



Economic Development & Planning Office
220 E. Mountain View Street | Barstow, CA 92311

REQUEST FOR STATEMENT OF
QUALIFICATIONS (SOQ)
FOR
PROFESSIONAL MARKETING AND REAL ESTATE SERVICES
FOR CITY OWNED PROPERTY

Submit Proposals No Later Than:

Date: September 6, 2017
Day: Wednesday
Time: 4:00 PM

Submit Proposal:

City Clerk's Office
City of Barstow
220 East Mountain View Street, Ste "A"
Barstow, CA 92311

For SOQ Questions, contact:

Margaret Carter
Economic Development Administrator
City of Barstow
220 East Mountain View Street, Ste "A"
Barstow, CA 92311
760-255-5109
mcarter@barstowca.org

Notice of Inviting Proposals

NOTICE IS HEREBY GIVEN that Request for Statement for Qualifications (SOQ) for providing Professional Marketing and Real Estate Services for City Owned Property will be received at the Office of the City Clerk, 220 East Mountain View Street, Barstow California, until 4:00PM (PST) on Wednesday, September 6, 2017.

DESCRIPTION OF WORK: Each SOQ shall specify each Item and any exceptions shall be clearly stated in the proposal. Failure to set forth any item in the specifications shall be grounds for rejection.

OBTAINING SOQ DOCUMENT:

The SOQ may be downloaded via the City of Barstow's Webpage at www.barstowca.org. Go to Business, Bid Opportunities / Request for Proposals).

PROPOSALS:

1. All expenses for preparation of SOQ's will be borne by the consultant.
2. Proposals shall be submitted in an 8 ½ x 11 format.
3. All Proposals must be received by mail, by a recognized carrier, or hand delivered no later than 4:00PM on Wednesday, September 6, 2017. Late RFPs will not be considered
4. It is preferred that all SOQ's be submitted on recycled paper. Limit your SOQ's to 20 pages with information on both sides of the sheet.
5. Submit the entire proposal in a sealed envelope with "**Sealed Request for Statement of Qualifications for Professional Marketing & Real Estate Services – Do not open with regular Mail**" printed on the outside.
6. This request does not constitute an offer of employment or contract for services.
7. The City reserves the option to reject any or all SOQs, all or in part, and to waive any informalities received by reason of this request.
8. The City reserves the option to retain all SOQs, whether selected or rejected.
9. The City reserves the right to select the Consultant, who presents the SOQ, which, in the judgment of the City, best accomplishes the desired results.
10. The Selection Committee will review and select three (3) companies to be interviewed on Monday, September 11, 2017.

If you have any questions about the proposal process and/or information regarding this SOQ, please contact:

Margaret Carter
Economic Development & Planning Office
760-255-5109
mcarte@barstowca.org

PROPOSALS TO REMAIN OPEN: The Proposer shall guarantee that all contents of their proposal shall be valid for a period of 90 calendar days from the due date of the proposal. The receiving time in the City Clerk's office will be the governing time for acceptability of Proposal. Telegraphic, electronic, and telephonic proposals will not be accepted. Late proposals will be returned unopened.

**REQUEST FOR STATEMENTS OF
QUALIFICATIONS
FOR
PROFESSIONAL MARKETING AND REAL ESTATE SERVICES
FOR CITY OWNED PROPERTY**

CITY OF BARSTOW

I. PROJECT DESCRIPTION

The City of Barstow (City) is requesting Statements of Qualifications (SOQ) from interested firms to provide marketing and real estate services for city owned property.

The selected firm will be responsible for the development and implementation of a marketing strategy that will lead to the successful disposition various city owned property. These tasks may include, but are not limited to the following:

1. MARKETING AND SALE OF LAND:

- Develop and implement a marketing program to effectively dispose of city owned property,
- Prepare, review and analyze real estate market valuations and appraisal reports for City property.
- Knowledgeable of California State Regulations regarding the sale of the former Redevelopment Agency property.
- With assistance from City staff, identify infrastructure needs for each property.
- Conduct client tours of available sites.
- Arrange for client access to the property.
- Determine financial ability of the proposed buyer to build the proposed development.
- Perform due diligence on the proposed buyer.
- Provide monthly activity report to City staff.

II FEE STRUCTURED

Describe how your organization would structure and develop a fee for managing this proposal. Refer to Section XI below for additional information.

II QUALIFICATIONS FOR RESPONDENT

Prospective respondents shall have sufficient qualified personnel and resources to accomplish all the proposed services described herein. The respondent shall be capable of furnishing all necessary professional and technical services necessary to successfully complete management and marketing activities for the City. The respondents shall have prior experience and capabilities in conducting facilities management and land marketing activities.

The respondents shall provide detailed descriptions about their experience related to the qualifications set forth and provide client references that would substantiate such experience. The client references must include the dates and locations of services provided client names and contact persons, addresses and telephone numbers. The City reserves the right to contact the referenced clients to verify the information and/or solicit comments.

The City reaffirms its commitment to award its contracts in a non-discriminatory manner regardless of the individual's or entity's race, color, creed, sex, age, national origin or physical disability. All entities or individuals responding to this Request for Statement of Qualifications must comply with all requirements of the City.

Small, Minority and Women-Owned businesses are encouraged to respond.

IV. GENERAL SCOPE OF SERVICES

The following tasks represent the general scope of services and are not definitive but meant to provide a general description of the requested duties. Proposing firms should identify additional tasks that they believe will be necessary in order to achieve the intended objectives.

The selected Consultant shall provide the services listed below in accordance with all applicable federal and state laws. The services include, but not limited to, the following tasks:

- Develop and implement strategies to market identified City property.
- Personally negotiate with potential clients (or their appointed representatives) on the City's behalf.
- Purchase Offers shall be transmitted to the City for review.
- During the time that negotiations with the client are proceeding, Consultant will provide all necessary information to, and work with, the City staff.
- All pertinent information and contacts regarding purchase offers and leads shall be maintained.
- A written activity summary will be submitted to City staff on a monthly basis.
- All executed documents on successfully negotiated sales will be promptly transmitted to the City.
- Prepare, review and analyze real estate market valuations and appraisal reports for City property.
- Prepare all offer letters, summary statements, real estate market valuations and appraisal reports in accordance with state and federal regulations and with the approval of the City.
- Prepare all deeds and other documents necessary to complete the sale.
- Process all sale documents and transmit the executed and accepted documents to the appropriate parties (ie. escrow, City and new property owner).
- Act as liaison between the City, title companies and escrow agents.
- Assist City staff with the coordination of all the various aspects of real property sales.
- Meet and confer with City staff on an as needed basis.

If you wish to participate, please submit One Original and three (3) signed responses no later than 4:00 PM on Wednesday, September 6, 2017. Please send all SOQ responses to the following address:

CITY CLERK'S OFFICE
CITY OF BARSTOW
220 East Mountain View Street, Ste "A"
Barstow, CA 92311

"Sealed Request for Statement of Qualifications for Professional Marketing & Real Estate Services – Do not open with regular Mail"

V. STATEMENTS OF QUALIFICATION FORMAT AND SCORING CRITERIA

The ideal entity will possess the knowledge of the local real estate market to maximize the revenue-generating capability of property sales. The following information shall be presented in the response to the SOQ and shall serve as criteria for the evaluation of response. The response shall be presented in a complete and concise format and shall be limited to no more than ten (10) pages, not including supplemental appendixes. The rating for scoring the responses will be based upon a total of 100 points. The criteria are as follows:

1. Firm's Profile: Provide a brief history of the firm, experience and qualifications of your designated professional team. 20 Points
2. Experience of the Firm with Similar Projects: Describe the firm's specific experience of working with government owned property in terms of marketing and sales of similar size scope and type within the last five (5) years. 30 Points
3. References: Provide three (3) client references that can attest to the qualifications and quality of work of the firm on projects with similar types of marketing real estate services described herein. References must be limited to projects in which the proposed team members had direct participation. The City reserves the right to contact the referenced clients to verify the information and/or to solicit comments. 20 Points
4. Cost of professional services: Describe your firms expected sales commission. See Section XI below for additional information. 30 Points

Upon receipt of responses, City staff will evaluate and rank each firm based on the above criteria. City staff will select up to three (3) semi-finalists to participate in an interview. Subsequently, the City will enter into contract negotiations with the top-ranked firm.

Any contract arising from this selection process will be subject to approval by the Barstow City Council.

The City will not accept any responses submitted by facsimile. Responses received after the deadline will not be considered. If you have any questions regarding this SOQ, please contact Margaret Carter at 706-255-5109.

VI. CHANGES TO THE PROJECT

The City reserves the right to negotiate a contract for the entire project or any portion and reserves the right to amend the Scope of Services at any time during the consultant selection process. The City reserves the right to accept any responses or to reject all responses and reissue this Request. The City is neither obligated to award a contract following SOQ evaluation nor to pay any costs incurred by participants in the selection process.

VII. RESPONSE PREPARATION EXPENSE

Each SOQ response shall be prepared at the sole cost and expense of the firms electing to participate and with the express understanding that no claims against the City for reimbursement will be accepted.

VIII. RIGHTS OF THE CITY OF BARTOW

The City reserves the right, at their discretion, to pursue any or all of the following actions related to this SOQ request:

1. Issue addenda to the SOQ request.
2. Request additional information and/or clarification from the respondents.

IX. PUBLIC DISCLOSURE

All SOQ responses and their contents shall become the property of the City and will not be subject to return. All information contained therein shall be subject to public disclosure under the Public Records Act. Submission of the SOQ response shall be deemed a waiver of any exemption or exception to disclosure that the firm may otherwise have.

X. CITY OF BARSTOW INSURANCE REQUIREMENTS

For respondents' information, the City's insurance requirements for the consultant are as follows:

- General Liability: \$1,000,000 per occurrence
- Auto Liability: \$1,000,000 combined single limit per accident
- Worker's Compensation: Worker's Compensation to statutory limits: \$1,000,000 Employers' Liability Limit
- Professional Liability: \$1,000,000 per occurrence

All insurance is to be placed with insurers with a current A.M. Best rating of A+ VII or above. The Consultant is also required to obtain a current City of Barstow Business License.

The City of Barstow, its officials, officers, employees and volunteers are to be added as insured on all liability policies.

Cancellation Notice: With respect to the interests of the City, this insurance shall not be cancelled except after thirty-days prior written notice by receipted delivery is given to the City.

The Worker's Compensation insurer agrees to waive all rights of subrogation against the City for injuries to employees of the insured resulting from work for the City or use of the City's premises or facilities.

XI. PROPERTY FOR DISPOSITION

The City of Barstow owns the following properties:

The former Redevelopment Agency property:

Barstow Business Park parcels:

0427-062-39

0427-062-42 through 0427-062-45

Total of 29.11 acres

0427-062-40 & 41: Sold to Victor Valley Transit Authority

0427-062-42: Currently under contract

All other RDA properties are listed in the Long Range Property Management Plan as government.

City of Barstow owned property:

Improved and Vacant Land

Properties currently under contract are not part of this SOQ

ATTACHMENT A
Scope and Fee Schedule

ATTACHMENT B

**Professional Services Agreement
(SAMPLE)**

PROFESSIONAL SERVICES AGREEMENT
(City of Barstow/_____)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Barstow, a California municipal corporation ("City") and _____, a California Corporation ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: _____.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 "Commencement Date": _____.
- 3.4 "Expiration Date": _____.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City

shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of _____ Dollars (\$ _____) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. _____ shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 5.6 Consultant has represented to the City that 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. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 5.7 Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule. Fees for such additional services shall be paid within sixty days of the date Consultant issues an invoice to City for such services.

7. OWNERSHIP OF WRITTEN PRODUCTS

- 7.1 All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant
- 7.2 Consultant represents and warrants that Consultant has the legal right to utilize all intellectual property Consultant will utilize in the performance of its obligations pursuant to this Agreement. Consultant further represents that Consultant shall ensure City has the legal right to utilize all intellectual property involved in and/or resulting from Consultant's performance of this Agreement.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or

otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.

- 10.3 City shall have the right to offset against the amount of any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and related to Consultant's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 will not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, to the fullest extent permitted by law, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement.
- 11.2 Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall

be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured.

- 11.3 Insurance required under this Agreement shall be of the types set forth below, with minimum coverage as described:
 - 11.3.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.3.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.3.3 Worker's Compensation insurance as required by the laws of the State of California.
 - 11.3.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.4 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.5 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.6 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Consultant's expense, the premium thereon.
- 11.7 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 11.8 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other

policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

- 11.9 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.10 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.11 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.12 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.
- 11.13 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.
- 11.14 Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under the Agreement.
- 11.15 Consultant may be self-insured under the terms of this Agreement only with express written approval from the City.
 - 11.15.1 All self-insured retentions (SIR) must be disclosed to the City for approval and shall not reduce the limits of liability.
 - 11.15.2 Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the names Insured or the

City.

- 11.16 City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require.

13. RECORDS AND INSPECTIONS

Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement. This includes, but shall not be limited to, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Barstow
Attention: City Manager
220 E. Mt. View Street, Ste. A
Barstow, CA 92311
Telephone: (760) 256-3531
Facsimile: (760) 256-4472

If to Consultant:

ATTN: _____

Telephone: _____
Facsimile: _____

With courtesy copy to:

Teresa L. Highsmith
City Attorney
Colantuono, Highsmith & Whatley, PC
300 S. Grand Ave, Suite 2700
Los Angeles, CA 90071-3137
Telephone: (213) 542-5711
Facsimile: (213) 542-5710

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1 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 subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if 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.
- 18.2 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.3 This Agreement shall be binding on the successors and assigns of the parties. Except as expressly stated herein, there is no intended third party beneficiary of any right or obligation assumed by the parties.
- 18.4 Time is of the essence for each and every provision of this Agreement.
- 18.5 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition or any other unlawful basis.
- 18.6 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

- 18.7 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.
- 18.8 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.9 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be San Bernardino County, California.
- 18.10 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.11 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.12 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations

herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Barstow

“Consultant”

By: _____
 , Mayor

By: _____

Date: _____

Date: _____

By: _____

Date: _____

Attest:

By _____
 , City Clerk

Date: _____

Approved as to form:

By _____
 Teresa Highsmith, City Attorney

EXHIBIT A
SCOPE OF WORK

**EXHIBIT B
APPROVED FEE SCHEDULE**