

**AGREEMENT FOR PROFESSIONAL CONSULTANT DESIGN SERVICES  
FOR ADA CURB RAMP REMEDIATION (PROJECT)  
PROJECT NO. 801 0109**

This Agreement is by and between the City of Moreno Valley, California, a municipal corporation, hereinafter described as "City," and **HR Green Pacific, Inc.**, a California corporation, hereinafter described as "Consultant." This Agreement is made and entered into as of this \_\_\_\_ day of \_\_\_\_ 2025 ("Effective Date").

**RECITALS**

WHEREAS, the City has determined it is in the public interest to proceed with the professional work hereinafter described as "Project"; and

WHEREAS, the City has determined the Project involves the performance of professional and technical services of a temporary nature as more specifically described in Exhibit "A" (City's Request for Proposal) and Exhibit "B" (Consultant's Proposal) hereto; and

WHEREAS, the City does not have available employees to perform the services for the Project;  
and

WHEREAS, the City has requested the Consultant to perform such services for the Project; and  
WHEREAS, the Consultant is professionally qualified in California to perform the professional and technical services required for the Project, and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement;

THEREFORE, the City and the Consultant, for the consideration hereinafter described, mutually agree as follows:

**DESCRIPTION OF PROJECT**

1. The Project is described as ADA Curb Ramp Remediation (Project).

Project No. 801 0109.

**SCOPE OF SERVICES**

2. The Consultant's scope of service is described on Exhibit "A" attached hereto and incorporated herein by this reference. In the event of a conflict, the City's Request for Proposal shall take precedence over the Consultant's Proposal.

3. The City's responsibility is described on Exhibit "C" attached hereto and incorporated herein by this reference.

**PAYMENT TERMS**

4. The City agrees to pay the Consultant and the Consultant agrees to receive a "Not- to-Exceed" fee of \$169,490.00 in accordance with the payment terms provided on Exhibit "D" attached hereto and incorporated herein by this reference.

**TIME FOR PERFORMANCE**

5. The Consultant shall commence services upon receipt of written direction to proceed from the City.

6. The Consultant shall perform the work described on Exhibit "A" in accordance with the schedule set forth in Exhibit " B " attached hereto and incorporated by this reference.

7. (a) This Agreement shall be effective from [effective date] and shall continue in full force and effect through [insert end date], subject to any earlier termination in accordance with this Agreement. The services of Consultant shall be completed in a sequence assuring expeditious

completion, but in any event, all such services shall be completed prior to expiration of this Agreement.

(b) Non-Performance Damages/Penalties. The Consultant agrees to non-performance damages/penalties with respect to Consultant's failure to complete the Project within the Agreement Time intervals and/or frequencies as set forth in this Agreement and/or in the Scope of Work, or as directed by the City. For each of the categories set forth hereinabove, the penal sum of 1% of the total contract/agreement amount per working day will be assessed for each working day the deficiencies remain uncorrected. If non-performance damages/penalties are to be assessed, the Consultant will be notified immediately by written email, letter, or by telephone. The Consultant will not be assessed non-performance damage/penalties for delays caused by the City or are deemed outside the Consultant's control by the City.

Consultant and City acknowledge and agree that the amount of such non-performance damages/penalties are impossible to ascertain as of the date of execution hereof and have agreed to such non-performance damages/penalties to fix the City's damages and to avoid later disputes. It is understood and agreed by Consultant that non-performance damages/penalties payable pursuant to this Agreement and that such amounts are not manifestly unreasonable under the circumstances existing as of the date of execution of this Agreement.

It is further mutually agreed that the City will have the right to deduct non-performance damages/penalties against progress payments or retainage and that the City will issue a Change Order and reduce the Agreement Price accordingly. In the event the remaining unpaid Agreement Price is insufficient to cover the full amount of non-performance damages/penalties, Consultant shall pay the difference to the City.

City may at any time deduct non-performance damages/penalties as are payable hereunder from money due or to become due to Consultant, or pursue any other legal remedy to collect such non performance damages/penalties from Consultant and/or its Insurance, Surety, etc. Neither the City's failure or delay in deducting non-performing damages/penalties from payments otherwise due Consultant, nor City's failure or delay in notifying Consultant of the accrual of non-performance damages/penalties, shall be deemed a waiver of City's right to non-performance damages/penalties.

City's rights under this Section shall not be interpreted as precluding or limiting: (i) any right or remedy of City arising from an event of Consultant default other than a failure to complete the Project within the Agreement Time; or (ii) City's right to order an acceleration, at Consultant's expense, of performance of the Project to overcome delay, including, without limitation, a delay for which City has the right to assess and/or accrue non-performance damages/penalties. The availability of non-performance damages/penalties shall not limit City's right to terminate the Consultant's performance and accrual and/or assessment of non-performance damages/penalties does not constitute a waiver of such rights

8. (a) The Consultant agrees that the personnel, including the principal Project manager, and all subconsultants assigned to the Project by the Consultant, shall be subject to the prior approval of the City.

(b) No change in subconsultants or key personnel shall be made by the Consultant without written prior approval of the City.

#### **SPECIAL PROVISIONS**

9. It is understood and agreed that the Consultant is, and at all times shall be, an

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independent CONSULTANT and nothing contained herein shall be construed as making the Consultant or any individual whose compensation for services is paid by the Consultant, an agent or employee of the City, or authorizing the Consultant to create or assume any obligation or liability for or on behalf of the City.

10. The Consultant may also retain or subcontract for the services of other necessary consultants with the prior written approval of the City. Payment for such services shall be the responsibility of the Consultant. Any and all subconsultants employed by the Consultant shall be subject to the terms and conditions of this Agreement, except that the City shall have no obligation to pay any subconsultant for services rendered on the Project.

11. The Consultant and the City agree to use reasonable care and diligence to perform their respective services under this Agreement.

12. The Consultant shall comply with applicable federal, state, and local laws in the performance of work under this Agreement.

13. To the extent required by controlling federal, state and local law, Consultant shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Consultant agrees as follows:

(a) Consultant will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability,

mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) Consultant will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Consultant shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Consultant's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, veteran of the Vietnam era, or any other protected class.

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(d) If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall cause each subCONSULTANT to also comply with the requirements of this Section 13.

14. Indemnification.

(a) Design Professional Services. To the fullest extent permitted by law, including but not limited to Civil Code Section 2782.8, in performing “design professional services” as defined in Section 2782.8, the Consultant agrees to indemnify, defend, and save the City, the Moreno Valley Community Services District (CSD), and the Moreno Valley Housing Authority (MVHA), their officers, agents and employees harmless from any and all liability, claims, demands, damages, or injuries to any person, including injury to the Consultant's employees and all claims which arise from or are connected with the negligent, reckless, or willful misconduct in the performance of or failure to perform the work or other obligations of the Consultant under this RFP and/or related Agreement, or are caused or claim to be caused by the negligent acts of the Consultant, its officers, agents or employees, or its subconsultant(s) or any person acting for the Consultant or under its control or direction; provided, however, that this indemnification and hold harmless shall not include claims arising from the sole negligence, active negligence, or willful misconduct of the City, MVHA, and CSD, their officers, agents or employees; and does not apply to any passive negligence of City unless caused at least in part by Consultant.

(b) Non-Design Professional Services. For all non-design professional services, Consultant shall indemnify, defend, and save the City, the Moreno Valley Community Services District (CSD), and the Moreno Valley Housing Authority (MVHA), their officers, agents and employees harmless from any

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and all liability, claims, demands, damages, or injuries to any person, including injury to the Consultant's employees and all claims which arise from or are connected with the performance of or failure to perform the work or other obligations of the Consultant, or are caused or claim to be caused by the acts of the Consultant, its officers, agents or employees, or its subconsultant(s) or any person acting for the Consultant or under its control or direction; provided, however, that this indemnification and hold harmless shall not include claims arising from the sole negligence or willful misconduct of the City, MVHA, and CSD, their officers, agents or employees.

(C) If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subconsultant to indemnify, hold harmless and defend City, CSD, Housing Authority and each of their officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

(d) CalPERS Indemnity. To the fullest extent permitted by law, in addition to obligations set forth in this section, in the event that any person providing services under this Agreement is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, to the fullest extent of the law, Consultant shall indemnify, defend, and hold harmless City for any costs and expenses incurred by City, including without limitation, payment that City is required as a result to make to CalPERS, whether in the form of employee and/or employer contributions, taxes, or any similar obligations, as well as for the payment of any penalties and interest.

CalPERS Participation. As set forth in this Agreement and in the Request for Qualifications, City has an obligation to treat all persons working for or under the direction of Consultant as an independent Consultant of City and agents and employees of Consultant , and not as agents or



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employees of City. Consultant and City acknowledge and agree that City participates in a defined benefit plan ("CalPERS"), and that it is possible that CalPERS may find that persons providing services pursuant to this Agreement are employees of City and should be registered with the CalPERS as employees of City.

CalPERS Retiree Disclosure. Consultant hereby expressly agrees to clearly and conspicuously disclose to City in writing any and all persons working for Consultant who are retirees under the California Public Employees' Retirement System (CalPERS) whom receives a monthly CalPERS retirement allowance, and whom are, subject to City approval, assigned by Consultant to provide services to City under the Agreement, prior to such person performing any services hereunder. Nothing herein shall be deemed or interpreted to limit a CalPERS retiree's obligations under applicable law, rules or regulations.

Joint Cooperation. In the event that CalPERS initiates an inquiry that includes examination of whether individuals providing services under this Agreement to City are City's employees, Consultant shall within five days and share all communications and documents from CalPERS that it may legally share. In the event that either Consultant or City files an appeal or court challenge, Consultant and City each agree to cooperate with each other in responding to the inquiry and any subsequent administrative appeal or court challenge of an adverse determination

This section shall survive termination or expiration of this Agreement.

15. Insurance.

(a) Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and effect all insurance as required in **Exhibit E** or as may be authorized in writing by the City

Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, Consultant or any of its subCONSULTANTS fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Consultant shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, agents, employees, persons under the supervision of Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subCONSULTANTS, or anyone employed directly or indirectly by any of

them.

(d) Upon request of City, Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subCONSULTANT to provide insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Consultant and City prior to the commencement of any services by the subCONSULTANT.

16. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

17. Consultant and subconsultants shall pay prevailing wage rates when required by the Labor Laws of the State of California. Consultant and all of Consultant's subcontractors, if any, shall pay each employee engaged in all applicable trades or occupation not less than the prevailing hourly wage rate for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In accordance with the provisions of Section 1770 of the California Labor Code ("Labor Code"), the Director of Department

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of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code Section 1773.8, apprenticeship or other training programs authorized by Labor Code Section 3093 and similar purposes applicable to the work to be done. Said wages are available through the California Department of Industrial Relations' Internet website at <http://www.dir.ca.gov/dlsr/PWD/index.htm> and are on file at City Hall, as provided in Section 1773.2 of the Labor Code. Said rates shall be posted at the Project site where work is to be performed, in accordance with Labor Code Section 1773.2. Consultant shall access a copy of the wage rate determination and shall make all subcontractors, if any, aware of the determination. As the wage determination for each craft reflects an expiration date, it shall be the Consultant's responsibility to ensure that the prevailing wage rates of concern are current and paid. Subject to the safe harbor provisions of Labor Code Section 1775, Consultant shall forfeit to the City an amount not to exceed two hundred dollars (\$200) for each calendar day or portion thereof, as set by the Labor Commissioner in accordance with the terms of Labor Code section 1775, for each laborer, workmen or mechanics employed that is paid less than the general prevailing rate of wages herein referred to and stipulated for any work done under the proposed contract, by him, or by any subcontractor under him, in violation of the provisions of the Labor Code, and in particular, Sections 1770 to 1781 inclusive. Consultant and any and all or its subcontractors shall forfeit to the City twenty-five dollars (\$25) for each worker employed in the performance of this Agreement for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Section 1813 of the Labor Code. In the event the total

cost of the Project is thirty thousand dollars (\$30,000.00) or more, Consultant shall further comply with provisions set forth in Labor Code Section 1777.5 pertaining to employment of properly registered apprentices, including without limitation the obligation to (i) pay employed apprentices the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of craft or trade to which he or she is registered; (ii) employ apprentices in at least the ratio as set forth in said section; (iii) submit contract award information to an applicable apprenticeship program; and (iv) contribute to California Apprenticeship Council.

Consultant and all subcontractors hired to perform any work under the Project shall keep accurate payroll records, including the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each worker, in accordance with Section 1776 of the Labor Code. Payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") or in a manner containing the same information as the forms provided by the DLSE. Failure to comply with the above may result in monetary penalties to the Consultant or affected subcontractor. Payroll records shall be verified by written declaration made under penalty of perjury, that the information contained in the records is true and correct. Consultant and any and all subcontractors shall make a certified copy of all payroll records available for inspection by DLSE, the City or any member of the public and otherwise provide certified copies of such records to any of the foregoing within ten (10) days of Consultant's and subcontractor's receipt of written request therefor. Failure to comply with the above may result in monetary penalties, in accordance with Labor Code Section 1776(d) and (h).

Notwithstanding anything else to the contrary, Consultant hereby acknowledges that all

contractors and subcontractors must be registered with the Department of Industrial Relations (“Department”) pursuant to Labor Code Section 1725.5 in order to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract, including this Agreement, that is subject to the payment of prevailing wages. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In accordance with Section 3700 of the Labor Code, Consultant must secure payment of compensation to all Consultant’s employees. Consultant represents and warrants that Consultant is registered with the Department in the manner prescribed by the Department and has paid the requisite application fee, as required by Labor Code Section 1725.5. Moreover, prior to Consultant entering into any contracts with any subcontractor, Consultant shall obtain proof that all such subcontractors have also registered with the Department in accordance with Section 1725.5.

18. (a) The Consultant shall deliver to the Public Works Director/City Engineer of the City or his designated representative, fully completed and detailed project-related documents which shall become the property of the City. The Consultant may retain, for its files, copies of any and all material, including drawings, documents, and specifications, produced by the Consultant in performance of this Agreement.

(b) The Consultant shall be entitled to copies of all furnished materials for his files and his subconsultants, if any.

(c) The City agrees to hold the Consultant free and harmless from any claim arising from any unauthorized use of computations, maps, and other documents prepared or provided by the Consultant under this Agreement, if used by the City on other work without the permission of the Consultant.

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Consultant acknowledges that Consultant work product produced under this agreement may be public record under State law.

19. (a) This Agreement shall terminate without any liability of City to Consultant upon the earlier of: (i) Consultant's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Consultant; (ii) 10 calendar days prior written notice with or without cause by City to Consultant; (iii) City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement. The written notice shall specify the date of termination. Upon receipt of such notice, the Consultant may continue services on the project through the date of termination, provided that no service(s) shall be commenced or continued after receipt of the notice, which is not intended to protect the interest of the City. The City shall pay the Consultant within thirty (30) days after the date of termination for all non-objected to services performed by the Consultant in accordance herewith through the date of termination. Consultant shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(b) In the event of termination due to failure of Consultant to satisfactorily perform in accordance with the terms of this Agreement, City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, City's damages caused by such failure. In no event shall any payment by City pursuant to this Agreement constitute a waiver by City of any breach of this Agreement which may then exist on the part of Consultant, nor shall such payment impair or prejudice any remedy available to City with respect to the breach.

(c) Upon any breach of this Agreement by Consultant, City may (i) exercise any right,

remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(d) Consultant shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Consultant and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Consultant shall notify City in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

20. This Agreement is binding upon the City and the Consultant and their successors and assigns. Except as otherwise provided herein, neither the City nor the Consultant shall assign, sublet, or transfer its interest in this Agreement or any part thereof without the prior written consent of the other.

21. A City representative shall be designated by the City and a Consultant representative shall be designated by the Consultant. The City representative and the Consultant representative shall be the primary contact person for each party regarding performance of this Agreement. The City representative shall cooperate with the Consultant, and the Consultant's representative shall cooperate with the City in all matters regarding this Agreement and in such a manner as will result in the performance of the



services in a timely and expeditious fashion.

22. This Agreement represents the entire and integrated Agreement between the City and the Consultant, and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be modified or amended only by a subsequent written Agreement signed by both parties.

23. Where the payment terms provide for compensation on a time and materials basis, the Consultant shall maintain adequate records to permit inspection and audit of the Consultant's time and materials charges under this Agreement. The Consultant shall make such records available to the City at the Consultant's office during normal business hours upon reasonable notice. Nothing herein shall convert such records into public records. Except as may be otherwise required by law, such records will be available only to the City. Such records shall be maintained by the Consultant for three (3) years following completion of the services under this Agreement.

24. The City and the Consultant agree, that to the extent permitted by law, all data shall be treated as confidential and will not be released to third parties without the prior written consent of both parties, both during the term of this Agreement and after its termination or expiration.

25. (a) Consultant shall comply, and require its subCONSULTANTS to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700

et. seq.). At any time, upon written request of City, Consultant shall provide a written opinion of its legal counsel and that of any subCONSULTANT that, after a due diligent inquiry, Consultant and the respective subCONSULTANT(s) are in full compliance with all laws and regulations. Consultant shall take, and require its subCONSULTANTS to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Consultant shall immediately notify City of these facts in writing.

(b) In performing the work or services to be provided hereunder, Consultant shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(c) Consultant represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(d) Neither Consultant, nor any of Consultant's subCONSULTANTS performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. Consultant and any of its subCONSULTANTS shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this

provision, Consultant shall remain responsible for complying with Section 25(a), above.

(e) If Consultant should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Consultant shall include the provisions of this Section 25 in each subcontract and require its subCONSULTANTS to comply therewith.

(f) This Section 25 shall survive expiration or termination of this Agreement.

26. All Plans, drawings, Specifications, reports, logs, and other documents prepared by the Consultant in its performance under this Agreement shall, upon completion of the project, be delivered to and be the property of the City, provided that the Consultant shall be entitled, at its own expense, to make copies thereof for its own use.

27. The laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement, and shall also govern the interpretation of this Agreement. Venue shall be vested in the Superior Court of the State of California, County of Riverside.

28. Consultant expressly waives any and all rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code which reads as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

\_\_\_\_\_  
Initials

This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims,

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liabilities, and demands of whatsoever character, nature and kind that are known or unknown, or suspected or unsuspected, including, without limitation, claims of entitlements under the California Public Employees' Retirement System (CalPERS) that are only afforded to employees and not independent contractors. Consultant further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

Consultant hereby expressly agrees to clearly and conspicuously disclose to City in writing any and all persons working for Consultant who are retirees under the California Public Employees' Retirement System (CalPERS) whom receives a monthly CalPERS retirement allowance, which may provide services to City under the Agreement, prior to such person performing any services thereunder. Nothing herein shall be deemed or interpreted to limited a CalPERS retiree's obligations under applicable law, rules or regulations.

29. Authority To Execute. The representative executing this Agreement on behalf of each party hereby represents and warrants that he or she has full power and authority to execute this Agreement on behalf of such party and that all approvals and other actions necessary in connection with the effective execution by him or her have been obtained and are in full force and effect as of his or her execution hereof.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement.

City of Moreno Valley

HR Green Pacific, Inc.

BY: \_\_\_\_\_  
Brian Mohan, City Manager

\_\_\_\_\_  
Date

BY: \_\_\_\_\_

Name: \_\_\_\_\_

TITLE: \_\_\_\_\_  
(President or Vice President)

\_\_\_\_\_  
Date

**INTERNAL USE ONLY**

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Public Works Director/City Engineer

\_\_\_\_\_  
Date

BY: \_\_\_\_\_

Name: \_\_\_\_\_

TITLE: \_\_\_\_\_  
(Corporate Secretary)

\_\_\_\_\_  
Date

Enclosures: Exhibit "A" – City Scope of Services  
Exhibit "B" – Consultant Proposal  
Exhibit "C" – City Services  
Exhibit "D" – Terms of Payment  
Exhibit "E" – Insurance Requirements

**EXHIBIT A**

**SCOPE OF SERVICES**

**EXHIBIT B**

**CONSULTANT PROPSAL**

## EXHIBIT C

### CITY - SERVICES TO BE PROVIDED TO CONSULTANT

1. Furnish the Consultant all in-house data which is pertinent to services to be performed by the Consultant and which is within the custody or control of the City, including, but not limited to, copies of record and off-record maps and other record and off-record property data, right-of-way maps and other right-of-way data, pending or proposed subject property land division and development application data, all newly developed and pertinent design and project specification data, and such other pertinent data which may become available to the City.
2. Provide timely review, processing, and reasonably expeditious approval of all submittals by the Consultant.
3. Provide timely City staff liaison with the Consultant when requested and when reasonably needed.



## **EXHIBIT D**

### **TERMS OF PAYMENT**

1. The Consultant's compensation shall not exceed \$\_\_\_\_\_.
2. The Consultant will obtain, and keep current during the term of this Agreement, the required City of Moreno Valley business license. Proof of a current City of Moreno Valley business license will be required prior to any payments by the City. Any invoice not paid because the proof of a current City of Moreno Valley business license has not been provided will not incur any fees, late charges, or other penalties. Complete instructions for obtaining a City of Moreno Valley business license are located at:  
[http://www.moval.org/do\\_biz/biz-license.shtml](http://www.moval.org/do_biz/biz-license.shtml)
3. The Consultant will electronically submit an invoice to the City once a month for progress payments along with documentation evidencing services completed to date. The progress payment is based on actual time and materials expended in furnishing authorized professional services during the preceding calendar month. At no time will the City pay for more services than have been satisfactorily completed and the City Engineer's determination of the amount due for any progress payment shall be final. The consultant will submit all original invoices to Accounts Payable staff at [AccountsPayable@moval.org](mailto:AccountsPayable@moval.org)  
Accounts Payable questions can be directed to (951) 413-3073.  
Copies of invoices may be submitted to the \_\_\_\_\_ Department at  
<email address>@moval.org or calls directed to (951) 413-XXXX.
4. The Consultant agrees that City payments will be received via Automated Clearing House (ACH) Direct Deposit and that the required ACH Authorization form will be completed prior to any payments by the City. Any invoice not paid because the completed ACH Authorization Form has not been provided will not incur any fees, late charges, or other penalties. The ACH Authorization Form is located at:  
[http://www.moval.org/city\\_hall/forms.shtml#bf](http://www.moval.org/city_hall/forms.shtml#bf)
5. The minimum information required on all invoices is:
  - A. Vendor Name, Mailing Address, and Phone Number
  - B. Invoice Date

- C. Vendor Invoice Number
- D. City-provided Reference Number (e.g. Project, Activity)
- E. Detailed work hours by class title (e.g. Manager, Technician, or Specialist), services performed and rates, explicit portion of a contract amount, or detailed billing information that is sufficient to justify the invoice amount; single, lump amounts without detail are not acceptable.

6. The City shall pay the Consultant for all invoiced, authorized professional services within thirty (30) days of receipt of the invoice for same.

7. Non-Performance Damages/Penalties. The Vendor have agreed to non-performance damages/penalties with respect to Vendor's failure to complete the Work within the Agreement Time intervals and/or frequencies as set forth in this agreement and/or in the Scope of Work, or as directed by the City. For each of the categories set forth hereinabove, **the penal sum of 1% of the total Agreement amount per working day will be assessed for each working day the deficiencies remain uncorrected.** If non-performance damages/penalties are to be assessed, the Vendor will be notified immediately by written email, facsimile transmission, letter, or by telephone. The Vendor will not be assessed non-performance damage/penalties for delays caused by the City or are deemed outside the Vendor's control by the City.

Vendor and City acknowledge and agree that the amount of such non-performance damages/penalties are impossible to ascertain as of the date of execution hereof and have agreed to such non-performance damages/penalties to fix the City's damages and to avoid later disputes. It is understood and agreed by Vendor that non-performance damages/penalties payable pursuant to this Agreement and that such amounts are not manifestly unreasonable under the circumstances existing as of the date of execution of this Agreement.

It is further mutually agreed that the City will have the right to deduct non-performance damages/penalties against progress payments or retainage and that the City will issue a Change Order and reduce the Agreement Price accordingly. In the event the remaining unpaid Agreement Price is insufficient to cover the full amount of non-performance damages/penalties, Vendor shall pay the difference to the City.

City may at any time deduct non-performance damages/penalties as are payable hereunder from money due or to become due to Vendor, or pursue any other legal remedy to collect such non-performance damages/penalties from Vendor and/or its Insurance, Surety, etc.. Neither the City's failure or delay in deducting non-performing damages/penalties from payments otherwise due Vendor, nor City's failure or delay in notifying Vendor of the accrual of non-performance

damages/penalties, shall be deemed a waiver of City's right to non-performance damages/penalties.

City's rights under this Section shall not be interpreted as precluding or limiting:

- 1) any right or remedy of City arising from an event of Vendor default other than a failure to complete the Work within the Agreement Time; or
- 2) City's right to order an acceleration, at Vendor's expense, of performance of the Work to overcome delay, including, without limitation, a delay for which City has the right to assess and/or accrue non-performance damages/penalties.

The availability of non-performance damages/penalties shall not limit City's right to terminate the Vendor's performance and accrual and/or assessment of non-performance damages/penalties does not constitute a waiver of such rights.

## **EXHIBIT E**

### **INSURANCE REQUIREMENTS**

#### **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers’ Compensation insurance as required by the California Labor Code and Employer’s Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to Consultant’s profession.

#### **Minimum Limits of Insurance**

Consultant shall maintain limits of liability of not less than:

1. General Liability:  
  
\$1,000,000 per occurrence for bodily injury and property damage  
\$1,000,000 per occurrence for personal and advertising injury  
\$2,000,000 aggregate for products and completed operations  
\$2,000,000 general aggregate
2. Automobile Liability:  
  
\$1,000,000 per accident for bodily injury and property damage
3. Employer’s Liability:  
  
\$1,000,000 each accident for bodily injury  
\$1,000,000 disease each employee  
\$1,000,000 disease policy limit<sup>4</sup>.
4. Professional Liability (Errors and Omissions):

\$1,000,000 per claim/occurrence  
\$2,000,000 policy aggregate

### **Umbrella or Excess Insurance**

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the “Minimum Limits of Insurance,” this insurance policy(ies) shall “follow form” and afford no less coverage than the primary insurance policy(ies).

### **Deductibles and Self-Insured Retentions**

Consultant shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and Consultant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee. At the option of the City Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, CSD, Housing Authority and each of their officers, officials, employees, agents and volunteers; or (ii) Consultant shall provide a financial guarantee, satisfactory to the City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

### **Other Insurance Provisions**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, CSD, Housing Authority and each of their officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, CSD, Housing Authority and each of their officers, officials, employees, agents and volunteers.
3. Consultant’s insurance coverage shall be primary and no contribution shall be required of City.

The Workers’ Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Consultant and its insurer shall waive any right of subrogation against City, CSD, Housing Authority and each of their officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.

2. Insurance must be maintained and evidence of insurance must be provided for at least 3 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 3-year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Consultant, Consultant must purchase extended reporting coverage for a minimum of 3 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

#### **Acceptability of Insurers**

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by the City Manager or his/her designee.

#### **Verification of Coverage**

Consultant shall furnish City with all certificates and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City Manager or his/her designee prior to City's execution of the Agreement and before work commences.