOTAL FULLY LOADED LABOR COST PER CLASSIFICATION			\$34,650.00	\$5,336.10		\$39,986.10

OTHER DIRECT COSTS (ODC)

Description	Unit(s)		Unit Cost	Total
Copy/Reprographics	100	Page	1	100
Mails	5	Each	10	50
Mileage	2500	Miles	0.58	\$1,450
TOTAL OTHER DIRECT COSTS				\$1,600

Subconsultant(s):

Paragon Partners Ltd	\$	21,625.00
TOTAL SUBCONSULTANT'S COSTS		\$ 21,625.00

GRAND TOTAL COSTS		\$63,211.10
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