

**CITY OF RANCHO MIRAGE**

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

**REQUEST FOR PROPOSALS  
FOR  
UNIFIED COMMUNICATIONS AS A SERVICE (UCaaS)**

**Issued:  
MARCH 30, 2022**

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**CITY OF RANCHO MIRAGE**  
**REQUEST FOR PROPOSALS**  
**FOR**  
**UNIFIED COMMUNICATIONS AS A SERVICE**

**ANNOUNCEMENT:**

The City of Rancho Mirage (“City”) invites proposals from qualified, competent, knowledgeable, and experienced companies that are capable of providing on-premise Cisco Voice over IP (VOLP) system with a cloud-hosted unified communications as a service (UCaaS) solution, 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 a contract (“Agreement”) for the services and duties as set forth in this RFP, which is included as part of **Exhibit “A,”** attached hereto and incorporated herein by this reference. However, if the proposer that is awarded the contract desires to use its own form of agreement, it may do so only with the City’s consent and the agreement must be approved by the City Attorney and all insurance requirements set forth in **Exhibit “B”** must be satisfied.

**SCOPE OF SERVICES:**

Purpose

City of Rancho Mirage (CoRM) is Requesting Proposals regarding replacement of our current on-premise Cisco Voice over IP (VoIP) system (the system) with a Cloud-Hosted Unified Communications as a Service (UCaaS) solution. CoRM has identified three (3) main reasons to move from an on-premise system to a Cloud-Hosted and Cloud-Managed system: Continuity of Operations, Mobility, and Cost. We are seeking a business partner that can help CoRM meet these needs by providing a reliable and cost effective UCaaS solution.

First, the current system provides for little redundancy, no continuity of operations, nor disaster recovery. Should the CoRM be left without operating data centers after the wake of a natural or other disaster, we would have no means of communicating with our customers or business partners. By moving to a Cloud-Hosted/Cloud-Managed Solution, CoRM staff can continue to make and receive calls from anywhere with an internet connection.

Second, CoRM wishes to provide for a mobile workforce. Our current system is on-premise and requires users to connect via VPN to use a softphone option. In addition, our system does not provide for mobile phone applications, nor can handsets be used outside of the cities network. During the first wave of the COVID-19 pandemic, the CoRM was challenged with continuing operations while allowing staff to Telework. Due to the lack of mobility, staff were required to forward desk phones to their mobile phones, which continuously posed challenges for both staff and Information Services. The CoRM wishes to provide users the ability to make and receive calls using smart phone applications, softphones, and handsets using any available internet connection without requiring a VPN or relying on CoRM infrastructure.

Third, the CoRM wishes to move from a Capital Expense model to an Operating Expense model for its Unified Communications; receiving a monthly bill, per user and/or device, rather than costly expenses to maintain an on-premise system. The CoRM currently incurs monthly & annual costs for telco expenses (DS1 and Long Distance), Hardware Support & Maintenance (Smartnet), and Software Support & Maintenance (Smartnet). In addition, upgrades to the system are costly, requires third party business partners, requires a great deal of information services staff time, and causes downtime for end-users. Moving to the cloud would decrease required resources for our on-premise infrastructure and increase information services staff efficiency.

## **CURRENT ENVIRONMENT**

The current phone system consists of (2) virtual Cisco Unified Communication Manager (CUCM) servers, (2) virtual Cisco Unity Connection (CUS) server for Voicemail, and IM & Presence Server for softphone needs. The Current version of Cisco Call manager is 11.5. The Current system includes 3 Voice Gateways, 2 AT&T DS1's, and 50 DID's. The current system includes 128 VoIP handsets, and 2 Conference phones. The CoRM currently uses Singlewire for phone paging.

### **NETWORK:**

CoRM network consists of 3 physical locations - City Hall, Library & Observatory, and the Corp Yard. Connection between the sites have an EPL line at minimum 1Gbps. CoRM has two internet connection: one 10Gbps Internet connect at the Library & Observatory and another one 500mbps connect at City Hall. Information Services also has a 40Gbps fiber line between the Library and City Hall for backups. All IDF have CISCO POE switches.

**HANDSETS:**

The CoRM is currently using the following phone Models:

Model	Count	Lines	Type
CISCO 8841	128	4	Handset
CISCO 8851	2	4	Handset
CISCO 8800	2	-	Expansion Module
CISCO 8831	2	-	Conference Phones

**Scope of Work, Specifications and Requirements**

1. Porting of existing CoRM Owned DID's to vendor's telecom system
2. End-user licenses for all affected users.
3. All Business readiness activities (network readiness assessment, procedure updates, tip sheets, deployment communication to impacted) will be supported by the vendor.
4. Procedures to order new VoIP phones and lines of services either at existing or new locations
5. "White Glove" setup of Handsets (pre-programmed phones arrived for IT Deployment)
6. All items listed in RFP Features

CoRM is requesting the overall phone system have the following features.

ID#	Features	Yes	No	Optional
F1	Ability to support multiple system prompts to greet callers with a ring no answer message or a busy message			
F2	Ability to record multiple greetings for internal and external callers, out-of-office greetings, etc			
F3	Ability to easily transfer a caller directly to an internal voicemail			

F4	Transfer messages to other users			
F5	Ability to hot-transfer call from desktop phone to users call phone			
F6	Intercom Calling			
F7	Call			
F8	Conforms to FCC requirements for Enhanced 911			
F9	3-digit extension dialing (currently CoRM uses 3-digit and would like to retain same #s)			
F10	Hunt Groups- A single phone number that can ring multiple extensions. Each CoRM location may have multiple Hunt Groups depending on their configuration.			
F11	Soft Phone - The proposed solution must have the ability to provide softphone extensions that reside on our employees' CoRM computers. These extensions should provide an equal or better level of functionality as physical handset equipment. Access to the solution, using a softphone application, should be capable over both a VPN and when not connected to a VPN. The softphone application must be compatible with the latest Windows Operating Systems, MacOS compatibility is not required, but desired if available.			
F12	Smartphone & Tablet- The proposed solution must have the ability to be used/accessed from a smartphone and/or a tablet device; henceforth described as a Mobile device. Mobile device applications must have the ability to provide an equal or better functionality as physical handset equipment. Mobile device application(s) must be compatible with the common mobile OS platforms including Android and Apple iOS.			
F13	Configurable day/night mode for Hunt Groups			

F14	Programmable hold music/message by CoRM, Hunt Group, or extension			
F15	Ability to page a Hunt Group or all extensions			
F16	Announcement Line - A phone number that is not tied to a physical extension, and simply plays a recorded message (e.g. job line).			

PER EXTENSION does your phone system have the following features:

Id#	Features	Yes	No	Optional
P1	Call Hold			
P2	Do not Disturb			
P3	Call Pickup from extension			
P4	Call Pickup from Hunt Group			
P5	Call Waiting- Allows users to receive an additional call while already in a call			
P6	Call transfer			
P7	Call Forward All			
P8	Call Forward Busy			
P9	Call Forward No Answer			
P10	Voicemail			
P11	User can access voicemail either from the email inbox using computer or directly from the phone\softphone interface.			
P12	Distinctive Ring			

P13	Call Return – Allows a user to return a call to the last party who called			
P14	Caller ID			
P15	Calling Name Delivery – Allows the calling name to be displayed for external and internal calls			
P16	Calling Number Delivery – Allows the calling number to be displayed for external and internal calls			
P17	Calling Line ID Delivery Blocking- Allows a user to restrict the public from seeing the user’s phone number when making a call.			
P18	We should be able to place a custom logo image on the display of the phone.			
P19	Busy Lamp Field – Allows a user to monitor the phone status of a list of users via an attendant console phone			

**IMPLEMENTATION:**

Describe the process by which user licenses for your solution are issued.

Describe the process by which the UCaaS solution is deployed. Include any tasks that must be performed on systems or devices already deployed (such as network configuration and third-party solution integration).

Describe the process by which the required functionality is initially configured. Include the creation of administrative accounts, adding key features, policy creation, etc.

**Product Support:**

Describe how you work with clients to deliver your UCaaS solution.



### Customer support

Do you provide toll-free customer support 24 hours a day, seven days a week?  
Please specify all paid and unpaid support options.

### Geographic and language support

Is your support provided from within the United States?

### User manuals

Do you provide a complete set of user manuals (either in hardcopy, softcopy, or via a searchable software/web interface) for all software applications to document and explain system features and functions?

How often are manuals updated?

### **Implementation support**

Provide a timeline and step-by-step process for implementation, including the project management duties and responsibilities.

Do you provide complete turnkey, onsite implementation, and project management support? Please specify which support will be included and which is provided for an additional fee. Also specify whether support is available direct from the vendor or provided through a partner.

Describe the vendor's approach for enabling remote workers

Describe how administrator profiles are established, the steps involved configuring and connecting the UCaaS solution, setting up a new user, the system tools available for proactive monitoring and end-to-end performance.

Describe the maintenance support for the UCaaS solution, pre- and post-cut-over.

### **Training**

Describe the type of training provided to administrators. Specify whether training is available direct from the vendor or provided through a partner.

Outline the vendor's knowledge transfer approach between CoRM subject matter experts and vendor's subject matter experts.

## BUDGET & ESTIMATED PRICING

All vendors must fill out the following cost breakdown for the implementation of their service for CoRM project as described in the RFP.

Five-Year Total Cost Summary						
COST	TOTAL	YEAR 1	YEAR 2	YEAR 3	YEAR 4	Year 5
Hardware						
Licensing						
Installations						
Software						
Miscellaneous						
Other						
TOTAL						

### Cost Categories:

**Hardware:** List describe and record the cost of each piece of hardware that is required. This includes costs for handsets comparable to models outlined in (HANDSETS) section of this RFP.

**Licensing:** List describe, and record the licensing, implementation, maintenance, support, and training fees associated with your proposed solution.

**Installation:** Describe any labor, equipment, supplies, design time, or other cost associated with installing your proposed solution. This includes costs for “White-Glove” services of pre-programming handsets and shipping to CoRM desired locations.

**Maintenance:** Describe and determine any other ongoing costs associated with the operations and maintenance of your proposed solution.

**Documentation & Training:** If there are fees associated with your users or technical documentation, list them here.

**Project Management:** If there are project management fees associated with your proposed solution, list and describe them here.

**Software:** List describe and record the cost of each piece of software that is required.

In addition, the CoRM is seeking costs for a solution that will encompass all requested needs and features at a Per User monthly rate. The CoRM is seeking costs for three (3) options:

Option #1: Cost Per User per Month – cost of all features required billed at a per user rate. This will also need to include published, shared lines such as main numbers.

Option #2: Cost Per User + Cost per Handset – includes all cost for Option #1 plus cost to Rent or lease handsets. In this scenario, the handset would be provided by the vendor. The unit would come pre-programmed and ready to be connected to an internet ready network port. If a handset unit failed, the vendor would provide a replacement unit at no cost. The unit would arrive pre-programmed.

Option #3: Cost per Handset – This option would be simply the cost to purchase requested handsets models. This will allow the CoRM to compare the total cost of purchase against the cost to lease/rent handsets.

**PROPOSALS/OFFER SUBMITTAL:**

Proposals will be accepted until **4:00 p.m.** (Pacific Standard Time), **APRIL 22, 2022**, and each must be submitted in a sealed envelope plainly marked on the outside **"BID FOR UNIFIED COMMUNICATIONS AS A SERVICE (UCaaS) - DO NOT OPEN WITH REGULAR MAIL"** to:

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

**GENERAL INSTRUCTIONS FOR SUBMITTAL:**

A. Proposal Submittal:

The proposer shall submit one (1) original and three (3) copies of Proposals by **4:00 p.m.** (Pacific Standard Time), **APRIL 22, 2022**, to:

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

**Or if by Email one (1) proposal copy to:** [jasonj@RanchoMirageCA.gov](mailto:jasonj@RanchoMirageCA.gov)

All electronic submittals shall include in the subject line **“BID FOR UNIFIED COMMUNICATIONS AS A SERVICE (UCaaS) - DO NOT OPEN WITH REGULAR MAIL”**. 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 APRIL 22, 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, **“BID FOR UNIFIED COMMUNICATIONS AS A SERVICE (UCaaS) - DO NOT OPEN WITH REGULAR MAIL” OR WHEN DELIVERED BY EMAIL, SUBJECT LINE MUST INCLUDE “BID FOR UNIFIED COMMUNICATIONS AS A SERVICE (UCaaS) - DO NOT OPEN WITH REGULAR MAIL”**. Failure of the proposer to properly identify the sealed envelope or email 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 APRIL 11, 2022** (“Addenda Due Date”), and must be submitted via the following approved written methods addressed to Jason Jaurigue, Information Services Manager:

1. At [jasonj@RanchoMirageCA.gov](mailto: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 questions raised verbally 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 within the time prescribed herein will be addressed by the City’s issuance of an addendum to this RFP. 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 sent to each recipient of record. Recipients of record shall consist of proposers on the original “bidders” mailing list, or proposers that have requested RFPs and have provided pertinent contact information in writing to the City. Addenda will also be posted and published on the City’s website, <http://www.ranchoirageca.gov>, as well as everywhere else the RFP was originally posted and published. Though the City shall mail out any addenda to RFP recipients of record, and in addition will post any addenda information on the City website and publish and post in accordance with the above, as soon as it becomes available, it shall be the responsibility of the proposers to maintain current, up to date contact information with the City if any addenda are to be mailed. 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 as set forth in **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 the insurance provisions of the agreements that are part of **Exhibit "A"** ("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, or equivalent format if electronic submittal.

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.

A preliminary ranking of vendors will be developed based on a review of each respective applicant’s proposal. Based on the ranking, a shortlist of vendors will be established and contacted for interviews.

At the discretion of the City, references of the firms invited for interviews may be contacted.

Criterion	Weight	Criterion Description
Ability to meet requirements	40%	Ability of proposed products and services to meet or exceed the basic requirements listed in the RFP
References and Experience	30%	Meet or exceed the requirements listed in the RFP and have customers similar in size and or intention as CoRM.
Cost	30%	Pricing

Upon selection of the most qualified proposer, the City may require the finalist 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.

## **CALIFORNIA PUBLIC RECORDS ACT**

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

## **INDEPENDENT CONTRACTOR STATUS**

By submitting a proposal to this RFP, proposers thereby represent, warrant, covenant and agree, that in the event City elects to enter into a contract for services outlined herein, as of the effective date of the agreement and throughout the term of the agreement, proposers firm and any person providing services hereunder shall be an independent contractor and not an employee of the City under applicable law, which may include but not be limited to, California Labor Code Sections 2775 et seq. and under the Public Employees' Retirement Law. Failure to comply with this requirement, as may be determined by the City, in consultation with the City Attorney, in City's sole and absolute reasonable discretion, shall result in the proposal being rejected as non-responsive. As set forth in more detail herein, successful proposers shall enter into an Agreement with the City governing the services, which shall include express language effectuating the same.

## **CALPERS OBLIGATIONS**

**CalPERS Participation.** As set forth in this RFP, City has an obligation to treat all persons working for or under the direction of Consultant as agents and employees of Consultant, and not as agents or employees of City. Consultant and City acknowledge and agree that City participates in a defined benefit plan ("CalPERS").

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

**Joint Cooperation.** In the event that the City's Retirement Program initiates an inquiry that includes examination of whether individuals providing services under this Agreement to City are City's employees, Consultant shall within five days and share all communications and documents from CalPERS that it may legally share. In the event

that either Consultant or City files an appeal or court challenge, Consultant and City each agree to cooperate with each other in responding to the inquiry and any subsequent administrative appeal or court challenge of an adverse determination.

**Indemnity.** To the fullest extent permitted by law, in addition to indemnification obligations set forth herein, in the event that any person providing services under this Agreement is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, to the fullest extent of the law, contractor shall indemnify, defend, and hold harmless City for any payment that City is required as a result to make to CalPERS, whether in the form of employee and/or employer contributions or any similar obligations, as well as for the payment of any penalties and interest on such payments.

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**EXHIBIT "A"**

**SEE ATTACHED AGREEMENT**

**PROFESSIONAL SERVICES AGREEMENT  
BY AND BETWEEN**

**THE CITY OF RANCHO MIRAGE**

**AND**

---

This Professional Services Agreement (hereinafter, this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Rancho Mirage, a municipal corporation in the County of Riverside, State of California, hereinafter referred to as the "City," and \_\_\_\_\_, \_\_\_\_\_, hereinafter referred to as "Consultant."

**RECITALS:**

**WHEREAS**, the City desires to utilize the services of Consultant, as an independent contractor, to provide the City with \_\_\_\_\_ (hereinafter, the "Services") as directed by the City and more particularly described in the "Scope of Services," attached hereto and incorporated herein by this reference as Exhibit "A"; and

**WHEREAS**, Consultant 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 Council approved this Agreement during its meeting of \_\_\_\_\_, 2022.

**NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN, THE PARTIES HERETO 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. SCOPE OF SERVICES**

Consultant shall provide to the City those services as set forth in the Scope of Services, at the time, place, and in the manner specified therein, in a manner satisfactory to the City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. In the event any conflict exists between the Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

Consultant hereby warrants and represents that any software and/or cloud-based services ("Software") will be free from material defects, and free from viruses, malware, logic locks, and other disabling devices or codes, and in particular will not contain any virus, Troja horse, worm, drop-dead devices, trap doors, time bombs, spyware, adware, or other software routines or other hardware components that could permit unauthorized access, disable, erase or otherwise harm any City software, hardware, or data, or otherwise cause the services to perform any functions other than those specified in this Agreement.

The services shall perform in all material respects in accordance with its applicable specifications and/or documentation, and as set forth in this Agreement. Without limiting the generality of the forgoing, Consultant shall provide Software that is accessible with 99.5% availability, and the Services will be deemed to be unavailable when the City is unable to access the Services, or the general public is unable to access the public-facing components of the Services, provided, however, that the occurrence of a Force Majeure Event or scheduled maintenance, system upgrades, or critical security upgrades between 11 :00 PM and 4:00 AM Pacific Time (PT) shall not count as downtime in the 99.5% calculation of availability. A "Force Majeure Event" shall be defined as an event arising out of or caused by, directly or indirectly, forces beyond Consultant's control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, broad ranging communications or computer (software and hardware) services not caused by or within the control of the Consultant (including but not limited to failures of the internet or any telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections and power failures).

**Section 3. COMPLETION DATE**

Consultant shall perform those services set forth in the Scope of Services during the term of this Agreement, which shall commence as of \_\_\_\_\_, 2022 and continue until \_\_\_\_\_, 20\_\_\_\_.

**Section 4.                    COMPENSATION**

The City agrees to pay Consultant for and in consideration of the faithful performance of the consulting services and duties set forth in this Agreement, and Consultant agrees to accept from the City, as and for compensation for the faithful performance of said services and duties, an amount not to exceed a total compensation of \_\_\_\_\_ Dollars and \_\_\_\_ Cents (\$\_\_\_\_\_.\_\_\_\_) during the term of this Agreement.

**Section 5.                    METHOD OF PAYMENT**

a.        Consultant shall submit invoices to the City on a monthly basis describing the work performed. Consultant'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 any reimbursable expenditures. The City shall pay Consultant no later than thirty (30) days after approval of the 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.

b.        The Consultant shall submit invoices under this Agreement to:

\_\_\_\_\_, \_\_\_\_\_  
City of Rancho Mirage  
69825 Highway 111  
Rancho Mirage, CA 92270  
Telephone: (760) \_\_\_\_\_  
Facsimile: (760) \_\_\_\_\_  
Email: \_\_\_\_\_

**Section 6.                    EXTRA WORK**

At any time during the term of this Agreement, the City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which 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. Consultant shall not perform Extra Work without written authorization from the City.

**Section 7.                    TERMINATION**

a.       This Agreement may be terminated by the City immediately for cause. The City may terminate this Agreement without cause upon thirty (30) days' written notice of termination. Upon termination, Consultant 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.

b.       Neither Party 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.

**Section 8.                    OWNERSHIP OF DOCUMENTS; INTELLECTUAL PROPERTY RIGHTS**

All plans, studies, documents and other writings prepared by and for Consultant, 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 Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at its expense, provide such reports (including any electronic copies), plans, studies, documents, and other writings to the City upon written request.

Except as expressly set forth herein, this Agreement does not grant (i) Consultant any intellectual property rights in City data, or (2) City any intellectual property rights in the Software, Consultant trademarks and brand features, or any improvements, modifications or derivative works of any of the forgoing.

**Section 9.                    CONFIDENTIALITY**

a.       All ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such



materials shall not, without prior written consent of the City, be used by Consultant 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. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential.

b. Consultant shall not use the City's insignia or photographs relating to the project for which Consultant's services are rendered, or any publicity pertaining to the Consultant'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 the City.

### **Section 10. CONSULTANT'S BOOKS AND RECORDS**

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

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three 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 the City's address indicated for receipt of notices in this Agreement when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where the City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, the City may, by written request of 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 at the City's address indicated for receipt of notices in this Agreement. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

**Section 11.                    INDEPENDENT CONTRACTOR'S STATUS: NOT AGENT OF THE CITY**

Consultant shall at all times during the term of this Agreement remain, as to the City, a wholly independent contractor and shall perform the services described in this Agreement as an independent contractor and further, hereby waives any claims for any compensation or benefits afforded to City employees and not to independent contractors. Neither the City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Nothing contained in this Agreement shall be deemed, construed, or represented by the City or Consultant or by any third person to create the relationship of principal and agent and Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. Consultant shall have no authority, expressed or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Consultant have any authority, expressed or implied, to bind the City to any obligation whatsoever.

**Section 12.                    REPRESENTATIONS AND ACKNOWLEDGMENTS REGARDING INDEPENDENT CONTRACTOR'S STATUS OF CONSULTANT**

a.        Consultant represents and acknowledges the following:

(1)        The City is not required to provide any training or legal counsel to Consultant or its employees in order for Consultant to perform the services described in this Agreement.

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

(3)        The services described in this Agreement can be performed without the use of City equipment, materials, tools or facilities.

(4)        Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Consultant on a continuing basis after termination of this Agreement.

(5)        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 by Consultant to perform the services described in this Agreement.

(6) Consultant 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.

b. The City represents and acknowledges the following:

(1) Consultant is not required to comply with daily instructions from City staff with respect to when, where or how Consultant must perform the services set forth in this Agreement.

(2) Consultant is solely responsible for determining who, under the supervision or direction of Consultant, will perform the services set forth in this Agreement.

(3) The City will not hire, supervise or pay any assistants working for Consultant pursuant to this Agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the Consultant must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(5) It is the sole responsibility of Consultant to set the hours in which Consultant performs or plans to perform the services set forth in this Agreement.

(6) Consultant 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.

(7) Consultant is not required to perform the services set forth in this Agreement at City-owned property.

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

(9) Consultant is not required to perform the Services set forth in the Agreement in any particular order or sequence.

**Section 13. CIVIL CODE SECTION 1542 WAIVER**

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

“A general release does not extend to claims 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. Consultant further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

\_\_\_\_\_  
Initials

#### **Section 14. CONFLICTS OF INTEREST**

a. Consultant (including principals, associates, and professional employees) covenants and represents that it does not 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 or income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant 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. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- (1) Does not make or participate in:
  - (i) the making or any governmental decisions regarding approval of a rate, rule, or regulation, the adoption or enforcement of laws;
  - (ii) the issuance, denial, suspension or revocation of permits, licenses, applications, certificates, approvals, orders, or similar authorization or entitlement;
  - (iii) authorizing the City to enter into, modify, or renew a contract;

- (iv) granting the City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
- (v) granting the City approval to a plan, design, report, study, or similar item; or
- (vi) adopting, or granting City approval of, policies, standards, or guidelines for the City or for any subdivision thereof.

(2) Does not serve in a staff capacity with the City and in that capacity participate in making a governmental decision or otherwise perform the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code under Government Code Section 87302.

c. In the event the City officially determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file the subject Form 700 with the City Clerk's Office of the City of Rancho Mirage pursuant to the written instructions provided by the Office of the City Clerk.

**Section 15. PROFESSIONAL ABILITY OF CONSULTANT; WARRANTY; FAMILIARITY WITH WORK; PERMITS AND LICENSES**

a. Consultant warrants that all services will be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry for such services.

b. By executing this Agreement, Consultant warrants that:

- (1) it has thoroughly investigated and considered the work to be performed;
- (2) it has investigated the issues, regarding the scope of services to be provided;
- (3) it has carefully considered how the work should be performed; and
- (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

c. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by the City, it shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City Manager or appropriate City representative.

d. Consultant 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, including a City of Rancho Mirage business license.

**Section 16. COMPLIANCE WITH LAWS**

Consultant shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including such legal requirements imposed on the City had it performed the services, including without limitation the Americans with Disabilities Act.

**Section 17. INDEMNIFICATION**

a. Consultant shall defend, indemnify and hold harmless the City, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs, expenses and attorneys' fees in connection therewith), arising out of the performance of this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, agents, employees or volunteers. Without limiting the generality of the forgoing, to the fullest extent permitted by law, in addition to indemnification obligations set forth herein, in the event that any person providing services under this Agreement is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, to the fullest extent of the law, contractor shall indemnify, defend, and hold harmless City for any payment that City is required as a result to make to CalPERS, whether in the form of employee and/or employer contributions or any similar obligations, as well as for the payment of any penalties and interest on such payments.

b. The City does not, and shall not, waive any rights that it may have against Consultant 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 18i, any applicable insurance

policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

c. Notwithstanding the provisions of subsections a. and b. of this section, Consultant 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 Consultant'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 Consultant's control, or for which Consultant is without fault.

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

## **Section 18. INSURANCE REQUIREMENTS**

a. Policies. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies:

(1) Worker's Compensation Coverage. Consultant shall maintain Worker's Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor 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 Consultant pursuant to this Agreement is not protected by the California State Worker's Compensation Law, Consultant shall provide adequate insurance for the protection of such employees to the satisfaction of the City. This provision shall not apply if Consultant has no employees performing work under this Agreement. If the Consultant has no employees for the purposes of this Agreement, Consultant shall sign and attach the Certificate of Exemption from Worker's Compensation Insurance, attached hereto and incorporated herein by this reference as Exhibit "B." Consultant 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.

(2) General Liability Coverage. Consultant 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 (\$2,000,000) in the aggregate, for bodily injury, personal injury and property damage. Consultant shall provide insurance on an occurrence, not claims-made basis. Consultant acknowledges

and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess coverage, 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.

(3) Automobile Liability Coverage. Consultant shall maintain commercial automobile liability insurance covering bodily injury, personal injury, and property damage for all activities of the Consultant 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 per occurrence, and two million dollars (\$2,000,000) in the aggregate.

(4) Professional Liability Coverage. Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant’s Services, whether such Services are performed by Consultant or by its employees, subcontractors, or sub-consultants, including without limitation protection against trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. 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. The policy shall include, or be endorsed to include, property damage liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of City in the care, custody, or control of Consultant.

b. Endorsements. Unless otherwise specified hereunder, 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:

(1) 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 Consultant, 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.

(2) 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.

(3) 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.

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

(5) 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.

(6) The insurance provided by this policy shall not be canceled except after thirty (30) days written notice has been mailed to the City and ten (10) days notice if cancellation is for nonpayment of premium.

c. Deductibles and Self-Insured Retentions. Consultant 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, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance. Consultant 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. Consultant agrees to ensure that the most current certification of insurance is 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 Consultant to perform any part of the Services, Consultant agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Consultant enters into contracts or whom

Consultant 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. Consultant 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, Consultant 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, Consultant 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, Consultant 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 Consultant 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 Consultant. 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 Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify 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 Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the

liability of Consultant, its principals, officers, agents, employees, persons under the supervision of Consultant, vendors, suppliers, invitees, sub-contractors, or anyone employed directly or indirectly by any of them.

j. Survival. The requirements set forth in Section 18f shall survive termination of this Agreement.

**Section 19.           NOTICES**

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the City:

\_\_\_\_\_, \_\_\_\_\_  
City of Rancho Mirage  
69825 Highway 111  
Rancho Mirage, CA 92270  
Telephone: (760) \_\_\_\_\_  
Facsimile: (760) \_\_\_\_\_  
Email: \_\_\_\_\_

To Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: (\_\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_

b. 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.

**Section 20.           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 material "breach" shall be deemed to have occurred. In the event of a material breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

e. In the event Consultant shall be in material breach of this Agreement, the City shall be permitted to suspend all payments to Consultant until such time that Consultant cures the breach to the City's satisfaction. Notwithstanding anything to the contrary, Consultant's failure to provide all insurance documents, certificates of insurance and endorsements required of Consultant and as prescribed in Section 18 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 20.

**Section 21. ENTIRE AGREEMENT**

a. This Agreement supersedes any and all other agreements, either oral or written, between the City and Consultant with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

c. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

**Section 22.                    MODIFICATIONS AND AMENDMENTS**

This Agreement may be modified or amended only by a written instrument signed by both parties.

**Section 23.                    ASSIGNMENT AND SUBCONTRACTING**

a. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the written consent of the City.

b. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written consent of the City. If the City consents to such subcontract, Consultant 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 required by law.

**Section 24.                    WAIVER**

a. No waiver shall be binding, unless executed in writing by the party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

**Section 25.                    SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not

affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

**Section 26.          VENUE**

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

**Section 27.          LITIGATION EXPENSES AND ATTORNEYS' FEES**

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

**Section 28.          EXECUTION IN COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least a copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 29.          PROHIBITED INTERESTS**

Consultant warrants and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**Section 30.                    EQUAL OPPORTUNITY EMPLOYMENT**

Consultant 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, Consultant 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.

**Section 31.                    TIME OF THE ESSENCE**

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

**Section 32.                    PRINCIPAL REPRESENTATIVES**

a. \_\_\_\_\_, is designated as Consultant'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. Consultant'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 Consultant's designated Principal Representative shall not be reassigned, without the express written consent of both parties.

b. \_\_\_\_\_, \_\_\_\_\_, shall be the Principal Representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

**Section 33.                    NON-LIABILITY OF CITY’S OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to Consultant, 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 Consultant or to its successor, or for any breach of any obligation of the terms of this Agreement.

**Section 34. INTERPRETATION**

This Agreement shall not be interpreted against either party on the grounds that one of the parties was solely responsible for preparing it or caused it to be prepared as both parties were involved in drafting it.

**Section 35. PROTECTION AND CORRECTION OF WORK**

a. Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work performed by Consultant, and the equipment, materials, papers, and other components thereof to prevent losses or damages.

b. The performance of services by Consultant shall not relieve Consultant from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the City, when such inaccuracies are due to the fault of Consultant.

**Section 36. CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

**Section 37. GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

**Section 38. CUMULATIVE 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.



**Section 39. NO THIRD PARTY BENEFICIARIES**

The parties do not intend the benefits of this Agreement to inure to any third party, nor shall any provision of this Agreement be so construed.

**Section 40. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT**

a. Each of the parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the parties each purports to represent.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first written above.

**CITY OF RANCHO MIRAGE**

\_\_\_\_\_

\_\_\_\_\_  
Isaiah Hagerman, City Manager

\_\_\_\_\_  
By Its: \_\_\_\_\_  
(Title)

**APPROVED AS TO CONTENT:**

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Kristie Ramos, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Colin D. Kirkpatrick, Assistant 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: \_\_\_\_\_, 2022

**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 Unified Communications As A Service (UCaaS), dated March 30, 2022 (“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 7 and its subsections (“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