

**CITY OF RANCHO MIRAGE
69825 HIGHWAY 111
RANCHO MIRAGE, CA 92270
(760) 770-3224**

**REQUEST FOR PROPOSALS
FOR
RANCHO MIRAGE AMPHITHEATER IMPROVEMENTS
DESIGN SERVICES**

**Issued:
DECEMBER 6, 2021**

EMAIL SUBMISSION REQUIREMENTS:

All electronic submittals shall include in the subject line **“RFP FOR RANCHO MIRAGE AMPHITHEATER IMPROVEMENTS DESIGN SERVICES.”** It shall be the responsibility of proposer to ensure the electronic delivery is successful prior to deadline for submissions.

**FOR PROBLEMS DOWNLOADING RFP OR SUBMITTING FORM,
PLEASE CONTACT THE FOLLOWING PERSONS BY EMAIL OR PHONE:**
Lori O'Keefe, lorio@ranchomirageca.gov or Gloria Griego, gloriag@ranchomirageca.gov
Phone: (760) 324-4511

TABLE OF CONTENTS

ANNOUNCEMENT.....	1
PROPOSALS/OFFER SUBMITTAL.....	1
SCOPE OF SERVICES.....	2
GENERAL INSTRUCTIONS FOR SUBMITTAL.....	8
PROPOSAL FORMAT AND CONTENT.....	11
PROPOSAL EVALUATION AND CONTRACT AWARD.....	13
EXHIBIT "A" (AGREEMENT FORM).....	14
EXHIBIT "B" (ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS)....	35
ATTACHMENT "A" (CONCEPT MASTER PLAN.....	36
ATTACHMENT "B" (RMA MASTER PLANNED IMPROVEMENTS.....	37

**CITY OF RANCHO MIRAGE
REQUEST FOR PROPOSALS
FOR RANCHO MIRAGE AMPHITHEATER IMPROVEMENTS DESIGN SERVICES**

ANNOUNCEMENT

The City of Rancho Mirage (“City”) invites proposals from qualified, competent, knowledgeable, and experienced consultants to provide design services for the Rancho Mirage Amphitheater Improvements and 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 a contract (“Agreement”) for the services and duties as set forth in this RFP.

PROPOSALS/OFFER SUBMITTAL:

Proposals will be accepted until **4:00 P.M. on TUESDAY, FEBRUARY 1, 2022**, and each must be submitted Via email in accordance with the instructions herein or in a sealed envelope plainly marked on the outside **"SEALED BID FOR RANCHO MIRAGE AMPHITHEATER IMPROVEMENTS DESIGN SERVICES - DO NOT OPEN WITH REGULAR MAIL"** to:

City of Rancho Mirage
Attn: Ryan Stendell, Director of Public Works
69825 Highway 111
Rancho Mirage, California 92270

Or if by Email to:

EMAIL: ryans@ranchomirageca.gov
CC: charlesn@ranchomirageca.gov

All electronic submittals shall include in the subject line **“RFP FOR RANCHO MIRAGE AMPHITHEATER IMPROVEMENTS DESIGN SERVICES.”** It shall be the responsibility of proposer to ensure the electronic delivery is successful prior to deadline for submissions.

PURPOSE:

The City of Rancho Mirage (City) is accepting written proposals in response to this Request for Proposal (RFP) from qualified design professional firms (Design Professional) interested in contracting with the City to provide services as outlined in this RFP.

PROJECT BACKGROUND:

Originally opened in 2016, the Rancho Mirage Amphitheater has become one of the City's most cherished venues. In the previous five years, the venue has hosted an array of entertainment events that include concerts, Broadway musicals, jr. theater, cabaret, political rallies, movie premieres, holiday shows, opera, symphony, wellness programs, dance competitions, and more. Now that the facility has been operational for some time, several areas of improvement have been identified. As a result, staff has prepared a **Concept Master Plan (ATTACHMENT "A" Attached)** for proposed enhancements that will improve the activation and production capabilities.

MANDATORY SITE VISIT

Mandatory Amphitheater preproposal site visit December 16, 2021, at 9:00 a.m. Prior notification of intent to attend is requested by December 13, 2021. Email project Manager Charles Nesbit at charlesn@ranchomirageca.gov.

CONTACTS:

Project Manager Charles Nesbit

charlesn@ranchomirageca.gov

CC: Public Works Director Ryan Stendell

Ryans@ranchomirageca.gov

SCOPE OF SERVICES:

The following is a scope of services the selected Design Professional shall provide at a minimum. Any Design Professional proposed additional services should be separately identified in the proposal along with reasons why the service is recommended.

OBJECTIVES:

The City has identified the following objectives:

- Expand and enhance the operational ability of the Rancho Mirage Amphitheater consistent with the RMA Master Planned Improvements **(ATTACHMENT B Attached as Reference Material)** plus additional enhancements. Enhancements are inclusive of but not limited to the addition of the following:
 - Amphitheater Entryways and queuing areas.
 - Storage areas

- Service Kitchen in accordance with Riverside County Health Requirements.
- Passageway / Corridor from Service Kitchen to the front of house.
- Creation of an Events Terrace on the upper east side of the facility.
- Integration to City network
- Actor/prop stadium to stage fly system
- Additional pavers to stadium grass areas
- Sound booth security and weatherproofing enhancements
- Design of final improvements to seamlessly integrate into the existing Amphitheater and park improvements
- The City desires to minimize disruption to the Rancho Mirage Community Park and all improvements are limited to the Amphitheater and areas directly adjacent.
- Target construction completion date of 10/01/2023.
- All amenities, site furnishings, and landscaping shall be of complimentary design and character to the existing facility.
- Network integration to City Hall Rancho Mirage
- To be able to utilize the completed facility in conjunction with the City's 50th year celebration in the Fall of 2023.

GENERAL REQUIREMENTS:

1. Design, draw, detail and provide all specifications/reports necessary to upgrade the facility consistent with the Concept Master Plan (attached) and additional enhancements to meet current code requirements.
2. The selected firm will also need to provide design, draw, detail, and provide specifications/reports necessary to upgrade the building, and or site, with ADA improvements, seismic improvements, or infrastructure improvements as required by code due to the building alterations being performed at the site.
3. Design meetings, Site visits, Initial conceptual drawings, City presentation if required, Progress Schedules, Engineer cost estimates for construction, Construction documents preparation, Final Plans and Specs, Construction RFP preparation and support, Project initiation, Project support, Construction period support services.
4. Design, draw, detail and provide all specifications/reports necessary to replace and or alter buildings finishes, doors, mechanical systems, energy efficiency, or any other aspect of the building as required by code or as a result of the work. The intent of this requirement is not to address new work in the entire building, but only those items being affected by the scope of work. For example, if a doorway needs to be moved as a result of the seismic or ADA improvements, a corresponding schedule should be created specifying the door details. The intent is to eliminate field change orders by identifying the full scope of work in the construction drawings.

5. Create a safe and cost-effective design.
6. Submit design and construction drawings to the City of Rancho Mirage Building and Safety Department, and the Planning Department as required, for permit issuance.
7. Provide all required drawings, reports, specifications, calculations, and any other document the City of Rancho Mirage Building and Safety and Planning Departments as necessary, required for permit issuance.
8. Provide support for the duration of design, bidding, and construction phases, including meetings, addendum requests, RFI responses, weekly project inspections, punch-list development, and other related support services.
9. It is the intent of this project for a design firm to deliver a complete design for a fully functional and operational facility in accordance with the concept design as indicated by the City of Rancho Mirage and be approved by City staff, building, and safety, and Riverside County Health Dept. To include as stated above all plans and specs for construction including RFP preparation for construction and support throughout the entire project through full commissioning and delivery

B. SPECIFIC SERVICES TO BE PROVIDED

1. Site Plan
2. Construction Plans, Details, Reports, and Specifications for all the building improvements, including any required seismic or ADA improvement work, in accordance with current codes.
 - a. Develop plans of the existing facility which are affected or needed for bidding and constructing. Said plans must detail all aspects and specifications of new work and required alterations to existing facilities including, but not limited to:
 - i. Demolition plans and/or notes
 - ii. Floor plan
 - iii. Mechanical plans and/or notes
 - iv. ADA plans and/or notes
 - v. Seismic plans/or notes
 - vi. Finish schedule and/or notes
 - vii. Design and physical elements must meet all applicable codes, standards, and ADA requirements.
 - b. Submit conceptual design drawings to City for review and comment.
 - c. Submit plans to Planning Department if permanent alterations are performed on the exterior of the building.
 - d. Submit 50% construction drawings, inclusive of all the building improvements (structural, roof, ADA, etc...) to the City for review and comment by a date mutually agreed to.

2. Structural Plans, Details, Calculations, Reports, and Specifications for Seismic Improvement Work in accordance with current codes governing seismic bracing.
 - a. Include or incorporate all necessary plans, details, calculations, reports, seismic requirements, and specifications from a licensed structural engineer who is proficient with structural design work of similar projects.

3. Roof Plans
 - a. Include construction drawings detailing the removal and replacement of the existing roofing system, including notes on demolition work, details, and specifications to replace the existing roof with a Ketone Ethylene Ester (KEE) or equal roofing system, including parapet and stucco tie-in and related details and specifications.

4. ADA Plans
 - a. Identify ADA improvements, as triggered by the code due to the building improvement project value, and provide all necessary plans, details, and specifications to comply with said ADA requirements.

5. Energy Design
 - a. Provide construction drawing details and specifications for energy efficiency and/or temperature conditioning measures in the garage/apparatus area.

6. Final Design
 - a. Public Works Review - submit the final design to the City Public Works Department for review and comments and incorporate City comments into final plans.
 1. Include engineers cost estimate
 2. Include project estimated construction schedule, in accordance with construction deadlines set forth herein.
 - b. Building and Safety Permit Issuance - Submit to Building and Safety for permit issuance, provide all plans, details, notes, specifications, reports, and any other documents the Building and Safety Department require for permit issuance or otherwise reasonably requested.

7. Support Services
 - a. The Design Professional shall provide timely, within 24 business hours, responses to all project questions and RFI's, before and during construction. The Design professional must attend weekly pre-construction and construction meetings, perform weekly site visits and be available for field inspections with 24 business hours-notice for the duration of the project.

DELIVERABLES:

The following products are expected to be prepared by the successful Design Professional:

- A. Conceptual and Preliminary Design Drawings and Plans. The Design Professional will be expected to review the data put forth in this RFP, make appropriate site inspections, meet with City staff and develop plans for review by City staff, and/or the City Council. The presentation of optional and alternative design details is encouraged within the scope of the project objectives and program requirements.
- B. Final Construction Drawings. The Design Professional will be responsible for the preparation of the final construction drawings and specifications and assist City Staff in moving to the bid phase of the project. The Design Professional will, as part of this process, take construction drawings through all appropriate plan checks and pay any and all required plan check fees with required agencies outside the City.
- C. Preparation of Bid Documents. The Design Professional will be expected to prepare the bid documents and present them for City review.
- D. Meetings Prior to and During Construction. The Design Professional will be expected to attend weekly job site meetings during the duration of design and construction.
- E. Engineering Services. The Design Professional for the project should include with basic services all necessary engineering services as required for the performance of the work including but not limited to: soils engineering, structural engineering, and other engineering services necessary to accommodate construction of the work.
- F. Project Cost; Estimate. Include a cost estimate for the entire project, the cost estimate should be organized by major work or item cost.
- G. Design Fee. The services above shall be paid for on a field fee, which will include the costs for all approved additional expenses such as transportation, reproduction, postage, data processing, photography, etc.
- H. Designation of an experienced and qualified project manager to the City's satisfaction.
- I. All data information materials and work produced including text, graphics, and maps, shall become the sole property of the City following payment by the City for the design services.

PROJECT PHASES – 90 calendar days to complete Task I and II

Task I – Project Initiation & Conceptual Design Review

- A. Meet with City staff to review project objectives and requirements.
- B. Assess RMCP Amphitheater current conditions.
- C. Provide conceptual plans to the city for review. Include a construction plan, preliminary cost estimates, descriptions, assessments, and recommendations concerning the existing facilities and site.
- D. Revise conceptual plans to address City review comments

Task II – Complete Design and Engineering

The Design professional shall develop and finalize all plans, indicating all existing and proposed improvements within the project area. Design Professional shall submit five (5) copies of plans, and electronic copies to the City and shall coordinate all plan submittal and approval processes. The Design professional shall complete all construction drawings and submit them to Building and Safety for permit issuance.

NOTE: The Design Professional must complete Task I and II 90 calendar days after issuance of Notice to Proceed.

Task III - Project Support

The Design Professional shall provide timely, within 24 business hours, responses to all project questions and RFI’s, before and during construction. The Design professional must attend weekly pre-construction and construction meetings, perform weekly site visits and be available for field inspections with 24 business hours-notice for the duration of the project.

DELIVERABLES

AVAILABLE REFERENCE MATERIALS

- Available Amphitheater Construction Set w/ available as-built drawings
- Concept master plan

ESTIMATED SCHEDULE

The following schedule is proposed to select Design Professional:

- | | |
|---------------------|---|
| • December 6, 2021 | Request for Proposals released |
| • December 16, 2021 | Mandatory Amphitheater Job Walk at 9:00 a.m. |
| • January 13, 2022 | Addendum Due Date – All written questions due |
| by 4:00 pm | |
| • January 20, 2022 | Addendum Published |
| • February 1, 2022 | Proposals Due |

- February 8, 2022 Selection of Design Professional
- February 17, 2022 Contract Award
- March 1, 2022 Notice to Proceed

GENERAL INSTRUCTIONS FOR SUBMITTAL

A. Proposal Submittal:

The proposer shall submit one (1) original and three (3) copies by **4:00 P.M. (Pacific Standard Time), TUESDAY, FEBRUARY 1, 2022, to:**

City of Rancho Mirage
Attn: Ryan Stendell, Director of Public Works
69825 Highway 111
Rancho Mirage, California 92270

Or if by Email to:

EMAIL: ryans@ranchomirageca.gov
CC: charlesn@ranchomirageca.gov

All electronic submittals shall include in the subject line **“RFP FOR RANCHO MIRAGE AMPHITHEATER IMPROVEMENTS DESIGN SERVICES.”** It shall be the responsibility of proposer to ensure the electronic delivery is successful prior to deadline for submissions.

B. Due Date and Time:

Proposals submitted after **4:00 p.m. on TUESDAY, FEBRUARY 1, 2022**, 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, **“SEALED BID FOR RANCHO MIRAGE AMPHITHEATER IMPROVEMENTS DESIGN SERVICES-DO NOT OPEN WITH REGULAR MAIL,”** or if via email, in accordance with the instructions set forth above. 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 4:00 P.M. on THURSDAY, JANUARY 13, 2022 (“Addendum Due Date”), and must be submitted via the following approved written methods addressed to Ryan Stendell, Director of Public Works and copy to Charles Nesbit, Project Manager:

1. At ryans@ranchomirageca.gov,
2. CC: At charlesn@ranchomirageca.gov, or
3. Via mail (to the address listed in General Instructions for Submittal, Proposal Submittal), 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 an agreement with the City, the 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 Section 20 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.

H. California Public Records Act

Each proposer is hereby informed that proposal and its contents are subject to disclosure in accordance with the California Public Records Act (California Government Code Sections 6250 et seq.).

I. Prevailing Wages

The selected contractor shall be required to pay prevailing wages in accordance with the State Labor Code. Compliance with the prevailing rates of wages and apprenticeship employment standards established by the State Department of Industrial Relations will be required. See Section 41.C. of the Agreement for Design Professional Services Form set forth in Exhibit "A" to this RFP for more detail regarding prevailing wage obligations.

Notice Regarding Registration with Department of Industrial Relations:

1. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
2. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
3. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

PROPOSAL FORMAT AND CONTENT:

A. Presentation

Proposals shall be submitted in an 8 ½" x 11" format, fastened with an effective method, or its equivalent if sent electronically.

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 with current or recently completed professional plan review consulting work, similar 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, design professional services 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.

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.
4. Provide any necessary organizational chart of the firm as it relates to this RFP.

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 service fees.

3. For all staff declared in the organizational chart, provide a schedule of hourly labor rates.

G. Appendices

Furnish as appendices, supporting documentation as requested, such as 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, demonstrating their competence and professional qualifications.

1. Work plan
2. Qualification and experience of proposer
3. Staffing and organization
4. Conformance with this RFP
5. 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
8. Any other criteria determined by the City

Upon selection of the most qualified proposer(s), staff may negotiate with qualified firm(s) to ensure compensation is fair and reasonable. The City may require the finalist(s) to make an oral presentation to the evaluation panel and/or the City Council or City Manager. The City expressly reserves the right to reject any or all proposals, with or without providing a reason and to waive any irregularities or informalities in the offers received. In the event of any such rejection, or in the event a proposer's offer is not rejected but does not result in contract award, the City shall not be liable for any costs incurred by the proposer in connection with the preparation and submittal of the proposal.

RFP EXHIBIT "A"

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES

This Agreement for Design Professional Services (hereinafter, "Agreement") is made and entered into as of the ____ day of _____, 2021, by and between the City of Rancho Mirage, a municipal corporation in the County of Riverside, State of California (hereinafter, the "City") and _____, a _____ (hereinafter, "Design Professional").

RECITALS

WHEREAS, the City desires to utilize the services of Design Professional, as an independent contractor, to provide the City with certain design professional services related to _____ (hereinafter, the "Services"); and

WHEREAS, Design Professional represents that it is fully qualified to perform such Services by virtue of its experience and the training, education and expertise of its principals and employees; and

WHEREAS, the City desires to retain Design Professional, and Design Professional desires to serve the City to render these professional services as set forth in this Agreement and subject to all applicable federal, state or local laws and regulations.

AGREEMENT

SERVICES OF DESIGN PROFESSIONAL

1. Scope of Services; Extra Work.

A. Design Professional shall furnish the Services described in the Scope of Services, attached hereto as Exhibit "A," and incorporated herein by this reference. Design Professional shall provide said services at the time, place, and in the manner specified in the Scope of Services. In the event any conflict exists between this Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

B. At any time during the term of this Agreement, City may request that Design Professional perform Extra Work. As used herein, Extra Work means any work that is determined by the City to be necessary for the proper completion of the services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Design Professional shall not perform, nor be compensated for, Extra Work without written authorization from the City. Design Professional shall perform the Extra Work in the manner specified herein.

2. Familiarity with Work.

A. Design Professional warrants that it has thoroughly investigated and considered the Scope of Services, has carefully considered how the services should be performed and fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement.

B. If the services involve work upon any site, Design Professional warrants that it has, or will, investigate the site and is or will be fully acquainted with the existing conditions, prior to commencement of services hereunder. Should the Design Professional discover any latent or unknown conditions that may materially affect the performance of the services hereunder, it shall immediately inform the City of such fact and shall not proceed without written instructions from the City except at its own risk.

3. Standard of Care. Services shall be performed by Design Professional in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of Design Professional's profession currently practicing in California. By delivery of completed work, Design Professional certifies that the work conforms to the requirements of this Agreement and all applicable federal, state, and local laws and the professional standard of care in California. Design Professional shall perform such services and duties in conformance with and consistent with that degree of care and skill consistent with the generally accepted professional standards prevailing at the time the work is performed. In addition, Design Professional represents that its work product does not infringe on any other copyrighted work. If Design Professional's work does infringe on any other copyrighted work, this constitutes willful misconduct under this Agreement.

4. Independent Evaluation. Design Professional is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation site conditions, existing facilities, seismic, geologic, soils, hydrologic, geographic, climatic conditions, applicable federal, state, and local laws and regulations, and all other contingencies or design considerations. Data calculations, opinions, reports, investigations, and other similar information provided by the City relating to site, local or other conditions is not warranted or guaranteed, either expressly or impliedly, by the City.

5. Licenses.

A. Design Professional represents and warrants to the City that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature, which is legally required to practice its profession as well as perform the services as set forth herein.

B. Design Professional represents and warrants to the City that it shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this

Agreement, any licenses, permits, insurance and approvals which are legally required of Design Professional to practice its profession.

C. Design Professional shall maintain a valid City of Rancho Mirage business license.

COMPENSATION

6. Contract Sum. For the services rendered pursuant to this Agreement, Design Professional shall be paid compensation not to exceed _____ Dollars and Zero Cents (\$_____) without additional written authorization from the City.

7. Payment.

A. Design Professional shall submit monthly billings to City describing the work performed during the preceding month. Design Professional's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of reimbursable expenditures.

B. The City shall pay Design Professional no later than thirty (30) days after approval of the monthly invoice by City staff, 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, that the number of hours of service set forth in the invoice reflect the amount of time ordinarily expended for such service by members of the profession currently practicing in the same locality under similar conditions, and that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of this Agreement.

C. When payments made by the City equal ninety percent (90%) of the maximum fee provided for in this Agreement, no further payments shall be made until City has accepted the final work under this Agreement.

PERFORMANCE SCHEDULE

8. Term and Time of Performance. The term of this Agreement shall commence upon execution of this Agreement and shall continue until the City approves all authorized work. All such work shall commence on _____, 2020 and shall be completed by no later than _____, 2021 (the "Term").

9. Time of Essence. Time is of the essence in the performance of this Agreement.

COORDINATION OF WORK

10. Independent Design Professional. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Design Professional,

its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Design Professional's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. It is understood that Design Professional, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Design Professional shall obtain no rights to any compensation, benefits, or retirement benefits that accrue to the City's employees and not to independent contractors, and it hereby expressly waives any claim it may have to any such rights.

11. Civil Code Section 1542 Waiver. Design Professional 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.”

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. Design Professional 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.

Initials

12. Conflicts of Interest.

A. Design Professional (including principals, associates, and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Design Professional's services hereunder. Design Professional further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

B. The City has determined that Design Professional is not a designated employee within the meaning of the Political Reform Act.

13. Assignment and Subcontracting. The parties recognize that a substantial inducement to the City for entering into this Agreement is the professional reputation,

experience, and competence of Design Professional. Assignments of any or all rights, duties or obligations of the Design Professional under this Agreement will be permitted only with the express consent of the City. Design Professional shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If the City consents to such subcontract, Design Professional shall be fully responsible to the City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between the City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law.

REPRESENTATIONS AND ACKNOWLEDGMENTS REGARDING INDEPENDENT CONTRACTOR'S STATUS OF DESIGN PROFESSIONAL

14. Design Professional represents and acknowledges the following:

A. The City is not required to provide any training or legal counsel to Design Professional or its employees in order for Design Professional to perform the services described in this Agreement.

B. Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

C. Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Design Professional on a continuing basis after termination of this Agreement.

D. The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage or other such compensation to any person employed, or retained as an independent contractor, by Design Professional to perform the services described in this Agreement.

E. Design Professional shall not at any time or in any manner represent that it or any of its officers, employees, or agents are "employees" of the City.

15. The City represents and acknowledges the following:

A. Design Professional is not required to comply with daily instructions from City staff with respect to when, where or how Design Professional must perform the services set forth in this Agreement.

B. Design Professional is solely responsible for determining who, under the supervision or direction of Design Professional, will perform the services set forth in this Agreement.

C. The City will not hire, supervise, or pay any assistants working for Design Professional pursuant to this Agreement.

D. Nothing in this Agreement shall be interpreted to imply that Design Professional must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

E. Except for attendance at certain required meetings, it is the sole responsibility of Design Professional to set the hours in which it performs or plans to perform the services set forth in this Agreement.

F. Design Professional is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

G. Nothing in this Agreement shall be interpreted to preclude Design Professional from working for other persons or firms, provided that such work does not create a conflict of interest.

H. Design Professional is not required to perform the services set forth in this Agreement in any particular order or sequence.

RECORDS AND REPORTS

16. Ownership of Documents. All plans, studies, documents, and other writings prepared by and for Design Professional, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Design Professional for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Design Professional or to any other party. Design Professional shall, at their expense, provide such reports, plans, studies, documents, and other writings to the City upon written request.

17. Licensing of Intellectual Property.

A. This Agreement creates a nonexclusive and perpetual license for the City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Design Professional under this Agreement ("Documents and Data").

B. Design Professional shall require all subcontractors to agree in writing that the City is granted a nonexclusive and perpetual license for any Documents and Data the subcontractor prepares under this Agreement.

C. Design Professional represents and warrants that it has the legal right to license any and all Documents and Data it provides to the City under this Agreement.

18. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, photographs, computer program data, input record data, written information, and other Documents and Data either created by or provided to Design Professional in connection with the performance of this Agreement shall be held confidential by Design Professional. Design Professional shall not, without the prior written consent of City, use such materials for any purposes other than the performance of the services under this Agreement nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Design Professional shall not use the City's insignia or photographs relating to project for which Design Professional's services are rendered, or any publicity pertaining to the Design Professional's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

19. Books and Records.

A. Design Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Design Professional under this Agreement.

B. Design Professional shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Design Professional's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Design Professional's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Design Professional, Design Professional's representatives, or Design Professional's successor-in-interest.

INSURANCE

20. Insurance Requirements.

A. Policies. Design Professional, at Design Professional's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies;

i. Worker's Compensation Coverage. Design Professional shall procure and maintain, at its own expense, Worker's Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California. In addition, Design Professional shall require each subcontractor, if any, to similarly maintain Worker's Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. If any class of employees employed by Design Professional pursuant to this Agreement is not protected by the California State Worker's Compensation Law, Design Professional shall provide adequate insurance for protection of such employees to the satisfaction of the City. This provision shall not apply if Design Professional has no employees performing work under this Agreement. If the Design Professional has no employees for the purposes of this Agreement, Design Professional shall sign and submit to the City the Certificate of Exemption from Worker's Compensation Insurance, attached hereto and incorporated herein by this reference as Exhibit "B." Design Professional agrees to waive its statutory immunity under any worker's compensation or similar statute, as respecting the City, and to require any and all subcontractors and any other person or entity involved in the Services to do the same.

ii. General Liability Coverage. Design Professional shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) combined single limit per occurrence and two million dollars in the aggregate (\$2,000,000) for bodily injury, personal injury, and property damage. Design Professional shall provide insurance on an occurrence, not claims-made basis. Design Professional 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.

iii. Automobile Liability Coverage. Design Professional shall procure and maintain, at its own expense, commercial automobile liability insurance covering bodily injury, personal injury and property damage for all activities of the Design Professional arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence and two million dollars in the aggregate (\$2,000,000).

iv. Professional Liability Coverage. Design Professional shall procure and maintain, at its own expense, professional errors and omissions liability

insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Design Professional's Services, whether such Services are performed by Design Professional or by its employees, subcontractors, or sub-consultants, to the extent such persons other than Design Professional are permitted to perform any of the Services under this Agreement. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim, and two million dollars (\$2,000,000) in the aggregate.

B. Endorsements. Unless otherwise specified herein, each insurance policy required herein shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by commercial general liability and commercial vehicle liability coverages, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers and agents and independent contractors, including without limitation, the City Manager and City Attorney, are named as additional insureds with respect to liability arising out of work performed by or on behalf of the Design Professional, including materials, parts or equipment furnished in connection with such work or operations. 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.

ii. With the exception of workers' compensation and professional liability insurance, this policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against the City, its elected or appointed officials, officers, employees, or agents.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents, or volunteers.

vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City or ten (10) days written notice is received by the City if cancellation, suspension, or reduction in coverage is for nonpayment of premium.

C. Deductibles and Self-Insured Retentions. Design Professional shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Design Professional shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

D. Certificates of Insurance. Design Professional shall provide certificates of insurance with original endorsements to the City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

E. Imposition of Insurance Requirements. Provided the City gives its written consent for any persons other than Design Professional to perform any part of the Services, Design Professional agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Design Professional enters into contracts or whom Design Professional 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. Design Professional 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. Maintain Coverages. In the event this Agreement is terminated for any reason prior to the completion of all obligations and requirements of this Agreement, Design Professional agrees to maintain all coverages required herein until the City provides written authorization to terminate the coverages following the City's review and determination that all liability posed under this Agreement as to the party providing insurance has been eliminated.

G. Failure to Obtain Coverages. Without limiting the generality of the forgoing, Design Professional 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 the performance of Services, to the extent such is permissible under this Agreement, Design Professional shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the City or its officers, employees, servants, volunteers, agents and independent contractors; and all Services under this Agreement shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to City. Any failure to maintain the required insurance, including insurance required of any subcontractors or others involved in any way with the Services, shall be sufficient cause for City to terminate this Agreement.

H. Broader Existing Coverage. In the event Design Professional maintains insurance with broader coverage and/or limits of liability greater than those required herein, City requires and shall be entitled to the broader coverage and/or higher limits of liability maintained by Design Professional. Any insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

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

J. Survival. The requirements set forth in Section 20F shall survive termination of this Agreement.

INDEMNIFICATION

21. Indemnity.

A. To the fullest extent permitted by law, the Design Professional, as defined in Section 2782.8 of the Civil Code, shall indemnify, defend (with independent counsel approved by the City) and hold harmless the City, and its directors, officers, and employees from and against all liabilities (including without limitation all claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs and costs of alternative dispute resolution) regardless of nature or type that arise out of, pertain to, or relate to the negligence, reckless, or willful misconduct of the Design Professional or the acts or omissions of an employee, agent or subcontractor of the Design Professional.

B. The City does not, and shall not, waive any rights that it may have against Design Professional under this Section because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless, indemnification and duty to defend provisions of this Section shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, action, damage, liability, loss, cost or expense described herein. As set forth in and without limiting the generality of Section 20I, any applicable insurance policy limits do not act as a limitation upon the amount of indemnification to be provided by Design Professional.

C. Notwithstanding the provisions of subsections A and B of this section, Design Professional shall not be responsible for damages or be in default or deemed to be in default by reason of delay caused by strikes, lockouts, accidents, or acts of God, or the failure of the City to furnish timely information or to approve or disapprove Design Professional's work promptly, or by reason of delay or faulty performance by the City, construction contractors, or governmental agencies, or by reason of any other delays beyond Design Professional's control, or for which Design Professional is without fault.

D. The indemnity provisions contained in this Section shall survive expiration or sooner termination of this Agreement.

ENFORCEMENT OF AGREEMENT

22. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Design Professional. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

23. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provisions under this Agreement. Payment by the City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

24. Default; Breach.

A. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided, however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

B. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

C. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

D. In the event that a default of any party to this Agreement may remain uncured for more than fifteen (15) calendar days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured

party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

E. In the event Design Professional shall be in material breach of this Agreement, the City shall be permitted to suspend all payments to Design Professional until such time that Design Professional cures the breach to the City's satisfaction. Notwithstanding anything to the contrary, Design Professional's failure to provide all insurance documents, certificates of insurance and endorsements required of Design Professional and as prescribed in Section 20 of this Agreement, by itself, shall be deemed a material breach of this Agreement without the need for the parties to engage in the notice and opportunity to cure process set forth in Subsections a, b and d of this Section 24.

25. Rights and Remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

26. Controlling Law Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Riverside.

27. Litigation Expenses and Attorneys Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys fees.

28. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic signatures shall be deemed to constitute evidence of the Agreement having been executed.

29. Authority to Enter Agreement. Design Professional 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 to bind each respective party.

30. Termination. The City may terminate this Agreement immediately for cause. The City may terminate this Agreement without cause upon fifteen (15) days written notice of termination. Upon termination, Design Professional shall be entitled to compensation for services performed up to the effective date of termination. For purposes of this Section, the City Manager shall have the authority to take action on behalf of the City.

31. Force Majeure. Neither CITY nor Design Professional will be held liable for failure to fulfill its obligations hereunder if such failure is due to a Force Majeure Event. A "Force Majeure Event" means, but is not limited to, an act of war; domestic and/or international terrorism; civil riots or rebellions; quarantines, pandemics or epidemics; embargoes, state or national states of emergencies, and other similar unusual governmental actions; or extraordinary elements of nature or acts of God; provided that such Force Majeure Event is beyond the excused Party's reasonable control, occurs without the excused Party's fault or negligence, is not caused directly or indirectly by the excused Party and could not have been prevented or avoided by the excused Party's reasonable diligence.

PRINCIPAL REPRESENTATIVES

32. [INSERT NAME], [INSERT TITLE], is designated as Design Professional's Principal Representative and is the person responsible for undertaking, managing and supervising the performance of all of the services set forth in the Scope of Services for this Agreement. Design Professional's designated Principal Representative's experience, knowledge, capability and reputation were a substantial inducement for the City to enter into this Agreement, and as such, for the purposes of performing the Scope of Services of this Agreement, the duties of Design Professional's designated Principal Representative shall not be reassigned, without the express written consent of both parties.

33. The City's [INSERT TITLE], [INSERT NAME], shall be the Principal Representative of the City for purposes of communicating with Design Professional on any matter associated with the performance of the services set forth in this Agreement.

CITY OFFICERS AND EMPLOYEES

34. Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Design Professional, or any successor-in-interest, in the event of any default or breach by the City or for any amount, which may become due to the Design Professional or to its successor, or for breach of any obligation of the terms of this Agreement.

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

36. Equal Opportunity Employment. Design Professional represents that it is an equal opportunity employer and shall not discriminate against any subcontractor,

employee, or applicant (“person”) for employment because of race; denial of family and medical care leave; religious creed (including religious dress and grooming practices); color; national origin (including language use restrictions); ancestry; physical disability or mental disability (including HIV and Aids); medical condition (cancer and genetic characteristics); genetic information; military or veteran status; marital status; gender, gender identity, and gender expression; sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding); age or sexual orientation. Unless otherwise permitted under the law, Design Professional shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

MISCELLANEOUS

37. Notices. 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 the City: [INSERT NAME, TITLE]
City of Rancho Mirage
69-825 Highway 111
Rancho Mirage, CA 92270
Telephone: (760) 770-3224
Facsimile: (760) 770-3261
Email: _____@ranchomirageca.gov

If to Design Professional: [INSERT NAME, TITLE]
[INSERT BUSINESS NAME]
[INSERT ADDRESS
_____]]
Telephone: (760) 770-9131
Facsimile: (760) 777-9132
Email: [INSERT EMAIL]

38. Amendments. This Agreement may be modified or amended only by a written document executed by both Design Professional and the City and approved as to form by the City Attorney.

39. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

40. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

41. Labor Laws; Prevailing Wages.

A. All work or services performed within the State of California pursuant to this Agreement by Design Professional, Design Professional's employees and independent contractors, or its subcontractors and its subcontractors' employees and independent contractors shall be performed by individuals lawfully permitted to perform such work or services in the State of California and/or the United States of America pursuant to all applicable State and/or Federal labor laws, rules and regulations including, but not limited to, any State or Federal law, rule or regulation prohibiting the employment of undocumented workers or any person not lawfully permitted to perform said work or services in the State of California or the United States of America. Documentation must be promptly submitted to the City at the request of the City, for the purpose of determining whether or not the work or services provided pursuant to this Agreement are being provided in compliance with this section.

B. Design Professional represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race, denial of family and medical care leave, religious creed (including religious dress and grooming practices), color; national origin (including language use restrictions), ancestry, physical disability or mental disability (including HIV and Aids), medical condition (cancer and genetic characteristics), genetic information, military or veteran status, marital status, gender, gender identity, gender expression, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), age or sexual orientation. Unless otherwise permitted under the law, Contractor shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

C. Design Professional and all of Design Professional's subcontractors, if any, shall pay each employee engaged in all applicable trades or occupation not less than the prevailing hourly wage rate for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In accordance with the provisions of Section 1770 of the California Labor Code ("Labor Code"), the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code Section 1773.8, apprenticeship or other training programs authorized by Labor Code Section 3093 and similar purposes applicable to the work to be done. Said wages are available through the California

Department of Industrial Relations' Internet website at <http://www.dir.ca.gov/dlsr/PWD/index.htm> and are on file at City Hall, as provided in Section 1773.2 of the Labor Code. Said rates shall be posted at the project site where work is to be performed, in accordance with Labor Code Section 1773.2. Design Professional shall access a copy of the wage rate determination and shall make all subcontractors, if any, aware of the determination. As the wage determination for each craft reflects an expiration date, it shall be the Design Professional's responsibility to ensure that the prevailing wage rates of concern are current and paid. Subject to the safe harbor provisions of Labor Code Section 1775, Design Professional shall forfeit to the City an amount not to exceed two hundred dollars (\$200) for each calendar day or portion thereof, as set by the Labor Commissioner in accordance with the terms of Labor Code section 1775, for each laborer, workmen or mechanics employed that is paid less than the general prevailing rate of wages herein referred to and stipulated for any work done under the proposed contract, by him, or by any subcontractor under him, in violation of the provisions of the Labor Code, and in particular, Sections 1770 to 1781 inclusive. Design Professional and any and all or its subcontractors shall forfeit to the City twenty-five dollars (\$25) for each worker employed in the performance of this Agreement for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Section 1813 of the Labor Code. In the event the total cost of the Project is thirty thousand dollars (\$30,000.00) or more, Design Professional shall further comply with provisions set forth in Labor Code Section 1777.5 pertaining to employment of properly registered apprentices, including without limitation the obligation to (i) pay employed apprentices the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of craft or trade to which he or she is registered; (ii) employ apprentices in at least the ratio as set forth in said section; (iii) submit contract award information to an applicable apprenticeship program; and (iv) contribute to California Apprenticeship Council.

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

Notwithstanding anything else to the contrary, Design Professional hereby acknowledges that all contractors and subcontractors must be registered with the Department of Industrial Relations (“Department”) pursuant to Labor Code Section 1725.5 in order to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract as defined in California Labor Code 1720, including this Agreement, that is subject to the payment of prevailing wages. The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In accordance with Section 3700 of the Labor Code, Design Professional must secure payment of compensation to all Design Professional’s employees. Design Professional represents and warrants that Design Professional is registered with the Department in the manner prescribed by the Department and has paid the requisite application fee, as required by Labor Code Section 1725.5. Moreover, where applicable, prior to Design Professional entering into any contracts with any subcontractor, Design Professional shall obtain proof that all such subcontractors have also registered with the Department in accordance with Section 1725.5.

42. Right to Independent Investigation. At any time during the term of this Agreement, the City reserves the right to make an independent investigation into the background of Design Professional’s personnel who perform work required in the Scope of Services, including but not limited to their references, character, address history, past employment, education, social security number validation, and criminal or police records, for the purpose of confirming that such personnel are lawfully employed, qualified to provide the subject service or pose a risk to the safety of persons or property in and around the vicinity of the area where work is to be performed. If the City makes a reasonable determination that any of Design Professional’s prospective or then current personnel is deemed objectionable, then the City may notify Design Professional of the same. Design Professional shall not use that personnel to perform work required in the Scope of Services, and if necessary, shall replace him or her with another suitable worker.

[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

Its: _____
(Title)

APPROVED AS TO CONTENT:

[INSERT NAME, TITLE]

ATTEST:

Kristie Ramos, City Clerk

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney

AGREEMENT EXHIBIT "A"

SCOPE OF SERVICES

**ATTACHED PROPOSAL
DATED _____**

AGREEMENT EXHIBIT "B"

**CERTIFICATE OF EXEMPTION
FROM WORKERS' COMPENSATION INSURANCE**

I certify that, in the performance of the work to be performed by _____,
for the City of Rancho Mirage, I shall not employ any person in any manner so as to become
subject to the workers' compensation laws of California, and agree that if I should become subject
to the workers' compensation provisions of the California Labor Code, I shall forthwith comply
with those provisions.

Date: _____, 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 Rancho Mirage Amphitheater Improvements Design Services, dated DECEMBER 6, 2021** (“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 20 (“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

ATTACHMENT "A"
CONCEPT MASTER PLAN
ATTACHED

ATTACHMENT "B"

**RMA MASTER PLANNED IMPROVEMENTS
(Attached as Reference Material)**