

**CITY OF PALM DESERT  
IRRIGATION PUMP PREVENTATIVE MAINTENANCE  
MAINTENANCE SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 12<sup>th</sup> day of May 2022 by and between the City of Palm Desert, a municipal corporation organized under the laws of the State of California with its principal place of business at 73-510 Fred Waring Drive, Palm Desert, California 92260-2578, County of Riverside, State of California ("City") and Multi W Systems, Inc. a Corporation with its principal place of business at 2615 Strozier Avenue El Monte, California 91733 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**2. RECITALS.**

**2.1 Contractor.**

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing maintenance services to public clients, that it and its subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**2.2 Project.**

City desires to engage Contractor to render such services for the **Irrigation Pump Preventive Maintenance** ("Project") as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

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

3.1.2 Term. The term of this Agreement shall be from **July 1, 2022**, to **June 30, 2027**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than three (3) additional one-year terms. Contractor shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

### **3.2 Responsibilities of Contractor.**

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

3.2.2 Schedule of Services. Contractor shall perform the Services in a prompt and timely manner in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

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

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

3.2.5 Contractor's Representative. Contractor hereby designates Rosa Yu, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained

throughout the term of this Agreement. Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of **Two Hundred Fifty Dollars (\$250.00)** per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do or respecting the size of any payment to Contractor during the performance of this Contract, Contractor shall continue to perform the Work while said dispute is decided by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with.

3.2.10.1 Employment Eligibility; Contractor. Contractor certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Contractor certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement and shall not violate any such law at any time during the term of the Agreement.

3.2.10.2 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which

require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.3 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer, and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall 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.

3.2.10.4 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.5 Water Quality Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor to penalties, fines, or additional regulatory requirements.

3.2.11 Insurance.

3.2.11.1 Minimum Requirements. Without limiting Contractor's indemnification of City, and prior to commencement of the Services, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form that is satisfactory to City.

(A) General Liability Insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(B) Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident. The City's Risk Manager may modify this requirement if it is determined that Consultant will not be utilizing a vehicle in the performance of his/her duties under this Agreement.

(C) Umbrella or Excess Liability Insurance. Contractor may opt to utilize umbrella or excess liability insurance in meeting insurance requirements. In such circumstances, Contractor may obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

(a) A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;

(b) Pay on behalf of wording as opposed to reimbursement;

(c) Concurrency of effective dates with primary policies; and

(d) Policies shall "follow form" to the underlying primary policies.

(e) Insureds under primary policies shall also be insureds under the umbrella or excess policies.

(D) Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives.

(E) Fidelity Coverage. Reserved

(F) Cyber Liability Insurance. Reserved

(G) Pollution Liability Insurance. Reserved

(A) Proof of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(B) Duration of Coverage. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by Contractor, his/her agents, representatives, employees or subconsultants.

(C) Primary/Non-Contributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(D) City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications, or is canceled and not replaced, City has the right, but not the duty, to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Contractor, or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.

(E) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(F) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives, or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(G) Enforcement of Contract Provisions (non estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(H) Requirements Not Limiting. Requirements of specific coverage features, or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(I) Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(J) Additional Insured Status. General liability, automobile liability, and if applicable, pollution liability and cyber liability, policies shall provide or be endorsed to provide that the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives, shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(K) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(L) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(M) Pass Through Clause. Contractor agrees to ensure that its sub-consultants, sub-contractors, and any other party involved with the Project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the Project will be submitted to City for review.

(N) City's Right to Revise Specifications. The City or its Risk Manager reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation. If the City reduces the insurance requirements, the change shall go into effect immediately and require no advanced written notice.

(O) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(P) Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(Q) Additional Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 Bonds.

3.2.13.1 Performance Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient, or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within ten (10) days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with

Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.2.14 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.2.15 Work Sites.

3.2.15.1 Inspection Of Site. Contractor shall visit sites where Services are to be performed and shall become acquainted with all conditions affecting the Services prior to commencing the Services. Contractor shall make such examinations as it deems necessary to determine the condition of the work sites, its accessibility to materials, workmen and equipment, and to determine Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances—time or money—will be allowed as to such matters after commencement of the Services.

3.2.15.2 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract, including any plans, specifications, or scope of work before commencing Services. Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any Services or altering the condition.

3.2.15.3 Hazardous Materials and Differing Conditions. Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes, hazardous substances and hazardous materials as defined in California state or federal law at the site which have not been rendered harmless, the Contractor shall immediately stop work at the affected area and shall report the condition to the City in writing. The City shall contract for any services required to directly remove and/or abate PCBs, hazardous substances, other toxic wastes and hazardous materials, and shall not require the Contractor to subcontract for such services. The Services in the affected area shall not thereafter be resumed except by written agreement of the City and Contractor.

3.2.16 Loss and Damage. Contractor shall be responsible for all loss and damage which may arise out of the nature of the Services agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by City.

3.2.17 Warranty. Contractor warrants all Services under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Services or non-conformance

of the Services to the Agreement, commence and prosecute with due diligence all Services necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by its defective Services or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total annual compensation shall not exceed Forty-Three Thousand Dollars (\$43,000.00) without written approval of the City Council or City Manager, as applicable.

3.3.2 Payment of Compensation. Contractor shall submit to City monthly invoices which provides a detailed description of the Services and hours rendered by Contractor. City shall, within thirty (30) days of receiving such statement, review the statement and pay all non-disputed and approved charges. Contractor shall submit its final invoice to City within thirty (30) days from the last date of provided Services or termination of this Agreement and failure by the Contractor to submit a timely invoice shall constitute a waiver of its right to final payment. Payment shall not constitute acceptance of any Services completed by Contractor. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.3.3 Deductions. City may deduct or withhold, as applicable, from each progress payment an amount necessary to protect City from loss because of: (1) stop payment notices as allowed by state law; (2) unsatisfactory prosecution of the Services by Contractor; (3) sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Agreement; and (4) any other sums which the City is entitled to recover from Contractor under the terms of the Agreement or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

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

3.3.5 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.6 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.3.7 Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works" or "maintenance" project, and if the total compensation is \$15,000 or more, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

**3.4 Termination of Agreement.**

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

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

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

**3.5 General Provisions.**

3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Contractor:**

Multi W Systems, Inc.  
2615 Strozier Avenue  
El Monte, CA 91733  
Attn: Rosa Yu

**City:**

City of Palm Desert  
73-510 Fred Waring Drive  
Palm Desert, CA 92260-2578  
Attn: Randy Chavez, Public Works Department

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses,

liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses except such Claims caused by the sole or active negligence or willful misconduct of the City.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Contractor, the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County. In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

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

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

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

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the

prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to the City include its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives 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.

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

3.5.10 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.

3.5.11 No Third-Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 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.

3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid, nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. 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.

3.5.14 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.

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

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

3.5.17 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.


**[SIGNATURES ON NEXT PAGE]**

**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT  
BETWEEN THE CITY OF PALM DESERT  
AND MULTI W SYSTEMS, INC.**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF PALM DESERT

MULTI W SYSTEMS, INC.  
A CORPORATION

By:   
Todd Hileman (May 20, 2022 08:58 PDT)  
L. Todd Hileman  
City Manager

[Corporations, TWO SIGNATURES,  
President OR Vice President AND  
Secretary OR Treasurer REQUIRED]

By: *William Wang*  
William Wang (May 20, 2022 08:16 PDT)

ATTEST:

Its: V. President

By:   
Anthony Mejia (May 20, 2022 09:06 PDT)  
Anthony J. Mejia  
City Clerk

Printed Name: William Wang

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

APPROVED AS TO FORM:

By: *Carlos Campos*  
Carlos Campos (May 20, 2022 08:46 PDT)  
Best Best & Krieger LLP  
City Attorney

956026 C61/D21

Contractor's License Number and  
Classification

\_\_\_\_\_  
DIR Registration Number (if applicable)

QC MN BONDS: MN

Insurance ID: MR mga

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**IRRIGATION PUMP QUATERLY PREVENTATIVE MAINTENANCE**  
**SCOPE OF SERVICES**

**1. GENERAL SCOPE OF WORK**

The City of Palm Desert currently has three (3) parks that utilize irrigation pumps, Variable Frequency Drives, SCADA systems, filters, screens, and other ancillary equipment. The pumps are essential to irrigate highly visited areas such as baseball fields, soccer fields, amphitheater, open turf spaces, and other greenbelt and landscaped areas. Maintaining the irrigation pump systems is critical to ensure city parks and landscape are maintained at a world class level.

The City is looking for a qualified Contractor to inventory the City's irrigation infrastructure and develop a Preventive Maintenance Program and perform the necessary work to keep these city assets operational. Contractor shall also maintain pump rooms, enclosed areas, and adjacent critical areas clean and free of debris.

Maintenance shall be performed a minimum of once every three (3) months. Contractor shall also supply the necessary tools, equipment, and qualified staff necessary to perform the job. In addition, contractor will report issues discovered and submit estimates for repairs.

**2. SERVICES TO BE PERFORMED**

City Staff conducted a preliminary inventory of the pump room and stations and noted: Six (6) irrigation booster pumps, three (3) VFD's, two (2) SCADA systems, and one (1) well pump. In addition, pressure regulating valves, filters, fertigation pumps, and supporting components were also noted.

Contractor shall conduct an independent inventory of the entire irrigation systems and submit a Preventive Maintenance Program Proposal based on the findings.

Equipment locations and approximate quantities:

- A. Civic Center Park: Three (3) irrigation booster pumps, three (3) VFD's, two (2) SCADA systems, Amiad filter, and one (1) well pump. In addition, there is a fertigation system at this location.
- B. Hovley Soccer Park: One (1) irrigation booster pump and one (1) pressure regulating valve. In addition, there is a fertigation system at this location.
- C. Freedom Park: Two (2) irrigation booster pumps and inline master valves.

Contractor is to perform industry standard maintenance, including but not limited to:

- Cleaning the filters associated with the pumps to ensure proper flow.
- Checking amps on motor controls and VFD's,
- Checking seals and gaskets.
- Oil and lubricating equipment per manufacturer's recommendations.

- SCADA systems review and testing.
- Checking valves, hoses, and equipment to ensure they operate correctly.
- Contractor shall be on-site to respond to emergency repairs within 24 hours of receiving notification.

**3. PERFORMANCE OF EXTRA WORK**

- Contractor shall not perform extra work without City authorization.
- Authorization shall be in writing, on a completed City Work Request Form, and signed by an authorized City representative.
- Additional Work labor shall be paid at the hourly rate listed on the Price Sheet Schedule unless otherwise agreed upon.
- Additional Work materials shall be paid at the rate of "cost plus fifteen percent (15%) mark-up.
- Invoicing for Additional Work shall include an itemized invoice describing the unit cost and/or labor hours at the contract rate, materials costs, and copies of materials invoices from the supplier(s).

**IRRIGATION PUMP QUARTERLY PREVENTATIVE MAINTENANCE  
SPECIAL PROVISIONS**

**1. PRE-COMMENCEMENT CONFERENCE**

A pre-commencement conference shall be conducted at the Palm Desert City Hall, 73-510 Fred Waring Drive, Palm Desert, California, 92260 prior to the start of construction. The job-site foreman or superintendent assigned by the Contractor for this project shall be present at the Pre-commencement Meeting. The Contractor shall prepare a tentative maintenance schedule for submission and review at the Pre-Construction Meeting. The discussion shall include but not be limited to: project supervision; progress schedules and reports; payments to Contractor; safety; and other anticipated issues pertinent to the contract.

At this conference, the Contractor shall designate, in writing, a representative who shall have authority to act for the Contractor with the City of Palm Desert. An alternate representative may be designated. The representative or alternate shall be present at the job site whenever work is in progress or whenever actions of the elements necessitate its presence to take measures necessary to protect the project, persons, or property. Any order or communication given to this representative shall be deemed delivered to the Contractor.

In the absence of the Contractor or its designated representative, necessary or desirable directions or instructions may be given by the Engineer to the superintendent or person having charge of the specific work to which the order applies. Such order shall be complied with promptly and referred to the Contractor or its representative.

Those attending the meeting shall include, but not be limited to the following:

1. Contractor
2. City of Palm Desert Department Project Manager
3. City of Palm Desert Landscape Staff
4. Pertinent Subcontractor(s)

**2. PUBLIC CONVENIENCE**

The Contractor shall conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under active maintenance no greater length or amount of work then can be prosecuted properly with due regard to the rights of the public. Contractor must obey City directives.

Pedestrian paths of travel must be maintained free of obstructions and hazardous conditions, except where the condition is necessary for completion of the work. To the extent any portion of the work requires obstructing pedestrian paths of travel, the work shall be performed so as to minimize the extent of the obstruction. Where Contractor's operations may create hazardous conditions to pedestrian paths of travel, appropriate signing and barricades shall be installed to safely route pedestrians around the impacted area.

**3. HOURS OF WORK**

Unless otherwise approved by City of Palm Desert, Contractor shall not work outside the established hours of operation under this contract:

May 1 through September 30

Weekdays (MTWTF):	5:30 AM to 7:00 PM
Weekends (Saturday):	*8:00 AM to 5:00 PM
Weekends (Sunday):	No Work
Government Code Holidays:	No Work

October 1 through April 30

Weekdays (MTWTF):	7:00 AM to 5:30 PM
Weekends (Saturday):	*8:00 AM to 5:00 PM
Weekends (Sunday):	No Work
Government Code Holidays:	No Work

\*Work is permitted on Saturdays only with prior approval by City of Palm Desert or its agent.

Work is not permitted on Sundays and during City of Palm Desert holidays.

Failure to observe these work hours may result in a citation being issued to the offenders by the police department. (***Emergency work directed by City of Palm Desert is not held to these restrictions.***)

**4. UTILITY REQUIREMENTS**

The Contractor is advised of the existence of the utility notification service provided by UNDERGROUND SERVICE ALERT (USA). USA member utilities will provide the Contractor with the precise locations of their substructures in the construction area when the Contractor gives at least 48-hours' notice to the Underground Service Alert by calling 1-800-227-2600. The location and existence of utilities and improvements shown on the plans are approximate and taken from available records. The Contractor shall verify the location of existing improvements and shall take all precautions to protect them whether shown or not.

The California Public Utilities Commission mandates that, in the interest of public safety, main line gas valves be maintained in a manner to be readily accessible and in good operating condition. The Contractor shall notify the Southern California Gas Company's Headquarters Planning Office at (909) 335-7581 at least two (2) working days prior to the start of construction.

The Contractor shall coordinate installation of utility facilities within the project with the inspector listed above as contact. Requests for information not shown on the specific utility installation plan shall be directed to the contact for that utility. The exact location and identification of all existing utilities shall be determined by the Contractor prior to the start of any work. The Contractor shall protect-in-place all utilities unless otherwise noted on the plans.

**5. USE OF AND PROTECTION OF PREMISES AND REMOVAL OF DEBRIS**

The Contractor shall be responsible for all damages to persons or property that occurs as a result of the work. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the City of Palm Desert. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

Contractor shall remove at its own expense all rubbish and waste materials resulting from its operations, including any material that may fall in swimming pools, lagoons, or other water features. If on private property, Contractor must obtain permission from the property owner prior to removing debris. All debris must be removed before the end of the day unless otherwise directed by City of Palm Desert or City of Palm Desert's agent.

**6. CHANGES IN THE WORK/EXTRA WORK**

Contractor shall make no changes in the work without written direction from City of Palm Desert. Contractor shall not be compensated for any change made without City of Palm Desert's written direction.

Contractor shall not perform Extra Work without City of Palm Desert approval and work order. Contractor shall submit extra work invoices with a copy of the approved City of Palm Desert work order and applicable receipts.

If City of Palm Desert requests Contractor in writing for extra work, the Agreement price will be adjusted based on the following:

1. Price Sheet Hourly Rates.
2. Parts and materials will be billed at cost with an allowable 15% markup.

The cost for extra or changed work performed on a Time and Materials basis shall be determined as follows:

1. Labor: Contractor will be paid cost of labor for workers used in actual and direct performance of extra work, including only the actual wages paid which shall include any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.
2. Material: Only materials furnished by Contractor and necessarily used in performance of extra Work will be paid for. Cost of such materials will be cost, including sales tax and delivery charges.
3. Equipment: For Contractor-owned equipment, payment will be made at rental rates listed for equipment in California Department of Transportation official equipment rental rate schedule which is in effect on the date upon which the extra Work is accomplished, and which schedule is incorporated herein by reference as though fully set forth herein.
  - (a) For rented equipment, payment will be made based on actual rental invoices. Equipment used on extra work shall be of proper size and type.
  - (b) Rental rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rental rates. Rental time will not be allowed while equipment is inoperative due to breakdowns.
  - (c) Individual pieces of equipment or tools having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools.

If no agreement can be reached on a change order, City of Palm Desert shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to City of Palm Desert within seven (7) days of the issuance of the unilateral change order, disputing the terms of the unilateral change order and providing sufficient supporting documentation for its position as City of Palm Desert may reasonably require.

## **7. CLAIMS**

The Contractor will indemnify and save the City of Palm Desert, City and their agents harmless from all claims growing out of the lawful demand of Subcontractors, laborers, workmen, mechanics, material supplier, and furnishers of machinery and parts thereof, equipment tools, and supplies, incurred in the furtherance of the performance of the work. The Contractor shall, at the City of Palm Desert's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so the City of Palm Desert may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonable and sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be constructed to impose any obligations upon the City of Palm Desert to either the Contractor his Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the City of Palm Desert shall be considered as a payment made under the Contract Documents

by the City of Palm Desert to the Contractor and the City of Palm Desert shall not be liable to the Contractor for any such payment made in good faith.

**8. DISPUTE RESOLUTION**

Notwithstanding any other provision herein, provisions and procedures in this Section, claims of \$375,000 or less shall be resolved pursuant to the procedures set forth in California Public Contract Code §§ 20104, et seq. Contractor shall comply with the claim procedures set forth in Government Code section 900 et seq. prior to filing any lawsuit against the City of Palm Desert. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a lawsuit against the City of Palm Desert.

**9. PROJECT SAFETY**

The Contractor shall take all responsible precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. All employees on the project and all other persons who may be affected thereby;
2. All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractor or Sub-Subcontractors;
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
4. Vehicular and pedestrian traffic on or near the project site. This requirement shall apply continuously and not be limited to normal working hours.

The Contractor is responsible to design, construct and maintain all safety devices as required by law or manufacture. The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public City of Palm Desert bearing on the safety of persons or property or their protection from damage, injury or loss. Neither the City of Palm Desert nor the City of Palm Desert's Representative shall enforce safety measures or regulations. The contractor must submit a comprehensive written safety program covering all aspects of onsite and applicable offsite operations and activities associated with the contract.

The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities. The Contractor shall use proper safety signing and barricading as required by the California Manual on Uniform Traffic Control Devices (CA MUTCD) and the W.A.T.C.H. handbook.

The Contractor shall use such foresight and shall take such steps and precautions as operations make necessary to protect the public from danger or damage, or loss of life or property, which would result from the interruption or contamination of public water supply, irrigation or other public service or from the failure of partly completed work.

The Contractor shall take all necessary precautions to protect the public, especially children, from the hazards of open excavations. Trenches, slopes, and excavations requiring shoring shall

either be covered or adequately fenced at night and on weekends or whenever operations are not in actual progress.

High visibility clothing shall be worn at all times when working on the project. It is the Contractor's responsibility to ensure that this requirement is enforced.

Contractor shall ensure that all working personnel are identified by a work uniform that, at a minimum, consists of a shirt that identifies the company. All work vehicles used on the project shall also be identified, at a minimum, with the company name adequately displayed on the vehicles.

All safety devices and all guards for equipment shall be in place and in proper working order during equipment use. No safety device or guards shall be removed, modified or altered in any way, except in strict accordance with the manufacturer's recommendation.

In case of an emergency, which threatens loss or injury to property or life, Contractor shall act without previous instructions as the situation may warrant. Contractor shall notify Engineer immediately thereafter. Any compensation for emergency work claimed by Contractor, together with substantiating documentation, shall be submitted to City of Palm Desert.

Whenever, in the opinion of the City of Palm Desert, an emergency exists against which the Contractor has not taken sufficient precaution for the safety of the public or the protection of utilities or of adjacent structures or property or if immediate action shall be considered necessary in order to protect public or private personnel or property interest, or prevent likely loss of human life or damage on account of the operations under the contract, then and in that event, the City of Palm Desert may provide suitable protection to said interest by causing such work to be performed and material to be furnished, as, in the opinion of the City of Palm Desert, may seem reasonable and necessary. The cost and expense of said labor and material together with the cost and expense of such repairs as may be deemed necessary shall be borne by the Contractor. If he shall not pay said cost and expense upon presentation of the bills therefor, duly certified by the Engineer, then said costs and expense will be paid by the City of Palm Desert and shall thereafter be deducted from any amounts due, or which may become due said Contractor. Failure of the City of Palm Desert to take such precautionary measure shall not relieve the Contractor of his full responsibility for public safety.

#### **10. WORK AREA APPEARANCE**

The Contractor shall maintain the work area in a neat and orderly fashion. When practical, debris developed during maintenance operations shall be disposed of concurrently with its removal. If stockpiling is necessary, the material shall be removed or disposed of daily. No tarps shall be left unattended in parking areas without express permission from the City of Palm Desert. No tarps shall be permitted in any area overnight.

#### **11. CLEANUP AND RESTORATION OF SURFACES**

The Contractor shall, as directed by the Engineer, remove from all public and private property, at its own expense, all temporary structures, rubbish, and waste materials resulting from its operations. This includes temporary work area(s) obtained by the Contractor.

All existing surfaces, whether asphaltic or concrete, Portland Cement concrete, permanent fencing and barriers, landscape material such as turf, trees, shrubs, gravel, etc., or other, shall, after operations, be restored to a condition at least equal to that which existed prior to landscape maintenance activity. All restoration shall be in-kind. Restoration shall include, but not be limited to, the replacement of landscape planting and irrigation system, and pavement striping which are disturbed by the Contractor's operations in the course of work.

## **12. RECYCLING SPECIFICATIONS**

Contractor shall segregate the following materials generated by this job and shall haul, or have the material hauled, to recycling, composting or other properly permitted and County-licensed, diversion facilities: Dirt; Sod; Grass; Wood; Concrete (with and without rebar); masonry; landscape irrigation piping and fittings; asphalt; gravel and rock.

Contractor shall submit weight tickets to the City of Palm Desert on a monthly basis showing the quantity (tons) delivered to each diversion facility. Contractor shall also submit to City of Palm Desert, on a monthly basis, all weight tickets showing the tons of all non-divertible material that have been delivered to landfill.

Contractor shall include the costs for the diversion of the above-listed materials in its bid for the job. All other debris generated that is beyond the scope of normal and routine maintenance shall be paid as an extra. Contractors are responsible for doing their own research in contacting the recycling, composting and other processing and diversion facilities to confirm the tipping fees for the various types of materials. Contractor may utilize any recyclers or processors provided that Contractor submits written evidence that said facilities are operating in compliance with all state, federal and local laws. Contractor is liable and responsible for any illegal dumping activities for any and all materials generated at the job site.

Contractor shall remove all green waste generated from maintenance operations on a daily basis. No green waste will be allowed to remain on site after work hours. Disposal of green waste shall not be allowed in any City of Palm Desert trash can, bin or other City of Palm Desert facility (i.e. corporation yard or satellite yards), or in any park refuse container unless other arrangements have been authorized by City of Palm Desert. Contractor shall recycle all green waste removed from City of Palm Desert landscaped areas at a County-licensed facility. If any compost is used in the execution of the landscape maintenance contract, it must be from a facility that receives and composts City or City of Palm Desert green waste. Said products shall be approved by the Engineer or his designee before use. Contractor shall submit verification of green waste disposal in the Green Waste Monthly Report.

**13. PERMITS AND LICENSES**

- a. Permits: Contractor, and any subcontractors shall obtain permits for all work within the City, City of Palm Desert, and State public right-of-way, and the project area and will maintain proper safety and regulatory signs for such work.
- b. Licenses: Contractor shall obtain and pay all costs incurred for licenses necessitated by his operations. Prior to starting any work, the Contractor and all subcontractors shall be required to have a City of Palm Desert Business Tax Registration valid for the time they are engaged in work. The cost of these fees shall be included in the price and no additional compensation will be allowed therefor.
- c. Fees: Contractor shall be responsible for all inspection and permit fees required by agencies (other than the City of Palm Desert, Public Works Department) necessitated by his operations for this project. This includes fees required for inspection work within the right-of-way of these other agencies and other public right-of-way. The cost of these fees shall be included in the lump sum contract bid price and no additional compensation will be allowed therefor.

**14. INSPECTION OF THE WORK**

There will be inspection of this work to ensure strict adherence to the specifications and work schedule submitted by the Contractor. It shall be the responsibility of the Contractor to notify the City of Palm Desert should any deviation of said work schedule become necessary. Any work done in unauthorized areas or in a manner unacceptable to the inspector shall not be accepted or paid for by the City of Palm Desert.

**15. PROTECTION OF PUBLIC**

The Contractor shall take all necessary precautions to protect the public, especially children, from the hazards of their maintenance operations.

Unusual conditions may arise during the scope of work, which will require that immediate and special provisions be made to protect the public from danger or loss or damage to life and property, due directly or indirectly to the progression of the work. It is part of the service required of the Contractor to make such provisions and to furnish such protection.

Whenever, in the opinion of the City of Palm Desert, an emergency exists against which the Contractor has not taken sufficient precaution for the safety of the public or the protection of utilities or of adjacent structures or property or if immediate action shall be considered necessary in order to protect public or private personnel or property interest, or prevent likely loss of human life or damage on account of the operations under the contract, then and in that event, the City of Palm Desert may provide suitable protection to said interest by causing such work to be performed and material to be furnished, as, in the opinion of the City of Palm Desert, may seem reasonable and necessary.

Materials and equipment shall be stored so as to not create a public nuisance and to ensure the preservation of their quality and fitness for the work. No materials or equipment shall be stored at the project site unless its use is imminent.

The Contractor is responsible to design, construct and maintain all safety devices and be responsible for conforming to all local, state and federal safety and health standard, laws and regulation

## **16. TRAFFIC CONTROL**

Contractor shall comply with the State of California and Cal-OSHA Safety Rules and Regulations and the American National Standards Institute (ANSI) 2133.1 standards. Contractor shall supply all delineation, signing and clothing as required by the State of California Department of Transportation. Contractor shall provide and maintain work zone traffic control devices at all times in accordance with the WATCH Manual, the California MUTCD, and as directed by the City of Palm Desert's Representative or his/her designee. All roadway signs, delineators, channelizers, cones and barricades shall be in "like new" condition. All roadway signs used for nighttime traffic control shall have retroreflective sheeting that meet or exceed ASTM Standard D 4956 Type III.

A minimum of a four-foot (4') wide ADA compliant pedestrian path of travel must be maintained in the sidewalk area at all times. The area under maintenance in the sidewalk areas must be maintained free of hazardous conditions. The immediate area must be barricaded in such a manner that pedestrian traffic cannot enter.

The compensation for furnishing, placing, maintaining and removing traffic cones, telescoping tree flags, advance warning signs, flagmen, barricades, temporary striping and other safety devices, as required for public safety or as directed by the City Engineer, shall be considered as included in the in the contract bid price, and no additional compensation will be made therefor.

## **17. MEASUREMENT AND PAYMENT**

City of Palm Desert has specific criteria by which to evaluate the performance of Contractor on a weekly basis. If performance by Contractor is deficient, City of Palm Desert reserves the right to subtract an associated amount form the monthly billing. Since it is difficult to quantify and assess a value to every aspect of the work, City of Palm Desert may implement liquidated damages of **\$250** per day per incident until the deficiency is corrected. The following is a brief summary of possible deficiencies:

1. Failure to comply with Contract Documents.
2. Failure to comply in a timely manner with contractually legitimate requests made by City of Palm Desert.
3. Failure to provide specified reports or falsification of reports.
4. Failure to supply adequate equipment, labor or supervision.
5. Failure to repair deficiencies in the allotted time frame.
6. Failure to comply with schedules.
7. Failure to protect public health and safety.
8. Failure to provide adequate identification on vehicles or employees.

In the event Contractor fails to perform contractual obligations to the satisfaction of City of Palm Desert, City of Palm Desert may choose to obtain the services of a separate landscape maintenance provider to fulfill Contractor's obligations, and any and all associated charges shall be the responsibility of the Contractor.

**18. VEHICLES ON SIDEWALK AND TURF**

Contractor vehicles shall not drive on sidewalks or turf without prior City of Palm Desert approval.

**19. REFUSE DISPOSAL**

All refuse collected shall be removed and taken to a sanitary landfill at Contractor's expense. Disposal of debris shall not be allowed in any City of Palm Desert trash can, bin or other City facility (i.e., corporation yard or satellite yards), or in any park refuse container unless other arrangements have been authorized by City of Palm Desert.

**20. GREEN WASTE**

Contractor shall remove all green waste generated from maintenance operations on a daily basis. No green waste will be allowed to remain on site after work hours. Disposal of green waste shall not be allowed in any City of Palm Desert trash can, bin or other City facility (i.e., Corporation Yard or satellite yards), or in any park refuse container unless other arrangements have been authorized by City of Palm Desert. Contractor shall recycle all green waste removed from City of Palm Desert landscaped areas at a County-licensed compost facility. If any compost is used in the execution of the landscape maintenance contract, it must be from a facility that receives and composts City of Palm Desert green waste. Said products shall be approved by the City of Palm Desert or his designee before use. Contractor shall submit verification of green waste disposal in the Green Waste Monthly Report.

**21. SCHEDULES**

At the pre-commencement conference, Contractor and City of Palm Desert staff will review the Work Schedule submitted by the Contractor. This schedule will be considered the permanent schedule. If, during the first thirty (30) days, an adjustment in the schedule needs to be made, Contractor may submit a revised schedule for approval. In addition, Contractor shall submit a weekly report by 1:00 p.m. every Friday showing work performed in the current week and work scheduled for the following week. Failure to submit the required report by 1:00 p.m. every Friday may result in a \$250 fine. Contractor shall adhere to the schedule. City of Palm Desert must receive notification of changes at least 24 hours in advance. Reports may be transmitted electronically to either [rchavez@cityofpalmdesert.org](mailto:rchavez@cityofpalmdesert.org) or [bgonzalez@cityofpalmdesert.org](mailto:bgonzalez@cityofpalmdesert.org) or a facsimile (Fax) to 760-341-7098.

**22. LICENSE AND CERTIFICATION REQUIREMENTS**

Contractor shall possess all permits and licenses required to comply with city, county, state or federal laws for the work activities performed, including the use of any chemicals. Contractor assumes responsibility and liability for use of all chemical controls and shall at all times perform chemical applications in accordance with governmental regulations and industry standards for their safe and appropriate use.

At the time that the Proposal is submitted, Contractor shall possess current licensure and certification as follows, and the same shall be maintained current and valid for the term of the contract:

1. C-61, subcategory D-21

**EXHIBIT "B"**

**SCHEDULE OF SERVICES**

The term of this Agreement shall be from **July 1, 2022, to June 30, 2027**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than three (3) additional one-year terms. Contractor shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

**EXHIBIT "C"**

**COMPENSATION**

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange Counties.












# C43100 - Multi W Systems, Inc.


Final Audit Report

2022-06-21

Created:	2022-05-19
By:	Michelle Nance (mnance@cityofpalmdesert.org)
Status:	Signed
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-  Document created by Michelle Nance (mnance@cityofpalmdesert.org)  
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