CITY OF RANCHO MIRAGE

69825 HIGHWAY 111
RANCHO MIRAGE, CA 92270
(760) 324-4511

REQUEST FOR PROPOSALS
FOR
DATA CENTER AND INFRASTRUCTURE PURCHASE

Issued:
MARCH 5, 2020
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CITY OF RANCHO MIRAGE

REQUEST FOR PROPOSALS
FOR
DATA CENTER AND INFRASTRUCTURE PURCHASE

ANNOUNCEMENT:

The City of Rancho Mirage ("City") invites proposals from qualified, competent, knowledgeable, and experienced companies that are capable of providing services for Dell pricing for VxRail Hyper Converge Infrastructure comprising the list below for our core server, storage and hardware, software support, warranty and any additional equipment necessary to meet our requirements. Also, the proposal must include consulting services including setting up the VxRail HCI and moving the existing VM host to the new HCI appliance, and that will administer the duties and responsibilities set forth in this Request for Proposals ("RFP") in compliance with all applicable laws, regulations, policies and procedures. Firms submitting proposals must be prepared to immediately enter into an Agreement for the services and duties as set forth in this RFP.

PROPOSALS/OFFER SUBMITTAL:

Proposals will be accepted until 5:00 p.m. (Pacific Standard Time), APRIL 3, 2020, and each must be submitted in a sealed envelope plainly marked on the outside "BID FOR DATA CENTER AND INFRASTRUCTURE PURCHASE - DO NOT OPEN WITH REGULAR MAIL" to:

The City of Rancho Mirage
Attn: Jason Jaurigue, Director of Information Services
69825 Highway 111
Rancho Mirage, California 92270

DESCRIPTION OF REQUIRED EQUIPMENT AND/OR SERVICES:

Current Environment:

The City’s data center is configured as a limited access, controlled environment. The primary server/storage infrastructure consists of mounted Dell VxRail hyper-converged, virtualized hosts on VMWare vSphere in configuration with redundant power supplies, and Ethernet 10gb network interface cards. The data center is comprised of approximately 50 virtual servers running on 6 VxRail hosts at City Hall and 4 hosts at the City’s library.
General Requirements:

The City of Rancho Mirage is soliciting proposals for Dell Pricing for VxRail Hyper Converge Infrastructure comprising the list below for our core server, storage and hardware, software support, warranty and any additional equipment necessary to meet our requirements. Also, the proposal must include consulting services including setting up the VxRail HCI and moving the existing VM host to the new HCI appliance.

The goal for this deployment is to have two clusters. One cluster will be used for low IOPS (Input/Output Operations Per Second) services such as our File Server and license server. This will be our current VxRail. The second cluster with higher IOPS server such as the ERP system and all SQL based servers.

DELL equipment installation and implementation

A. Installation and configuration means that a fully-engineered solution is delivered, installed, configured, and 100% operational in our environment, with sufficient documentation provided to the City IT to run and maintain the product on a day-to-day basis.
B. Setup, install provision DELL VxRail Equipment for turnkey setup
C. All the tasks that need to happen in preparation for set up, install and upgrade to new hardware to work properly in our current environment.
D. Prepare the environment and ensure that it meets the system requirements.
E. Update to the latest stable version firmware, a plug-in to VxRail appliance and software

System Specifications

The following hardware/software items are to be delivered as part of the project:

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<th>Maintenance Months</th>
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Attach a complete part list to this form showing all model and part information of the proposed solution.

GENERAL INSTRUCTIONS FOR SUBMITTAL:

A. Proposal Submittal:

The proposer shall submit one (1) original and three (3) copies proposal by 5:00 p.m. (Pacific Standard Time), APRIL 3, 2020, to:

The City of Rancho Mirage
Attn: Jason Jaurigue, Director of Information Services
69825 Highway 111
Rancho Mirage, California 92270

B. Due Date and Time:

Proposals submitted after 5:00 p.m. on APRIL 3, 2020, may, at the sole discretion of the City, be rejected as non-responsive and returned without review. For a proposal to be considered on time, it must be date stamped by City staff upon receipt. At the discretion of the City, a “late” proposal may be considered only if a selection cannot be determined from among proposals received on time. The City shall not be responsible for, nor accept any as a valid excuse, any delay in mail service, or any other method of delivery used by the proposer. All proposals shall be enclosed in a sealed envelope with the words clearly
written on the front, “BID FOR DATA CENTER AND INFRASTRUCTURE PURCHASE - DO NOT OPEN WITH REGULAR MAIL.” Failure of the proposer to properly identify the sealed envelope proposal as described may result in the proposal being considered non-responsive. All proposals shall be firm offers subject to acceptance by the City and may not be withdrawn for a period of 180 calendar days following the last day to accept proposals. Proposals may not be amended after the due date except by consent of the City. All proposals must clearly address all of the requirements outlined in this RFP. Each proposal shall be limited to twenty (20) pages and must include a minimum of three (3) references, which include the address, telephone number, and email address of each reference. Resumes and brochures may be added to the proposal, provided they are located in an appendix at the back of the proposal. Should the proposer have concerns about meeting any noted requirements, the proposer shall include a clearly labeled subsection with individual statements specifically identifying the concerns and exceptions.

C. RFP Addenda and Clarifications in Written Comments

All comments and questions from proposers must be submitted in writing and received by no later than 5:00 p.m. on THURSDAY, MARCH 19, 2020 (“Addenda Due Date”), and must be submitted via the following approved written methods addressed to Jason Jaurigue, Director of Information Services:

1. At jasonj@RanchoMirageCA.gov, or
2. Via fax to (760) 324-8830, or
3. Via mail, as long as the correspondence is received, and date stamped by the City on or prior to the Addenda Due Date.

Any verbal questions shall not be addressed by the City. Submittal of written comments or questions shall not be considered by the City unless submitted in an approved method on or before the Addenda Due Date. Written comments or questions received via approved method and within the time prescribed herein will be addressed by the City’s issuance of an addendum. Notwithstanding anything else herein, if it becomes necessary for the City to revise any part of this RFP, or to provide clarification or additional information after this RFP has been issued, a written addendum will be posted and published on the City’s website, http://www.ranchomirageca.gov. All addenda shall become part of the RFP.

D. Pre-contractual Expenses:

The City shall not be responsible for, under any circumstances, any claims of expenses necessary for the proposer to receive, evaluate, complete and deliver the proposal. The proposer should also not include any pre-contractual expenses or fees in the proposal.

E. Conflicts of Interest:
The proposer affirms that to the best of his or her knowledge, there exists no actual or potential conflict between the firm’s business or financial interests, and either the services to be provided under the Agreement, or any commissioner, officer, employee, or agent of the City. For the duration of the Agreement, the proposer shall refrain from undertaking any work for any individual, business, or legal entity, in which direct conflicts of interest regarding the services to be provided thereunder or herein may arise.

F. Proposed Contract:

The proposer selected through this RFP shall be required to enter into the Agreement with the City, a form of which is attached hereto as Exhibit “A.”

G. Insurance and Acknowledgement

Each proposal shall include a breakdown of all costs associated with issuance of the insurance endorsements described in and pertaining to Sections 10 of the Agreement (“Insurance Provisions”). Each proposal shall also include signed acknowledgement(s) in substantially the same form as the form attached hereto as Exhibit “B,” through which each insurance carrier that will issue any policy required in the Insurance Provisions, shall acknowledge, warrant and represent that it possesses the ability to and shall furnish all the insurance endorsements prescribed in the Insurance Provisions.

PROPOSAL FORMAT AND CONTENT:

A. Presentation

Proposals shall be submitted in an 8 ½” x 11” format, fastened with an effective method.

B. Proposal Content

1. Transmittal Letter
   a. Contact information, identification of firm, name and email address and telephone number
   b. A statement to the effect that the proposal will remain valid for 180 days from the due date for the proposals
   c. Acknowledgement of receipt of addenda, if any
   d. Signature of the person authorized to bind the terms of the proposal

2. Table of Contents
Following the transmittal, provide a table of contents for the proposal

C. Qualifications, Related Experience and References

1. This section shall establish the ability of the proposer to satisfy all aspects of the required work, as may be applicable, with current or recently completed similar services to the work required in this RFP.

2. Background information of the firm, including the date of founding, legal form, number and location of offices, number of employees, days and hours of operation and any other pertinent information.

3. Disclose any conditions (e.g., bankruptcy, pending litigation, planned office closures, mergers) and organizational conflicts of interest that may affect the ability of the proposer to perform the required duties.

4. Certify that the firm is not debarred, suspended or otherwise declared ineligible to contract with any other federal, state or local public agency.

5. Provide a list of business clients to which your firm is currently providing, or has recently provided, services/products similar to those required in this RFP. Include company names, beginning/end dates of contracts, and names, titles and telephone numbers the City can contact as references for your firm.

6. Furnish as an appendix, your firm’s financial information (last year’s Income Statement and Balance Sheet) that accurately describes the financial stability of your firm (financial statements will remain confidential and will be revealed only to individuals involved in the evaluation process and award of contract).

D. Proposed Staffing and Project Organization

1. Discuss the staffing of the proposing firm who would be assigned to work on the City’s project.

2. Identify the key personnel that would be assigned to the project. Include a brief description of their qualifications and experience in performing the type of work being assigned.

3. Designate an administrator who would serve as a day-to-day contact for the City.

E. Work Plan / Technical Approach
1. Establish the proposer’s understanding of the City’s objectives and requirements, demonstrate the proper ability to meet those objectives and requirements, and clearly identify the method (plan) of accomplishing the described work.

2. Describe what information, documentation or staff assistance from the City your firm would request from the City in order to complete the work described.

3. Provide a summary of the firm’s proposed services, with a focus on any technologies, innovations, and processes that the firm will offer to help the City meet its objectives.

F. Cost and Price

1. This section shall disclose all charges to be assessed the City for the required services and declare the proposer’s preferences for method and timing of payment.

2. Quote a total price for completing all services; include all costs associated with the operating budget, including all equipment fees.

G. Appendices

Furnish as appendices, supporting documentation as requested, such as financial information and staff resumes.

PROPOSAL EVALUATION AND CONTRACT AWARD:

A. Evaluation Panel

An evaluation panel consisting of City staff will be responsible for reviewing, analyzing, and evaluating the proposals received. The panel may also conduct contract negotiations with the highest rated proposer(s). The evaluation panel will either select the successful proposer or make recommendations to the City Council regarding selection.

B. Evaluation Criteria

Proposals will be evaluated by the panel, considering the factors which are listed below, in no particular order of significance.

1. Cost and price.
2. Work plan.
3. Qualification and experience of proposer.
4. Staffing and organization.
5. Conformance with this RFP.
6. References of performance including such factors as control of costs, quality of work, ability to meet schedules, cooperation, responsiveness, compliance with the requirements, and other considerations.
7. Any other criteria determined by the City.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
RFP EXHIBIT "A"

PURCHASE AND INSTALLATION AGREEMENT
BY AND BETWEEN
THE CITY OF RANCHO MIRAGE
AND

THIS PURCHASE AND INSTALLATION AGREEMENT ("Agreement") is made and entered into this _____ day of _______________, 2020 ("Effective Date"), by and between the City of Rancho Mirage, a municipal corporation located in the County of Riverside, State of California ("Buyer" or "City"), and ______________________, a ________________ ("Contractor"), with Buyer/City and Contractor together sometimes hereinafter referred to as the "Parties."

RECITALS:

WHEREAS, Contractor owns _______________________ ("________") and is licensed to sell and install such ___________, and Buyer desires to purchase the ________________ from Contractor; and

WHEREAS, Buyer seeks to retain Contractor to install, configure and set up________________________, at Rancho Mirage City Hall and Rancho Mirage Library and Observatory, and provide consulting services, all as set forth and more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference (collectively, the "Project"); and

WHEREAS, Contractor desires to sell to City the ___________ and otherwise complete the services required of the Project and Buyer desires to purchase the ___________ upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants, conditions and promises contained herein and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

Section 1. Recitals

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth in full herein.

Section 2. Purchase, Sale, Delivery, and Installation of ___________; Related Services and Duties

Contractor hereby sells, transfers, conveys and quitclaims to Buyer, and Buyer hereby purchases, accepts and assumes, all of Contractor’s right, title and interest in and
to the ____________ for a purchase price of _________________ ($___________) (“Purchase Price”), which includes any and all applicable sales taxes. Contractor shall deliver the ____________ to the Buyer, and deliver to Buyer any and all manufacturer’s warranties, instructions, manuals, and other information and brochures relating to the ____________ that Contractor would ordinarily deliver to its customers in a similar transaction. Contractor shall also install, set up, and configure the ____________ at the location requested by Buyer and otherwise complete the Project in connection therewith in accordance with all manufacturers’ specifications, including providing consulting services (“Scope of Services”), as set forth in Exhibit “A,” in exchange for compensation not to exceed _________________ ($_______________).

Section 3. Payment; Compensation

a. Contractor shall invoice Buyer for the Purchase Price and Buyer shall pay Contractor in accordance with Exhibit “A” and Section 2 of this Agreement, provided that the condition of the ____________ is reasonably satisfactory to Buyer after inspection thereof.

b. Contractor’s compensation shall be paid for the services rendered by Contractor for completion of the Project, including profit, labor and materials.

c. Contractor shall invoice the City for the performance of the services under this Agreement in the amount agreed upon by the parties herein. Contractor shall be paid the amount specified in the invoice within 30 days of receipt by the City, provided that the services reflected in the invoice were performed to the reasonable satisfaction of the City in accordance with the terms of this Agreement.

Section 4. Extra Work and Change Orders

Extra work and change orders shall become a part of this Agreement once the extra work or change order is approved in writing and signed by the Buyer and Contractor, prior to the commencement of any extra work or change in work covered by the change order. The Buyer’s form change order shall be used for both extra work and a change in work. The change order must describe the scope of the extra work or change in work, and the cost to be added or subtracted from this Agreement. The Buyer shall not require Contractor to perform any extra work or a change in work without written authorization. A change order shall not be enforceable against the Buyer unless the change order complies with this provision.

Section 5. Term

Contractor shall complete all duties and tasks required in Exhibit “A” and any approved change orders during the term of this Agreement, which shall commence as of the Effective Date and shall expire upon Contractor’s completion of the work, tasks and
duties necessary for completion of the Project to the reasonable satisfaction of Buyer. Contractor shall do so by no later than ________________, 20___.

Section 6. Contractors' Representations and Warranties

Contractor hereby makes the following representations, warranties, and acknowledgments, and agrees that such representations, warranties and acknowledgments shall be true as of the Effective Date and throughout the term of this Agreement:

a. Contractor has the full right, power and authority to enter into this Agreement and to convey Contractor's ownership interest in the ______ to Buyer, and to take all actions required of Contractor by the terms of this Agreement.

b. All the documents executed by Contractor pursuant to this Agreement will be duly authorized, executed and delivered by Contractor and will be legal, valid and binding obligations of Contractor enforceable against Contractor in accordance with their respective terms, and will not violate any provisions of any agreement to which Contractor is a party or to which it is subject.

c. Contractor has good and marketable title to the _________ and the _________ are sold and transferred to Buyer free and clear of all liens, security agreements, encumbrances, claims, demands, and charges of every kind and nature whatsoever.

d. There are no obstacles or prohibitions of any kind whatsoever, as respecting the __________, that will prevent Buyer from obtaining any and all permits to use and operate the __________ anywhere within the State of California, as the __________ are intended to be used.

e. The __________ and any other materials provided to Buyer shall be free from all defects and are of good quality and fit for the purpose and use intended herein.

f. Contractor warrants all workmanship for a period of one (1) year from the time all work is completed.

g. Notwithstanding anything else herein, if, in the opinion of the Buyer, nonconforming work creates a dangerous condition or requires immediate correction or repair to prevent further loss to the Buyer or to prevent interruption of operations, the Buyer shall attempt to give the Contractor notice thereof. If Contractor cannot be contacted or does not comply with the Buyer's request for correction within a reasonable time as determined by the Buyer, the Buyer may proceed to make such correction or provide such repair. The costs of such correction or repair shall be charged against
Contractor, who agrees to make payment for said costs upon demand. Corrective action by the Buyer will not relieve Contractor or Contractor's sureties or insurers of the guarantees and indemnities of this Agreement.

**Section 7. Remedy upon Finding of Defect**

a. For a period of one (1) year after the date the _____________ are installed in their intended locations and the City shall accept the Project, Contractor agrees that if any portion of the _____________ should fail to function as reasonably expected by Buyer, or if there is any defect in materials or workmanship for any service required herein, as determined in Buyer's sole and absolute discretion, then, upon written notice thereof given to Contractor, Contractor shall, without delay and with the least inconvenience and without further cost to the Buyer, repair or replace the defective or otherwise unsatisfactory component or components of the _____________ or any other materials furnished by Contractor. Buyer shall determine whether the defective component or components shall be repaired or shall be replaced by Contractor. In the event of Contractor's failure to repair or replace any part of the _____________ or other materials within ten (10) calendar days after being notified in writing, or fail to diligently pursue such compliance to completion, Buyer is hereby authorized to proceed to have the defects repaired and made good at the expense of Contractor who hereby agrees to pay the cost and charges therefor immediately upon demand. Notwithstanding the foregoing, Buyer may contract with another party for any such services or purchase of replacement part or parts, and Contractor shall reimburse Buyer for all such costs immediately upon demand.

b. This section does not in any way limit Buyer's remedies pursuant to Code of Civil Procedure Section 337, or the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer or supplier gives a longer guarantee period. No manufacturer's guarantee period shall in any way limit the liability of Contractor under the indemnity provisions of this Agreement.

**Section 8. Buyer's Representations and Warranties**

Buyer hereby makes the following representations, warranties and acknowledgments, and agrees that such representations, warranties and acknowledgments shall be true as of the Effective Date:

a. Buyer, and the person executing this Agreement on behalf of Buyer, has the full right, power and authority to enter into this Agreement, to receive and accept title to the _____________ from Contractor and to take all actions required of it by the terms of this Agreement.

b. All the documents executed by Buyer pursuant to this Agreement will be duly authorized, executed and delivered by Buyer and will be legal, valid and binding obligations of Buyer enforceable against it in accordance with their respective terms, and
will not violate any provisions of any agreement to which Buyer is a party or to which it is subject.

Section 9. Indemnification Obligations of Contractor

Contractor indemnifies Buyer against, and holds Buyer harmless from, any and all losses, claims, expenses, costs, causes of action or obligations (including reasonable attorneys fees), whether direct or indirect, known or unknown, incurred in connection with, or arising from (i) Contractor's ownership or possession of the ________ during any period ending on or prior to the Effective Date; (ii) Contractors’ repair or replacement of the ________ or any part thereof, or any other materials, pursuant to Section 7 of this Agreement; and (iii) Contractor's breach of any of its representations, warranties or covenants under this Agreement.

Section 10. Insurance Coverage

a. Contractor shall procure and maintain at its own expense, until completion of performance, comprehensive general liability insurance of not less than One Million Dollars ($1,000,000) combined single limit per occurrence, and Two Million Dollars ($2,000,000) in the aggregate, for bodily injury, personal injury, death, loss or damage resulting from the wrongful or negligent acts by the Contractor or its officers, employees, servants, volunteers and agents and independent contractors. Contractor shall provide insurance on an occurrence, not claims-made basis. Contractor acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess insurance, personal and advertising injury coverage shall be triggered by an "offense" while bodily injury and property damage coverage shall be triggered by an “occurrence” during the policy period.

b. Contractor shall further procure and maintain at its own expense, until completion of performance, commercial vehicle liability insurance covering personal injury and property damage, of not less than One Million Dollars ($1,000,000) combined single limit per occurrence, and Two Million Dollars ($2,000,000) in the aggregate, covering any vehicle utilized by Contractor or its officers, employees, servants, volunteers and agents and independent contractors in performing the services required by this Agreement.

c. Unless Contractor has no employees and is exempt from worker's compensation requirements, Contractor shall further procure and maintain at its expense, until completion of performance, workers' compensation insurance providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by the Contractor pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the Buyer. Contractor agrees to waive its statutory immunity under any workers' compensation or similar statute, as respecting
the Buyer, and to require any and all subcontractors and any other person or entity involved in the services provided under this Agreement to do the same.

Worker’s Compensation Insurance:

- Contractor has no employees and is exempt from workers’ compensation requirements.
- Contractor carries workers’ compensation insurance for all employees.

d. All policies required by this section shall be secured from insurers authorized to do business in the State of California with an “A” policyholder’s rating or better and a financial rating of at least Class VII, in accordance with the current Best’s Ratings.

e. Contractor agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Contractor enters into contracts or whom Contractor hires or retains pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required herein, at minimum, and name as additional insureds the parties to this Agreement. 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.

f. In the event this Agreement is terminated for any reason prior to the completion of all obligations and requirements of this Agreement, Contractor agrees to maintain all coverages required herein until the Buyer provides written authorization to terminate the coverages following the Buyer’s review and determination that all liability posed under this Agreement as to the party providing insurance has been eliminated.

g. Contractor agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by any subcontractors or others involved in any way with this Agreement, Contractor shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the Buyer, and/or their officers, employees, servants, volunteers, agents and independent contractors.

Section 11. Insurance Documentation; Notice

a. Contractor shall provide certificates of insurance with original endorsements to the Buyer as evidence of the insurance coverage required herein. Certificates of such
insurance shall be filed with the Buyer on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the Buyer at all times until completion of performance.

b. Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the comprehensive general liability and commercial vehicle liability policies shall bear endorsements whereby it is provided that the Buyer, and its officers, employees, servants, volunteers, agents and independent contractors are named as additional insureds. Additional insureds shall be entitled to the full benefit of all insurance policies in the same manner and to the same extent as any other insureds and there shall be no limitation to the benefits conferred upon them other than policy limits to coverages.

c. Contractor shall require the carriers of all required insurance policies to waive all rights of subrogation against the Buyer, and their officers, employees, servants, volunteers, agents and independent contractors.

d. Each policy required herein must be endorsed to provide that the policy shall not be cancelled or non-renewed by either party, or reduced in coverage or limits (except by paid claims) unless the insurer has provided the City with at least thirty (30) days prior written notice of said cancellation, non-renewal, or reduction, with the exception that only ten (10) days prior written notice shall be required in the event of cancellation for nonpayment of premium.

e. All insurance policies required to be provided by Contractor or any other party must be endorsed to provide that the policies shall apply on a primary and noncontributing basis in relation to any insurance or self-insurance, primary or excess, maintained or available to the Buyer, and their officers, employees, servants, volunteers, agents and independent contractors.

**Section 12. Independent Contractor**

Contractor shall at all times during the term of this Agreement perform the services described in this Agreement as an independent contractor, and hereby waives any claims for any compensation or benefits afforded to Buyer employees and not to independent contractors.

**Section 13. Civil Code Section 1542 Waiver**

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

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

b. This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind that are known or unknown, or suspected or unsuspected, including, without limitation, claims of entitlements under the California Public Employees’ Retirement System (CalPERS) that are only afforded to employees and not independent contractors. Contractor further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

Section 14. Licenses, Certifications and Permits

Contractor represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement.

Section 15. General Provisions

a. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter contained herein, and supersedes any prior agreement and understanding about the subject matter hereof. This Agreement may only be modified or amended by a written instrument executed by the Parties.

b. Time is of the Essence. Time is of the essence in this Agreement.

c. Headings. The subject headings of the sections and paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

d. Termination. Buyer may terminate this Agreement for any reason whatsoever, prior to delivery of the ______ and Buyer’s payment of the Purchase Price as set forth herein. Thereafter, the purchase of the ______ shall be subject to Contractor’s standard return and exchange policy. This Agreement may also be terminated by Buyer immediately for cause. Buyer may terminate this Agreement without cause upon thirty (30) days' written notice of termination. Upon termination, Contractor shall be entitled to compensation for services performed up to the effective date of termination.
e. Modifications and Amendments. This Agreement may be modified or amended only by a written document executed by both Buyer and Contractor and approved as to form by Buyer’s City Attorney.

f. Notices.

1. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to Buyer: City of Rancho Mirage
Attn: _______________
69825 Highway 111
Rancho Mirage, California 92270
Telephone: (760)
Facsimile: (760)
Email:

If to Contractor: ____________________
____________________
____________________
____________________

2. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

g. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

h. Successors and Assigns. Each covenant and condition contained in this Agreement shall inure to the benefit of and be binding on the parties to this Agreement and their respective heirs, executors, administrators, personal representatives, successors and assigns.

i. Further Assurances. The Parties agree to cooperate with each other and to execute, deliver and record such other agreements and documents and to take such other actions as are reasonably necessary or helpful to more effectively consummate the transactions contemplated under this Agreement and to carry out its purpose and intent. Upon reasonable notice, Contractor shall provide Buyer with reasonable access to, and
allow it to copy, any books and records concerning the _________ as are in Contractor's possession or control.

j. Attorneys’ Fees; Costs of Litigation. If any legal action or any other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled, including the fees and costs incurred in enforcing any judgment which may be obtained in said action.

k. Default. Failure by a party to perform any term, condition or covenant required of the party under this Agreement, shall constitute a “default” of the offending party under this Agreement. In the event that a default remains uncured for more than ten (10) days following receipt of written notice of default from the other party, a "breach" shall be deemed to have occurred. Contractor's breach any of its warranties given under Section 6 hereof, and the discovery of any of Contractor’s representations thereunder not being true in every respect, shall also be deemed a breach of this Agreement by Contractor. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

l. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

m. Non-Liability of Officials and Employees of Buyer. No member, official or employee of Buyer shall be personally liable to Contractor, either individually or jointly, or any of Contractor's successors-in-interest, in the event of any default or breach by Buyer for any amount which may become due to Contractor or any of Contractor's successors, or on any obligations under the terms of this Agreement.

n. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by the Parties.

o. Legal Advice. The Parties represent and warrant to the other party the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel, as to the matters set forth in this Agreement, or, have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other parties, or their respective agents, employees or attorneys, except as
specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF RANCHO MIRAGE

Isaiah Hagerman, City Manager

APPROVED AS TO CONTENT:

Jason Jaurigue, Director of Information Services

ATTEST:

Kristie Ramos, City Clerk

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney
EXHIBIT “A”

SCOPE OF SERVICES

SEE ATTACHED PROPOSAL
DATED ______________, 20___
RFP EXHIBIT “B”

ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS

In recognition of _____________________ (“Company”) having submitted a proposal to the City of Rancho Mirage Request for Proposals for DATA CENTER AND INFRASTRUCTURE PURCHASE, DATED MARCH 5, 2020 (“RFP”), issued by the City of Rancho Mirage (“City”), and in further recognition that the City requires Company to comply with certain insurance requirements as set forth in Section 10 (“Insurance Provisions”) of the Agreement (which Agreement is defined in and made part of the RFP), I represent that I am authorized to sign on behalf of the insurance company listed below (“Insurer”), and by signing below, I acknowledge, warrant and represent that Insurer possesses the ability to, and if requested by Company, shall furnish all the insurance endorsements prescribed in the Insurance Provisions within thirty (30) days of contract award, as respecting ○ worker’s compensation and/or ○ commercial general liability and/or ○ commercial vehicle liability insurance and/or ○ professional liability [PLEASE CHECK ALL THAT APPLY].

Name of Insurer [Print]

____________________________________

Name, Title [Print]

____________________________________

Signature