

**CITY OF RANCHO MIRAGE**

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

**REQUEST FOR QUALIFICATIONS  
FOR  
RANCHO MIRAGE LIBRARY & OBSERVATORY  
LED SIGN REPLACEMENT  
DESIGN AND CONSTRUCTION SERVICES**

**ISSUED:  
MAY 8, 2023**

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**CITY OF RANCHO MIRAGE  
REQUEST FOR QUALIFICATIONS  
FOR  
RANCHO MIRAGE LIBRARY & OBSERVATORY  
LED SIGN REPLACEMENT  
DESIGN AND CONSTRUCTION SERVICES**

**ANNOUNCEMENT AND BACKGROUND**

The City of Rancho Mirage (“City”) invites submittals of statements of qualifications from qualified firms in order to retain the services of a design and construction firm (“Contractor”) to prepare initial conceptual renderings, design drawings, plans, specifications, and full construction services of the Rancho Mirage Library and Observatory LED Sign Replacement (“City”) and administer the duties and responsibilities set forth in this Request for Qualifications (“RFQ”), in compliance with all applicable laws, regulations, policies and procedures.

Prequalified design-build entities will subsequently be issued a Request for proposals, and such design-build entities must be prepared to immediately enter into a contract (“Agreement”) if selected, substantially in the form attached hereto and incorporated herein by this reference as **Exhibit “A,”** subject to revision by the City in its sole and absolute discretion, which agreement shall be provided in the RFP, for the services and duties as set forth in this RFQ.

**SCOPE OF SERVICES:**

The selected firm shall provide to the City all the necessary design/build services in accordance with the scope of services to fulfill its duties and obligations under the Agreement which duties and obligations include but are not limited to, the following:

The work to be accomplished includes, in general terms, all aspects of the preparation and development of initial concept rendering, design drawings, plans, specifications, and full construction services of the City of Rancho Mirage Library and Observatory LED Sign Replacement Project CP 21-368, located at 71-100 Highway 111, Rancho Mirage, California 92270 (“Site”), including, but not limited to:

- Produce initial conceptual drawing for approval
- Design plans from approved conceptual drawings
- Construction documents (working drawings and specifications)
- Cost estimates
- Registered electrical engineer to design the electrical plans for the project
- Registered civil engineer to design the structural plans for the project
- Full construction of the project

The existing LED entrance sign has reached its service life and needs to be replaced. The new sign will need to be a fully automated high-resolution LED display to serve as an events and public service announcement platform. The new sign will need to consider placement, height restrictions, traffic flow, traffic views, obstruction, and aesthetics. Time will be of the essence and the anticipated schedule for delivery is as follows:

- 30 days award and start
- 30 days for initial concept design and approval
- 30 days for plans and specs
- 30 days Building and Safety approval
- 90 days construction (pending materials availability)

**Estimated Cost:**

Estimated cost is between \$150,000 and \$300,000.

**SCHEDULING OF SERVICES**

The Project Manager shall be the primary representative of the City. To aid the Contractor in the performance of the Agreement, the City shall provide Contractor with the contact information for other appropriate City staff.

The Contractor shall designate a representative to serve as the primary contact for daily communication with City staff regarding scheduling and coordinating the foregoing duties and obligations under the Scope of Services.

**SITE VISITS UPON REQUEST:**

To schedule site visit contact **Charles Nesbit, Project Manager**, at the phone or email below:

**Phone:** (760) 324-4511, Ext. 523

**Email:** charlesn@ranchomirageca.gov

**RESPONSE SUBMITTAL:**

The City reserves the right to award a contract or contracts for all or any portion(s) of the services described in this RFQ to one or more firms, or in any other manner, as deemed by the City to be in the City's best interest.

Responses to this RFQ will be accepted until **2:00 p.m. (Pacific Standard Time), JUNE 7, 2023**, and each response must be submitted in a sealed envelope plainly

marked on the outside **"SEALED RESPONSE FOR RFQ FOR RANCHO MIRAGE LIBRARY & OBSERVATORY LED SIGN REPLACEMENT DESIGN AND CONSTRUCTION SERVICES - DO NOT OPEN WITH REGULAR MAIL"** and addressed to:

City of Rancho Mirage  
Attn: Charles Nesbit, Project Manager  
69-825 Highway 111  
Rancho Mirage, California 92270

### **GENERAL INSTRUCTIONS FOR SUBMITTAL**

#### **A. RFQ Response Submittal**

The applicant shall submit one (1) original and three (3) copies **by 2:00 p.m. (Pacific Standard Time), JUNE 7, 2023, to:**

The City of Rancho Mirage  
Attn: Charles Nesbit, Project Manager  
69-825 Highway 111  
Rancho Mirage, California 92270

#### **B. Due Date and Time**

RFQ responses submitted after **2:00 p.m. on JUNE 7, 2023**, may, at the sole discretion of the City, be rejected as non-responsive and returned without review. For an RFQ response to be considered on time, it must be date stamped by City staff upon receipt. At the discretion of the City, a "late" response may be considered only if a selection cannot be determined from among responses 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 applicant. All responses shall be enclosed in a sealed envelope with the words clearly written on the front, **"SEALED RESPONSE FOR RFQ FOR RANCHO MIRAGE LIBRARY & OBSERVATORY LED SIGN REPLACEMENT DESIGN AND CONSTRUCTION SERVICES - DO NOT OPEN WITH REGULAR MAIL."** Failure of the applicant to properly identify the sealed envelope response as described may result in the response being considered non-responsive. Responses may not be amended after the due date except by consent of the City. All responses must clearly address all of the requirements outlined in this RFQ. Each response shall be limited to twenty (20) pages. Resumes and brochures may be added to the response, provided they are located in an appendix at the back of the response. Should the applicant have concerns about meeting any noted requirements, the applicant shall include a clearly labeled subsection with individual statements specifically identifying the concerns and exceptions.

### **C. RFQ Addenda and Clarifications in Written Comments or Questions**

Written comments or questions from applicants must be received by **2:00 p.m. on MAY 22, 2023** (“Addenda Due Date”), and must be submitted via the following approved written methods addressed to **Charles Nesbit, Project Manager**:

1. At [charlesn@RanchoMirageCA.gov](mailto:charlesn@RanchoMirageCA.gov), or
2. Via fax to (760) 770-3261, 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 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 RFQ, or to provide clarification or additional information after this RFQ has been issued, a written addendum will be posted and published on the City’s website, <http://www.rancho MirageCA.gov>. All addenda shall become part of the RFQ.

### **D. Pre-contractual Expenses:**

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

### **E. Conflicts of Interest:**

The applicant 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 applicant 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. Consultants who assisted the City, if any, in the RFQ and/or RFP preparations may not propose or participate on any design build team on this project, unless the City waives a potential conflict of interest where consultant was limited to provision of preliminary designs, reports or similar low-lever documents that will be incorporated into the procurement and did not include assistance in development of instructions or proposers or evaluation criteria.

## **F. Proposed Contract:**

The design-build entities prequalified as selected through this RFQ shall be issued a Request for Proposals, and successful proposer shall be required to enter into an Agreement with the City.

## **G. Security**

The selected firm pursuant to the subsequent RFP process shall furnish a payment bond and a performance bond at no expense to the City, as security for the payment of all persons performing labor and furnishing materials in connection with the Agreement, and as security for the faithful performance of the Agreement. To be acceptable, the surety company must be authorized to do business and have an agent for service of process in California, be on the accredited list of the United States Treasury Department and have an "A" policyholder's rating and a financial rating of Class V, or better, in accordance with the current Best's Rating.

## **H. Prevailing Wages**

The selected firm 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.

### **I. 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.

## **J. 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 8 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.

**K. Skilled and Trained Workforce**

The design build entity shall provide an enforceable commitment to the City that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.

**L. California Public Records Act**

Each bidder is hereby informed, and by submitting a proposal acknowledges, that proposals and their contents are subject to disclosure in accordance with the California Public Records Act (California Government Code Sections 6250 et seq.).

**M. Independent Contractor Status**

By submitting a proposal, 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.

**N. CALPERS Obligations**

**CalPERS Participation.** City participates in a defined benefit plan (“CalPERS”). If awarded a contract, proposers expressly agree to clearly and conspicuously disclose to City in writing any and all persons working for Contractor 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 successful bidder 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.

## **RESPONSE FORMAT AND CONTENT**

### **A. Presentation**

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

### **B. RFQ Response 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 response will remain valid for 180 days from the due date for the responses.
- c. Acknowledgement of receipt of addenda, if any.
- d. Signature of the person authorized to bind the terms of the response.

#### 2. Table of Contents

Following the transmittal, provide a table of contents for the response.

### **C. Qualifications, Related Experience and References**

1. This section shall establish the ability of the applicant to satisfy all aspects of the required work with current or recently completed work, similar to the work required in this RFQ. This shall include evidence the members of the design-build team have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.
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 applicant 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 similar to the LED Sign Replacement design and construction services and duties required in this RFQ. 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) that ensure the design build entity has the capacity to complete the project.
7. The licenses, registration, and credentials required to design and construct the project, including, but not limited to, information on the revocation or suspension of any license, credential, or registration.
8. Evidence establishing the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance required herein.
9. Information concerning workers' compensation experience history and a worker safety program.
10. Evidence of a safety record with experience modification rate for the most recent three-year period with an average of 1.00 or less, and average total recordable injury or illness rate and average lost work rate that does not exceed the applicable statistical standard for its business category or if the proposer is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

**D. Proposed Staffing and Project Organization**

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

2. Identify the key personnel that would be assigned to the project, in hours per week. 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 RFQ.

**E. Work Plan / Technical Approach**

1. Establish the applicant'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 qualifications to provide the required services, with a focus on any technologies, innovations, and processes that the firm will offer to help the City meet its objectives.

**F. Miscellaneous**

If the design-build entity is a privately held corporation, limited liability company, partnership or joint venture, a listing of all the shareholders, partners, or members known at the time of statement of qualification submission who will perform work on the project.

If the design-build entity is a privately held corporation, limited liability company, partnership, joint venture or other legal entity, a copy of the organizational documents or agreement committing to form the organization.

**G. Certification Under Penalty of Perjury**

The proposal shall be submitted with a certification under penalty of perjury by the design-build entity and its general partners or joint venture members, providing as in substantially the same form as follows:

"I certify under penalty of perjury under the laws of the State of California that the forgoing, and everything stated herein, is true and correct.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
*Name, Title*

## **H. Appendices**

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

## **RESPONSE EVALUATION AND CONTRACT AWARD**

### **A. Evaluation Panel**

An evaluation panel consisting of City staff will be responsible for reviewing, analyzing, and evaluating the responses received. The evaluation panel will either select the successful applicant or make recommendations to the City Council regarding selection.

### **B. Evaluation Criteria**

RFQ responses will be evaluated by the panel, considering the factors which are listed below.

1. Work plan.
2. Qualification and experience of applicant.
3. Staffing and organization.
4. Conformance with this RFQ.
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.

The City expressly reserves the right to reject any or all responses, 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 an applicant's offer is not rejected but does not result in contract award, the City shall not be liable for any costs incurred by the applicant in connection with the preparation and submittal of the response.

A Request for Proposals will be issued to the prequalified design-build entities to evaluate ultimate contract award.

## **INSURANCE REQUIREMENTS**

The selected firm shall be subject to the City's insurance requirements which are set forth in the sample Agreement, attached hereto. Some of the more important Agreement insurance provisions are also provided below for the convenience of all applicants, as follows:

**Worker's Compensation Coverage.** Contractor 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, Contractor 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 Contractor pursuant to this Agreement is not protected by the California State Worker's Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the City. Contractor 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.

**General Liability Coverage.** Contractor shall maintain commercial general liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, and property damage. Contractor shall provide insurance on an occurrence, not claims-made basis. Contractor acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess 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.

**Automobile Liability Coverage.** Contractor shall maintain automobile liability insurance covering bodily injury, personal injury and property damage for all activities of the Contractor 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 (\$2,000,000) in the aggregate.

**Professional Liability Coverage.** Contractor shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Contractor's services, whether such services are performed by Contractor or by its employees, subcontractors, or sub-Contractors, to the extent such persons other than Contractor 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.

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:

- Except for worker's compensation, errors and omissions, professional liability, or directors and officers coverage, the City, its elected or appointed officers, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work or operations.

- 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.

- Except for worker's compensation insurance and professional liability, or directors and officers coverage, all insurance policies required to be provided must be endorsed to provide that the policies shall apply on a primary and noncontributing basis in relation to any insurance or self-insurance, primary or excess, maintained, or available to the CITY, and its officers, employees, servants, volunteers, agents, and independent contractors.

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

- 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.

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

**RFQ EXHIBIT "A"**  
**SAMPLE RFQ**  
**DESIGN BUILD AGREEMENT**

This Design Build Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date"), by and between the CITY OF RANCHO MIRAGE, a municipal corporation located in the County of Riverside, State of California ("**CITY**") and \_\_\_\_\_, a \_\_\_\_\_ ("**CONTRACTOR**"), as follows:

**RECITALS:**

**WHEREAS**, Section 3.34.110 of the CITY's Municipal Code authorizes the CITY to utilize design-build procurement methods for the design and construction of certain public works projects; and

**WHEREAS**, CITY desires to have CONTRACTOR design, install, and construct an LED Sign ("Improvements") at the Rancho Mirage Library & Observatory, 71-100 Highway 111, in the city of Rancho Mirage (sometimes, the "Project"); and

**WHEREAS**, CONTRACTOR shall complete all its obligations under this Agreement either directly or through use of subcontractors; and

**WHEREAS**, CONTRACTOR shall complete the Project and fulfill all its obligations to CITY in accordance with this Agreement, which includes preparing the initial concept rendering, design drawings, plans and construction of the LED sign (as defined below) and the Rancho Mirage Library & Observatory Request for Proposals for LED Sign Replacement Design and Construction Services, dated \_\_\_\_\_, 2023, which both are incorporated herein and made part hereof, all of which collectively are hereinafter referred to as the "Contract Documents."

**NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:**

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.
2. **DESIGN OF IMPROVEMENTS:** CONTRACTOR shall prepare complete initial concept rendering, design drawings, plans, specifications ("Project Plans"), all of which shall be reviewed and approved by CITY prior to commencement of construction of the Improvements in accordance with Section 3 hereof, and shall furnish the services of all supervisors, architects, engineers, designers, draftsmen, and other personnel, as necessary, for the preparation of those Project Plans required for the construction component of the Project.

**3. CONSTRUCTION OF IMPROVEMENTS:** CONTRACTOR shall install and construct the Improvements by the date specified in the Summary of Key Terms, attached hereto and incorporated herein by this reference as Exhibit "A," in accordance with the Contract Documents. CONTRACTOR warrants that all of the materials supplied and work to be done will be of good quality and workmanship. Said work shall be in strict conformity with the Scope of Services and Project Plans. CONTRACTOR shall furnish or cause to be furnished all transportation, equipment, materials, tools, labor, services, permits, utilities, and all other items necessary to complete the Project in accordance with all applicable provisions of the Contract Documents, including, but not limited to, the Project Plans. CONTRACTOR shall pay all claims, demands and liability arising out of, or resulting from or in connection with, the performance of the work. CONTRACTOR shall furnish accurate "as constructed" plans.

**4. TIME FOR COMMENCEMENT/COMPLETION:** CONTRACTOR shall complete the design component of the Project as required in Section 2 hereof with sufficient time to allow CITY to review and approve the Project Plans that will in turn allow construction to commence by no later than \_\_\_\_\_, 20\_\_.

The construction component of the Project as required in Section 3 hereof shall commence no later than \_\_\_\_\_, 2023 and shall be completed within \_\_\_\_\_ calendar days from and after the commencement date ("Commencement Date"), or in other words, by no later than \_\_\_\_\_, 20\_\_\_. It is expressly agreed that time shall be of the essence.

**5. COMPENSATION:** As payment for the design services provided by CONTRACTOR under Section 2 of this Agreement, CONTRACTOR shall receive compensation of up to \_\_\_\_\_.

As payment for the construction services provided by CONTRACTOR under Section 3 of this Agreement, CONTRACTOR shall receive compensation of an amount not to exceed \_\_\_\_\_.

Said compensation shall cover all expenses, losses, damage and consequences arising out of the nature of work during its progress or prior to its acceptance, including those for well and faithfully completing the work and the whole thereof in the manner and time specified herein; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work and all other unknowns or risks of any description connected with the work.

**6. TERM:** The term of this Agreement shall commence upon the Effective Date and shall expire in accordance with the following: the date that is one (1) business day prior to the Commencement Date, with respect to CONTRACTOR's rights and obligations as they pertain to Section 2; and one (1) year following the CITY's acceptance of the Project in accordance with Section 15 of this Agreement, with respect to CONTRACTOR's rights and obligations as they pertain to Section 3.



**7. METHOD OF PAYMENT:** CONTRACTOR shall invoice the CITY for the performance of the services under this Agreement in the amount agreed upon by the parties herein, and shall supply CITY with all documentation, including, but not limited to, certified payroll records required in Section 20 of this Agreement, in support of each invoice. CONTRACTOR shall be paid the amount specified in the invoice within thirty (30) days of receipt by the CITY. Pursuant to Section 9203 of the Public Contract Code, the CITY shall retain no less than five (5) percent of each progress payment to be paid to CONTRACTOR for work performed pursuant to Section 3 which payment shall be released to CONTRACTOR no later than thirty-five (35) days from the date of CITY's acceptance of the Project.

**8. INSURANCE:** CONTRACTOR shall not commence or continue to perform any work unless CONTRACTOR has in full force and effect all insurance required hereunder with companies satisfactory to CITY. To be acceptable, insurers must be authorized to do business, and have an agent for service of process, in California, and have an "A" policyholder's rating and a financial rating of at least Class V, in accordance with the current Best's Ratings. All insurance policies shall be maintained until the work is accepted by CITY and provide for coverage of all causes of action or disputes arising out of acts in performance of the work herein, whether said causes or disputes are filed or brought to the attention of CITY before or after the expiration or sooner termination of this Agreement.

Concurrent with execution of this Agreement, CONTRACTOR shall provide certificate(s) of insurance and endorsements, satisfactory to CITY, or otherwise provide proof of insurance as approved by the City Attorney, certifying that CONTRACTOR has and will maintain for the Agreement period, full worker's compensation insurance coverage as required by State laws, for all persons who are or may be employed in carrying out the work.

Concurrent with execution of this Agreement, CONTRACTOR shall provide to CITY certificate(s) of insurance and endorsements, satisfactory to CITY, or otherwise provide proof of insurance as approved by the City Attorney, certifying that CONTRACTOR has general liability and commercial vehicle liability insurance coverage naming CITY, City Council members, CITY'S engineer, and their Contractors, officials, directors, officers, agents and employees, as additional insureds for both bodily injury and property damage of not less than that specified in the Summary of Key Terms.

General liability and commercial vehicle liability insurance coverage shall include each of the following types of insurance as required by CITY to carry out this Agreement:

- |   |   |
|---|---|
| <p>A. General Liability</p> <ol style="list-style-type: none"><li>1. Comprehensive Form</li><li>2. Premises-Operations</li><li>3. Explosion and Collapse Hazard</li><li>4. Underground Hazard</li><li>5. Products/Completed Operations Hazard</li></ol> | <p>B. Vehicle Liability</p> <ol style="list-style-type: none"><li>1. Comprehensive Form, Including Loading and Unloading</li><li>2. Owned</li></ol> |
|---|---|

- |  |              |
|--|--------------|
| 6. Contractual Insurance                                     | 3. Hired     |
| 7. Broad Form Property Damage including Completed Operations | 4. Non-owned |
| 8. Independent Contractors                                   |              |
| 9. Personal Injury   |              |

CONTRACTOR 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 CONTRACTOR's services performed pursuant to Section 2, whether such services are performed by CONTRACTOR or by its employees, subcontractors, or sub-Contractors. The amount of this insurance shall not be less than one million dollars (\$2,000,000) per claim, and two million dollars (\$2,000,000) in the aggregate.

Concurrent with execution of any agreements between CONTRACTOR and any subcontractors retained by CONTRACTOR to perform any work required of CONTRACTOR hereunder, and in any event prior to CONTRACTOR authorizing any subcontractors to perform any such work or to even conduct any preliminary activities in preparation for or in anticipation of such work, CONTRACTOR shall collect certificates of insurance from all such subcontractors evidencing proof that all subcontractors have procured and will maintain all the insurance coverages required of CONTRACTOR under this Agreement.

In addition to naming the CITY, City Council members, CITY'S engineer, and their Contractors, officials, directors, officers, agents and employees, as additional insureds, as set forth above, the certificates of insurance, including those provided by any subcontractor, provided either on forms required by the CITY or as otherwise approved by the City Attorney, shall bear the following endorsements: (1) each policy required herein must be endorsed to provide that the policy shall not be cancelled or non-renewed by or reduced in coverage or limits (except by paid claims) unless the insurer has provided the CITY with thirty (30) days prior written notice of cancellation; (2) the carriers of all required insurance policies must waive all rights of subrogation against the CITY and its officers, employees, servants, volunteers, agents and independent contractors; and (3) except for worker's compensation insurance, all insurance policies required to be provided by CONTRACTOR must be endorsed to provide that the policies shall apply on a primary and noncontributing basis in relation to any insurance or self-insurance, primary or excess, maintained or available to the CITY, and its officers, employees, servants, volunteers, agents and independent contractors.

Nothing contained in these insurance requirements shall limit the liability of CONTRACTOR or CONTRACTOR's sureties. Review and acceptance of insurance certificates shall not constitute any representation by CITY or its representatives that any required insurance has been issued.

**9. CONTRACTOR'S LIABILITY:** CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, be solely and completely responsible for all matters affecting the

design, prosecution, progress, and completion of the work (both on and off the job site). CONTRACTOR shall be responsible for observing all laws. CONTRACTOR shall provide for public convenience and safety and safety of workers, including CONTRACTOR'S workers and those of CONTRACTOR'S subcontractors, suppliers and others contributing to the work. CONTRACTOR shall protect CITY property and property rights of others, including the location, maintenance, and replacement of utilities, whether shown on the plans or not. CONTRACTOR shall give prior notification to utility owners. CONTRACTOR shall notify Underground Service Alert at 1-800-422-4133 at least 48 hours prior to start of construction. CONTRACTOR shall protect against, and prevent drainage from, storm runoff. CONTRACTOR shall not interfere with easements, rights-of-way and encroachment permits. Nothing in this Agreement, the specifications, or other contract documents, or CITY'S approval of the plans and specifications or inspection of the work is intended to include CITY'S review, inspection, acknowledgment of or responsibility for any such matters. CITY, CITY COUNCIL members, ENGINEER, and their Contractors and each of their officials, directors, officers, employees, and agents shall have no responsibility or liability for the above.

#### **10. CONTRACTOR'S INDEMNIFICATION:**

**DESIGN PROFESSIONAL SERVICES:** To the fullest extent permitted by law, the CONTRACTOR, as a "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 CONTRACTOR or the acts or omissions of an employee, agent or subcontractor of CONTRACTOR.

#### **NON-DESIGN PROFESSIONAL SERVICES:**

Contractor 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 and expenses in connection therewith), arising out of the performance of this Agreement, except for any such claim arising out of the sole and/or active negligence or willful misconduct of the City, its officers, agents, employees or volunteers.

Acceptance of the Improvements by CITY shall not constitute an assumption by CITY of any responsibility for such damage or taking. As to any and all claims against the indemnified parties by any employee of CONTRACTOR, any contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnity obligations hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR, subcontractor, supplier

or other person under workers' compensation acts, disability benefit acts or other employee acts.

**11. SECURITY:** Concurrent with or prior to the Effective Date, CONTRACTOR shall furnish and deliver to CITY a performance bond and a payment bond substantially in the forms attached hereto and incorporated herein by this reference as Exhibit "B" and Exhibit "C," in connection with CONTRACTOR's work under Section 3 of this Agreement. Each shall be executed and in the amount of \_\_\_\_\_, and shall be furnished by surety companies satisfactory to CITY on the forms provided by CITY. No alterations or substitution of said forms shall be allowed. To be acceptable, surety companies must be authorized to do business and have an agent for service of process in California, be on the accredited list of the United States Treasury Department and have an "A" policyholder's rating and a financial rating of Class V, or better, in accordance with the current Best's Rating. The bonds shall be limited to amounts acceptable to the Treasury Department.

**12. TYPES/AMOUNT OF SECURITY:** If permitted by CITY, in lieu of payment and performance bonds, CONTRACTOR may furnish CITY either cash, a Letter of Credit, or an Agreement of Deposit as security for performance. Said security shall be in an amount not less than 100% of the cost estimate and, in addition, for payment of those furnishing materials, labor or equipment in an amount not less than 100% of the cost estimate. Said security agreements shall be on forms furnished by CITY. No alterations or substitution of said forms shall be allowed. The obligations of CONTRACTOR shall not be limited by the amount of security required. No interest shall be paid CONTRACTOR on any cash deposit made pursuant to this paragraph.

**13. SUBSTITUTION OF SECURITIES:** In conformance with the State of California Public Contract Code, Part 5, Section 22300, CONTRACTOR may substitute securities for any monies withheld by the CITY to ensure performance under this Agreement.

At the request and expense of CONTRACTOR, CONTRACTOR has the option of establishing an escrow account with a state or federally chartered bank which shall serve as an escrow agent, for CONTRACTOR'S direct deposit of securities as a substitute for retention earnings required to be withheld by the CITY. Upon CONTRACTOR'S completion of its obligations under Section 3, as evidenced by the CITY'S acceptance of the work pursuant to Section 15 hereof, the escrow agent shall return the securities to CONTRACTOR. The escrow agent shall notify the CITY within ten (10) days after deposit of the securities. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention. Securities shall be held in the name of the CITY and shall designate CONTRACTOR as the beneficial owner. Alternatively, on written request of CONTRACTOR, the CITY shall make payments of the retention earnings directly to the escrow account.

**14. PARTIAL UTILIZATION:** Until all work required of CONTRACTOR under Section 3 has been completed and accepted by CITY and all other public authorities having

jurisdiction, CONTRACTOR shall be responsible for the care and maintenance of, or any damage to, the work.

When the work or any portion of it is sufficiently complete to be utilized or placed into service, CITY shall have the right, upon written notification to CONTRACTOR, to utilize such portions of the work and to place the operable portions into service. With this notice and commencement of utilization or operation by CITY, CONTRACTOR shall be relieved of the duty of maintaining the portions so utilized or placed into operation. However, such use and operation shall not relieve CONTRACTOR of the full responsibility for completing the work in its entirety, for making good any defective work or materials, for protecting the work from damage, and for being responsible for damage and for the work as set forth herein. Nor shall such action by CITY be deemed completion and acceptance. Further, such action shall not relieve CONTRACTOR or CONTRACTOR'S sureties and insurers of the provisions hereof relating to indemnity and guarantees.

**15. ACCEPTANCE OF PROJECT - WARRANTY:** Acceptance of the Project shall only be by action of the CITY COUNCIL. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by CITY of any defects in the work. From and after acceptance, the work shall be owned and operated by CITY. As a condition to acceptance, CONTRACTOR shall certify to CITY in writing that all of the work has been performed in strict conformity with the Agreement and that all costs have been paid or supplied to CITY for security required herein, satisfactory to CITY, guaranteeing such performance. In addition to CONTRACTOR'S other obligations under the Agreement CONTRACTOR warrants all work and materials to be of good quality and fit for the purpose and intended use. CONTRACTOR shall also repair, replace, and restore any other work which is displaced in correcting defective work as well as other portions of the work which CITY by reason of such defects reasonably suspects may also be defective.

In the event of a failure to commence with the compliance of above-mentioned conditions within seven (7) calendar days after being notified in writing or failure to diligently pursue such compliance to completion, CITY is hereby authorized to proceed to have the defects repaired and made good at the expense of CONTRACTOR who hereby agrees to pay the cost and charges therefor immediately on demand.

If, in the opinion of CITY, nonconforming work creates a dangerous condition or requires immediate correction or repair to prevent further loss to CITY or to prevent interruption of operations, CITY shall attempt to give the CONTRACTOR notice. If CONTRACTOR cannot be contacted or does not comply with CITY'S request for correction within a reasonable time as determined by CITY, CITY may proceed to make such correction or provide such repair. The costs of such correction or repair shall be charged against CONTRACTOR, who agrees to make payment for said costs upon demand.

Corrective action by CITY will not relieve CONTRACTOR or CONTRACTOR'S sureties or insurers of the guarantees and indemnities of this Agreement.

This paragraph does not in any way limit CITY'S remedies pursuant to Code of Civil Procedure, Section 337 and 337.15, or the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer or supplier gives a longer guarantee period. CONTRACTOR agrees to act as a co-guarantor with such manufacturer or supplier and shall furnish CITY all appropriate guarantees or warranty certificates upon completion of the Project. No manufacturer's guarantee period shall in any way limit the liability of CONTRACTOR or CONTRACTOR'S sureties and insurers under the indemnity or insurance provisions of this Agreement.

**16. CONTRACTORS AND AGENTS:** CONTRACTOR shall be as fully responsible to CITY for the acts and omissions of CONTRACTOR'S subcontractor and of the persons directly or indirectly employed by CONTRACTOR'S subcontractor as CONTRACTOR is for the acts and omissions of persons directly or indirectly employed by CONTRACTOR. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor or others and CITY. CONTRACTOR shall bind every contractor to be bound by the terms of this Agreement.

**17. DEFAULT BY CONTRACTOR:** CONTRACTOR shall be in default of this Agreement if: CONTRACTOR refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure its completion within the time specified in the paragraph above, or any written extension thereof, or fails to complete such work within such time, or if CONTRACTOR should be adjudged a bankrupt, make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of CONTRACTOR'S insolvency, or if CONTRACTOR or any of their subcontractors violate any of the provisions of this Agreement or fail to do what is required under this Agreement, or if CONTRACTOR fails to make prompt payment for materials or labor, or if CONTRACTOR disregards laws, ordinances, or instructions of CITY.

CITY may thereafter serve written notice upon the CONTRACTOR and CONTRACTOR'S surety of its intention to declare this Agreement in default. Said notice shall contain the reasons for such intention to declare a default. Unless, within ten (10) days after the service of such notice, such violations shall cease and satisfactory arrangements for the corrections thereof be made, this Agreement shall upon the expiration of said time be in default.

Upon such default, with respect to CONTRACTOR's failure to perform its duties under Section 3 of this Agreement, CITY shall serve written notice thereof upon the surety and CONTRACTOR, and the surety shall have the right to take over and perform this Agreement. If the surety does not, within fifteen (15) days after the serving upon it of a notice of a default, give CITY written notice of its intention to take over and perform this Agreement or does not commence performance thereof within thirty (30) days from the date of CITY'S notice, CITY may take over the work and prosecute the same to the extent of completion it deems necessary by contract or by any other method it may

deem advisable for the account and at the expense of CONTRACTOR, and the surety shall be liable to CITY for any cost or other damage occasioned CITY thereby. In such event CITY may, without liability for so doing, take possession of, and utilize in completing such work, such materials, appliances, plants, and other property belonging to CONTRACTOR that may be on the site of the work and be necessary therefor. Should surety fail to take over and diligently perform the Agreement upon CONTRACTOR'S default, surety agrees to promptly on demand deposit with CITY such amount as CITY may reasonably estimate as the cost of completing all of CONTRACTOR'S obligations. For any such work the CITY elects to complete by furnishing its own employees, materials, tools, and equipment, CITY shall receive reasonable compensation therefor including costs of supervision and overhead.

CITY may, at its option, elect not to complete any or all of the work and may elect not to accept any of the work already completed. If CITY elects not to accept any of the work, then all CITY'S obligations to CONTRACTOR shall terminate. CITY'S obligations to CONTRACTOR shall continue to the extent of any acceptance, subject to CITY'S right to offset any sums due the CITY.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to CITY.

**18. DELAY BY CONTRACTOR:** If the work required under Section 3 is suspended or otherwise not continuously prosecuted for any cause whatsoever, within or without the time for completion, CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, remove and replace all or any portion of the work already completed and inspected which CITY, in its sole discretion, determines is or can be damaged.

**19. ATTORNEYS' FEES AND COSTS:** Should CITY or CONTRACTOR engage an attorney to enforce any provision of this Agreement or to defend any claim brought by anyone arising out of the failure of the other party to perform any of that party's obligations under this Agreement, the prevailing party shall pay the other party's attorneys' fees incurred in connection therewith, with or without suit, whether or not said attorney is in the regular employ of the prevailing party.

**20. LABOR LAWS; PREVAILING WAGES**

a. All work or services performed within the State of California pursuant to this Agreement by Contractor, Contractor's employees and independent contractors, or contractor's 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 other person not lawfully permitted to perform said work or services in the State of California or the United States of America.

b. Contractor represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant (“person”) for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, 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. Documentation must be promptly submitted to the City at any time, at the request of the City, for the purpose of determining whether or not the work or services provided pursuant to this contract are being provided in compliance with this section.

d. Contractor and all of Contractor’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. Contractor 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 Contractor’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, Contractor 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. Contractor and any and all of 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.

e. Contractor 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 Contractor 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. Contractor 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 Contractor’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).

f. Notwithstanding anything else to the contrary, Contractor hereby acknowledges that all contractors 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, including this Agreement, that is subject to the payment of prevailing wages. Contractor represents and warrants that Contractor 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, prior to Contractor entering into any contracts with any subcontractor, Contractor shall obtain proof that all such subcontractors have also registered with the Department in accordance with Section 1725.5.

**21. ASSIGNMENT AND SUBCONTRACTING:** The performance of the Agreement may not be assigned or subcontracted except upon the written consent of CITY. Consent will not be given to any proposed assignment which would relieve CONTRACTOR or CONTRACTOR’S sureties of their responsibilities under the Agreement unless CITY finds that assignee can perform this Agreement and provide security comparable to that provided by CONTRACTOR.

**22. 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  
69-825 Highway 111  
Rancho Mirage, CA 92270  
Telephone: (760) 324-4511

Facsimile: (760) \_\_\_\_\_  
Email: \_\_\_\_\_@ranchomirageca.gov

To Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

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

**24. CIVIL CODE SECTION 1542 WAIVER:** Contractor expressly waives any and all rights and benefits conferred upon it by the provisions of section 1542 of the California Civil Code which reads as follows:

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

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

\_\_\_\_\_  
Initials

**25. FAMILIARITY WITH WORK:** By executing this Agreement, CONTRACTOR 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. Should CONTRACTOR 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 CONTRACTOR's risk until written instructions are received from the City Manager or his or her designee.

**26. COMPLIANCE WITH LAWS; LICENSING AND PERMITS:** CONTRACTOR shall comply with all local, state, and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of CONTRACTOR and/or its employees, officers, or board members. CONTRACTOR shall ensure that all contractors and subcontractors, shall obtain and 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 business license.

**27. TERMINATION OR SUSPENSION:** This Agreement may be terminated or suspended without cause by CITY at any time provided that the CITY provides CONTRACTOR at least thirty (30) calendar days written notice of such termination or suspension. This Agreement may be terminated or suspended with cause by either party at any time provided that the respective party provides the other party at least ten (10) business days' written notice of such termination or suspension. In the event of a termination of this Agreement under this section, CONTRACTOR shall provide all documents, reports, data, or other work product developed in performance of this Agreement to CITY, within ten (10) calendar days of such termination and without additional charge to CITY.

**28. TIME OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.

**29. BOOKS AND RECORDS:** CONTRACTOR 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 CONTRACTOR pursuant to this Agreement. 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 CONTRACTOR's address indicated for receipt of notices in this Agreement. Where the CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONTRACTOR'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 City Hall. Access to such records and documents shall be granted to any

party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

**30. OWNERSHIP OF DOCUMENTS:** All plans, studies, documents and other writings prepared by and for CONTRACTOR, 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 CONTRACTOR for such work, and the CITY shall have the sole right to use such materials in its discretion without further compensation to CONTRACTOR or to any other party. CONTRACTOR shall, at its expense, provide such reports, plans, studies, documents, and other writings to the CITY upon written request.

**31. CONFIDENTIALITY:** 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 CONTRACTOR in connection with the performance of this Agreement shall be held confidential by CONTRACTOR. Such materials shall not, without prior written consent of the CITY, be used by CONTRACTOR 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 CONTRACTOR which is otherwise known to CONTRACTOR or is generally known, or has become known, to the related industry shall be deemed confidential. CONTRACTOR shall not use the CITY's insignia or photographs relating to the project for which CONTRACTOR's services are rendered, or any publicity pertaining to the CONTRACTOR'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.

**32. ENTIRE AGREEMENT:** This Agreement supersedes any and all other agreements, either oral or written, between the CITY and CONTRACTOR with respect to the subject matter of this Agreement. 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. No agreement, statement, or promise not contained in this Agreement shall be valid or binding. Notwithstanding anything else to the contrary, the parties shall be bound by a side letter agreement of even date herewith signed by the parties hereto.

**33. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES:** No officer or employee of the CITY shall be personally liable to CONTRACTOR, 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 CONTRACTOR or to its successor, or for any breach of any obligation of the terms of this Agreement.

- 34. WAIVER:** No waiver shall be binding, unless executed in writing by the party making the waiver. 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. 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.
- 35. 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.
- 36. 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.
- 37. THIRD PARTY BENEFICIARIES:** CONTRACTOR shall ensure that the CITY shall be made an intended third party beneficiary of all contracts between CONTRACTOR and all its subcontractors, if any.
- 38. COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original.
- 39. EXTRA WORK AND CHANGE ORDERS:** There shall be no extra work or change orders allowed as part of this Agreement even considering that the parties may later learn of some unforeseen or unforeseeable circumstances, including, but not limited to, any force majeure events.

**CITY OF RANCHO MIRAGE  
STANDARD AGREEMENT FOR PUBLIC WORKS CONSTRUCTION  
SIGNATURE REQUIREMENTS**

(Limited Partnership/General Partnership/Corporation)

**1 WHERE PRINCIPAL IS A LIMITED PARTNERSHIP**

- A. General Partner shall execute on behalf of the limited partnership.
- B. General Partner shall furnish City of Rancho Mirage a copy of the recorded Certificate of Limited Partnership to authenticate the authority of the General Partner to sign on behalf of the limited partnership.

**2 WHERE PRINCIPAL IS A GENERAL PARTNERSHIP**

- A. General Partner shall execute on behalf of general partnership.
- B. General Partner shall furnish City of Rancho Mirage a copy of the General Partnership Agreement authenticating that the General Partner who signs the document has authority to do so.

**3 WHERE PRINCIPAL IS A CORPORATION**

- A. Officers shall execute on behalf of corporation.
- B. Officers shall furnish City of Rancho Mirage a copy of a corporate resolution indicating that the officers who sign the document are the officers of the corporation and authorized to bind the corporation to contract. Corporation requires two signatures.

In each of the foregoing situations (a limited partnership, a general partnership, or a corporation) the CITY requires an individual obligor in addition to the partnership or corporate entity.

For example, John Doe may sign on behalf of either partnership or the corporation as the General Partner and/or president thereof, but then, in addition, John Doe is required to sign the document individually as an individual obligor.

By \_\_\_\_\_  
(Authorized Representative of CITY) Date  
Richard W. Kite, Mayor

Title: Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

ATTEST:

By: \_\_\_\_\_  
City Clerk

(SEAL IF CORPORATION)

By \_\_\_\_\_  
(Authorized Representative of Corporation) Date

Title \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

By \_\_\_\_\_  
Individual Guarantor

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

By \_\_\_\_\_  
Individual Guarantor

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

**(SIGNATURES MUST BE NOTARIZED)**

(Seal: Partnership/Corporation)

**AGREEMENT EXHIBIT "A"  
SUMMARY OF KEY TERMS**

This schedule is attached to and made a part of the Design Build Agreement between CITY and CONTRACTOR for the above-referenced property.

1. Compensation: \$ \_\_\_\_\_ (total)  
\$ \_\_\_\_\_ (construction component)

2. Completion Date (For Section 3 only): \_\_\_\_\_

3. Liability Insurance Limits:

General Liability

\$2,000,000	Each Occurrence (Includes Bodily Injury and Property Damage)
\$1,000	Medical Expense
\$1,000,000	Personal & Advertising Injury
\$2,000,000	General Aggregate
\$2,000,000	Products-Completed/Operations Aggregate

Vehicle Liability

Combined Single Limit \$1,000,000 each accident, and \$2,000,000 in the aggregate

Professional Liability

Combined Single Limit \$1,000,000 per claim, and \$2,000,000 in the aggregate

Workers Compensation Statutory

4. Approved Security Amounts:

a. Performance

\$ \_\_\_\_\_

b. Payment

\$ \_\_\_\_\_

5. Bond Substitute Acceptable: Yes No (Cross out one)

6. Contractor(s):

<u>Name and Address</u>	<u>License No.</u>	<u>Phase of Work</u>
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( ) Initial of CITY REPRESENTATIVE      ( ) Initials of CONTRACTOR  
REPRESENTATIVE



**AGREEMENT EXHIBIT "B"**

**PERFORMANCE BOND**

We, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Rancho Mirage ("CITY") for payment of the penal sum of: \_\_\_\_\_. CITY and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference ("Agreement"), for the construction of public improvements for property referenced in said Agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by CITY and Principal.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall in all things stand to and abide by, and well and truly keep and perform all of the covenants, conditions, and provisions in said agreement, and any alteration thereof made as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify and save harmless the CITY, CITY'S engineer, and their Contractors, and each of their officials, directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Upon default of the Principal and notice to the Surety, the Surety shall take over and diligently arrange for the completion of the work required by the Agreement within the time specified in the Agreement, or deposit with CITY an amount mutually agreed upon between CITY and the Surety for the cost of completing all of Principal's obligations. Surety's agreement for payment herein shall extend, notwithstanding any controversy between Principal and CITY regarding Principal's failure under the Agreement and should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligations herein and shall be deemed proper payment as between Principal and Surety.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or the work to be performed thereunder or the plans and specifications, or any matters unknown to Surety which may affect Surety's risk shall in any wise affect its obligation on this bond, and it does thereby waive notice thereof.

Principal and Surety agree that if the CITY is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay CITY'S reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Seal of Corporation

By \_\_\_\_\_  
Authorized Representative of Principal

Title \_\_\_\_\_

By \_\_\_\_\_  
Authorized Representative of Principal

Title \_\_\_\_\_

**(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)**

Any claims under this bond may be addressed to: (check one)

Surety's agent for service  
of process in California:

( ) \_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City and State

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Telephone Number

By \_\_\_\_\_

Attorney in Fact or other Representative

**(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)**

( ) \_\_\_\_\_  
Company Agent

APPROVED AS TO FORM:

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

Furnish the name, address and phone number of the company agent as well as the surety company. Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of Section 11 of the agreement.

**(NOTICE: No substitution or revision of this bond form shall be accepted.)**

## AGREEMENT EXHIBIT "C"

### PAYMENT BOND

We, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the CITY OF RANCHO MIRAGE ("CITY") and those for whose benefit this bond insures in the sum of: \_\_\_\_\_. CITY and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference ("Agreement"), for the construction of public improvements for the property referenced in said Agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by CITY and Principal. If Principal or any of Principal's contractors or subcontractors, fails to pay any of the persons named in Section 9000 *et seq.* of the California Civil Code employed in the performance of the Agreement for materials furnished or for labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then Surety shall pay the same in an amount not exceeding the sum specified above, and also shall pay, in case suit is brought upon this bond, such reasonable attorneys' fees as shall be fixed by the court.

Surety agrees that it shall pay the amounts due the persons above named and upon default of the Principal and notice to the Surety, the Surety shall take over and diligently arrange for the completion of the Agreement requirements within the time specified in the Agreement, or deposit with City an amount mutually agreed upon between CITY and the Surety for the cost of completing all of Principal's obligations. Surety's agreement for payment herein shall extend, notwithstanding any controversy between Principal and CITY regarding Principal's failure under the Agreement and should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligations herein and shall be deemed proper payment as between Principal and Surety.

This bond shall insure to the benefit of any and all of the persons named in Section 9000 *et seq.* of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or the work to be performed thereunder, or the plans and specifications, or any matters unknown to Surety which might affect Surety's risk, shall in any way affect its obligation on this bond, and it does hereby waive notice thereof.

Principal and Surety agree that should CITY become a party to any action on this bond, that each will also pay CITY'S reasonable attorneys' fees incurred therein in addition to the above sums.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Seal of Corporation

By \_\_\_\_\_  
Authorized Representative of Principal

Title \_\_\_\_\_

**(ATTACH ACKNOWLEDGEMENT)**

By \_\_\_\_\_  
Authorized Representative of Principal

Title \_\_\_\_\_

Any claims under this bond may be addressed to: (check one)

Surety's agent for service  
of process in California:

( ) \_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City and State

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Telephone Number

By \_\_\_\_\_  
Attorney in Fact or other Representative

**(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)**

( ) \_\_\_\_\_  
Company Agent

APPROVED AS TO FORM:

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
CITY Attorney

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

Furnish the name, address, and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of Section 11 of the agreement.

**(NOTICE: No substitution or revision of this bond form shall be accepted.)**

**AGREEMENT EXHIBIT "D"**

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

I certify that, in the performance of the work to be performed by \_\_\_\_\_, a \_\_\_\_\_, 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.

\_\_\_\_\_  
Name & Signature

Date: \_\_\_\_\_, 2023

**RFQ EXHIBIT “B”**

**ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS**

In recognition of \_\_\_\_\_ (“Company”) having submitted a proposal to the City of Rancho Mirage Request for Qualifications for Rancho Mirage Library & Observatory LED Sign Replacement Design and Construction Services, dated May 8, 2023 (“RFQ”), 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 8 (“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 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

Date: \_\_\_\_\_



RIGHT LANE  
MUST  
TURN RIGHT

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