

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

**REQUEST FOR PROPOSALS  
FOR  
RANCHO MIRAGE COMMUNITY PARK  
TENNIS COURT PICKLEBALL CONVERSION**

**Issued:  
JUNE 14, 2023**

**FOR PROBLEMS DOWNLOADING RFP OR SUBMITTING FORM,  
PLEASE CONTACT THE FOLLOWING PERSONS BY EMAIL OR PHONE:**  
Lori O'Keefe, [lorio@ranchomirageca.gov](mailto:lorio@ranchomirageca.gov) or Gloria Griego, [gloriag@ranchomirageca.gov](mailto:gloriag@ranchomirageca.gov)  
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**ANNOUNCEMENT:**

The City of Rancho Mirage (“City”) invites proposals from qualified, competent, knowledgeable, and experienced firms to provide construction services for the Rancho Mirage Community Park tennis court pickleball conversion project and administer the duties and responsibilities set forth in this Request for Proposals (“RFP”), in compliance with all applicable laws, regulations, policies and procedures. Firms submitting proposals must be prepared to immediately enter into a contract (“Agreement”) for the services and duties as set forth in this RFP.

**MANDATORY SITE VISIT:**

Mandatory site visit will be conducted on **TUESDAY, JUNE 20, 2023, at 10:00 a.m. and attendance is required.** Site visit location is at the Rancho Mirage Community Park, 71-560 San Jacinto Drive, Rancho Mirage, California. The purpose of this meeting is to provide interested firms with background information, which may be beneficial as they prepare their proposals. It is expected that each proposal will be based on this RFP. Questions will not be answered during the site visit. All inquiries will be addressed after the site meeting and will be sent out to all prospective bidders in a formal RFP addendum. Only one addendum will be issued, all questions must be submitted on or before the addendum due date.

**PROPOSALS/OFFER SUBMITTAL:**

Proposals will be accepted until **2:00 P.M. on WEDNESDAY, JULY 5, 2023**, and each must be submitted in a sealed envelope plainly marked on the outside **"SEALED RFP FOR RANCHO MIRAGE COMMUNITY PARK TENNIS COURT PICKLEBALL CONVERSION - DO NOT OPEN WITH REGULAR MAIL"** to:

The City of Rancho Mirage  
Attn: Ian Lasley, Assistant Director of Public Works  
69825 Highway 111  
Rancho Mirage, California 92270

**OR if by EMAIL to:** [ianl@ranchomirageca.gov](mailto:ianl@ranchomirageca.gov)

**PROJECT DESCRIPTION:**

Conversion of tennis courts, three (3) and four (4) to eight (8) pickle ball courts including, pickle ball post and nets, resurfacing and striping of courts three (3) and four (4). Concrete and fence reconfiguration is included in the scope to accommodate this conversion.

## **SCOPE OF WORK:**

1. Remove fencing from the eight (8) California-cut corners.
2. Layout and set forms for the construction of eight (8) 10' x 10' concrete corners.
3. Fine grade and compact existing base (import fill as needed).
4. Drill and dowel 12-inch O.C. exposed edge of slab using #4 rebar.
5. Install reinforcement system 12-inch O.C.B.W. using #4 rebar.
6. Place and finish 5 inches 4500 PSI Ready mix concrete thickened to 8 inches on the edges.
7. Install a fencing system 10 ft. high on the new corners to match the existing fencing system.
8. Provide X-ray or other means to identify post tension cables prior to core drilling for post.
  - a. If required, contractor is to adjust post/court layout to accommodate post tension cables at no additional expense to the City.
  - b. Contractor shall receive written approval from City prior to proceeding with any proposed layout changes.
9. Layout and core-drill for sixteen (16) permanent net posts.
10. Install eight (8) sets of Edwards Classic Round Net Posts in concrete footing.
11. Locate and mark all delamination and irregularities.
12. Remove those areas of the court surface using the Edco Terrazzo diamond grinding unit.
13. Patch voids and irregularities with acrylic Deep Patch Binder and inert fillers.
14. Black out existing playing lines.
15. Disc-sand the repairs to a seamless edge.
16. Wash court surface thoroughly.
17. Provide City with drawing(s) of proposed layout including dimensions of eight (8) pickleball playing areas with bid proposal.
18. Install Laykold Acrylic Sport Surfacing System by Advanced Polymer Technology per manufactures specification.
19. Court colors to match existing (2 colors with white playing lines). Contractor to proposed color match according to Laykold color charts.
20. Contractor is to be an approved/certified installer for Laykold products.
21. Layout and stripe as per USAPBA Regulations.
22. Install eight (8) new Courtmaster pickleball nets.
23. Regarding any specific brand or trade name required herein, if bidder proposed "an equal" substitution, bidder's must submit data substantiating a request for a substitution of "an equal" item within the bidding documents. City will not accept data substantiating an equal substitution after the submission of bids.

## **General Project Conditions:**

1. Contractor shall not perform construction activity outside of 7am- 7pm without prior written approval by City. Contractors are prohibited from working on Sundays or holidays.

2. Storage of equipment and material is the sole responsibility of the contractor. Any storage container, temporary fencing or other means of storage shall have written approval from City.
3. Project shall be secured during and after working hours to ensure public safety.
  - a. Temporary fencing is to be a minimum of six feet (6') in height, secured and have tan windscreen.
  - b. It is imperative the project is secure during non-working hours and during the weekends.
  - c. Contractor shall respond within one (1) hour if notified the project security has been compromised.
  - d. Material storage security is the sole responsibility of the contractor.
4. Contractor is to provide City with a twenty-four (24) hour person to contact in case of emergency.
5. Contractor is to always keep project clean, and broom swept daily. Materials shall not be left outside of the court fenced area when contractor is not onsite.
6. Contractor is to provide a schedule to City within five (5) days of Notice to Proceed (NTP).
7. Submittals are to be provided to City within five (5) days of Notice to Proceed (NTP).

**Project Schedule:**

1. Contractor acknowledges time is of the essence.
2. Project is to be completed within forty-five (45) days from start of work. Project must be completed no later than September 30, 2023. Material availability is to be considered.
3. **LIQUIDATED DAMAGES**: In accordance with Government Code 53069.85, if performance by the successful bidder is delayed, such delay or failure would result in damages to the City in an amount not readily ascertainable by the parties, and being that it is impracticable and difficult to fix the amount of such damages, the parties hereby agree that such damages would be approximately equal to amounts incurred by City, and that successful bidder shall pay the City \$500 per day the project is completed beyond September 30, 2023, and that successful bidder shall pay this amount as liquidated damages for each and every day of delay, and that such amount is reasonable and not a penalty. Such liquidated damages may be deducted from any payments due or to become due to the successful bidder.

**GENERAL INSTRUCTIONS FOR SUBMITTAL:**

A. Proposal Submittal:

The proposer shall submit one (1) original and three (3) copies by **2:00 P.M. (Pacific Standard Time)**, on **WEDNESDAY, JULY 5, 2023**, to:

The City of Rancho Mirage  
Attn: Ian Lasley, Assistant Director of Public Works  
69825 Highway 111  
Rancho Mirage, California 92270

**OR if by EMAIL to:** [ianl@ranchomirageca.gov](mailto:ianl@ranchomirageca.gov)

All electronic submittals shall include in the subject line **“RFP FOR RANCHO MIRAGE COMMUNITY PARK TENNIS COURT PICKLEBALL CONVERSION.”** 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 **2:00 P.M. on JULY 5, 2023**, 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, or equivalent method for electronic submittals. At the discretion of the City, a “late” proposal may be considered only if a selection cannot be determined from among proposals received on time. The City shall not be responsible for, nor accept any as a valid excuse, any delay in mail service, or any other method of delivery used by the proposer. All proposals shall be enclosed in a sealed envelope with the words clearly written on the front, **“SEALED RFP FOR RANCHO MIRAGE COMMUNITY PARK TENNIS COURT PICKLEBALL CONVERSION - DO NOT OPEN WITH REGULAR MAIL.”** Or, if by email, **“RFP FOR RANCHO MIRAGE COMMUNITY PARK TENNIS COURT PICKLEBALL CONVERSION.”** Failure of the proposer to properly identify the sealed envelope proposal as described may result in the proposal being considered non-responsive. All proposals shall be firm offers subject to acceptance by the City and may not be withdrawn for a period of 180 calendar days following the last day to accept proposals. Proposals may not be amended after the due date except by consent of the City. All proposals must clearly address all of the requirements outlined in this RFP. Each proposal shall be limited to twenty (20) pages and must include a minimum of three (3) references, which include the address, telephone number, and email address of each reference. Resumes and brochures may be added to the proposal, provided they are located in an appendix at the back of the proposal. Should the proposer have concerns about meeting any noted requirements, the proposer shall include a clearly labeled subsection with individual statements specifically identifying the concerns and exceptions.

**C. RFP Addenda and Clarifications in Written Comments**

All comments and questions from proposers must be submitted in writing and received by no later than **4:00 P.M. on THURSDAY, JUNE 22, 2023** (“Addenda Due Date”), and must be submitted via the following approved written methods addressed to Ian Lasley, Assistant Director of Public Works:

1. At [ianl@RanchoMirageCA.gov](mailto:ianl@RanchoMirageCA.gov), or
2. Via fax to (760) 343-3792, 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 RFP, or to provide clarification or additional information after this RFP has been issued, a written addendum will be posted and published on the City's website, <http://www.ranchomirageca.gov>. All addenda shall become part of the RFP.

D. Pre-contractual Expenses:

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

E. Conflicts of Interest:

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

F. Proposed Contract:

The proposer selected through this RFP shall be required to enter into the Agreement with the City, in substantially the same form as the form attached hereto as **Exhibit "A."**

G. 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.

H. 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.

I. Insurance and Acknowledgement

Each proposal shall include a breakdown of all costs associated with issuance of the insurance endorsements described in and pertaining to Sections 4 and 5 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.

J. Proposal Guarantee (Bid Bond)

Proposals must be accompanied by a proposal guarantee consisting of a certified check or bid bond payable to the City in the amount of ten percent (10%) of the total amount bid. Any proposal not accompanied by such a guarantee will not be considered. If a bidder to whom a contract is awarded fails or refuses to execute the contract documents or furnish the required insurance policies and bonds as set forth in those documents, the proposal guarantee shall be forfeited to the City. The proposal guarantees of all bidders will be held until the successful bidder has properly executed all contract documents.

**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 submitted electronically.

B. Proposal Content

1. Transmittal Letter

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



2. Table of Contents

Following the transmittal, provide a table of contents for the proposal

C. Qualifications, Related Experience and References

1. This section shall establish the ability of the proposer to satisfy all aspects of the required work with current or recently completed work, similar to the work required in this RFP.
2. Background information of the proposer, 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 proposer 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 you or your company is currently providing, or has recently provided, services similar to those required in this RFP. Include company names, beginning/end dates of contracts, and names, titles, and telephone numbers the City can contact as references for you or your company.

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, 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 RFP.

E. Work Plan / Technical Approach

1. Establish the proposer's understanding of the City's objectives and requirements, demonstrate the proper ability to meet those objectives and requirements, and clearly identify the method (plan) of accomplishing the described work.

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

#### F. Cost and Price

1. This section shall disclose all charges to be assessed the City for the required services and declare the proposer's preferences for method and timing of payment.
2. Quote a total price for completing all services; include all costs associated with the operating budget, including all service fees. The total cost should also include the cost associated with obtaining all required insurance coverages.

#### G. Appendices

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

#### **AWARD OF CONTRACT:**

Following a review of the proposals, the City shall determine whether to award the contract to a particular bidder or to reject any or all proposals. The award of contract, if made, shall be to the lowest responsible and responsive bidder as determined solely by the City. At the time of contract award, the successful bidder **shall hold an active Class A or B Contractor's License and/or subcontract to a combination of Class C Specialty Contractor's with License(s) issued by the State of California, as required to perform the work.** Additionally, the City reserves the right to reject any or all proposals, and to accept any bid or portion thereof, to waive any irregularity in the offers received, all as may be required to provide for the best interests of the City. 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. In no event will an award be made until all necessary investigations are made as to the responsibility and qualifications of the bidder to whom the award is contemplated.

#### **CALIFORNIA PUBLIC RECORDS ACT**

Each bidder 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 successful bidder as agents and employees of successful bidder, and not as agents or employees of City. Successful bidder and City acknowledge that City participates in a defined benefit plan ("CalPERS").

**CalPERS Retiree Disclosure.** Proposers expressly agrees to clearly and conspicuously disclose to City in writing any and all persons working for successful bidder 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.

**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, successful bidder shall within five days and share all communications and documents from CalPERS that it may legally share. In the event that either successful proposer or City files an appeal or court challenge, successful proposer 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, successful proposer 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.

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_,  
as BIDDER, and \_\_\_\_\_,  
as SURETY, are held and firmly bound unto the CITY OF RANCHO MIRAGE, as  
AGENCY, in the penal sum of \_\_\_\_\_  
dollars (\$\_\_\_\_\_), which is ten percent (10%) of the total amount bid by  
BIDDER to AGENCY for the above-stated project, for the payment of which sum BIDDER  
and SURETY agree to be bound jointly, severally, and firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, whereas BIDDER is about  
to submit a bid to AGENCY for the above-stated project, if said bid is rejected, or if said  
bid is accepted and a contract is awarded and entered into by BIDDER in the manner and  
time specified, then this obligation shall be null and void; otherwise, it shall remain in full  
force and effect in favor of CITY.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. (seal)

\_\_\_\_\_  
CONTRACTOR (CORPORATION)-TYPE

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

By: \_\_\_\_\_  
Secretary/Treasurer

**NOTE: SIGNATURE OF CORPORATE OFFICIALS MUST BE NOTARIZED.**

(seal)

\_\_\_\_\_  
SURETY'S NAME-TYPE

\_\_\_\_\_  
Mailing Address

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

\_\_\_\_\_  
Title

**NOTE: SIGNATURE OF SURETY MUST BE NOTARIZED**

**NON-COLLUSION DECLARATION**  
TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

STATE OF CALIFORNIA            )

)

COUNTY OF                        )

The undersigned declares:

I am the \_\_\_\_\_(president, managing member, etc.) of \_\_\_\_\_, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly, or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on \_\_\_\_\_[date], at \_\_\_\_\_[city], \_\_\_\_\_[state].”

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

**RFP EXHIBIT "A"**  
**PUBLIC WORKS CONSTRUCTION AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY OF RANCHO MIRAGE**  
**AND**

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THIS PUBLIC WORKS CONSTRUCTION AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Rancho Mirage, hereinafter referred to as "City," and \_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to as "Contractor."

**RECITALS**

**WHEREAS**, the City desires to retain Contractor, on an independent contractor basis, to perform services \_\_\_\_\_ as more particularly described below; and

**WHEREAS**, the Contractor 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;

**WHEREAS**, the City Council approved this Agreement during its meeting of \_\_\_\_\_, \_\_\_\_\_.

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

**AGREEMENT**

**1. Incorporation by Reference**

The foregoing recitals are hereby expressly made a part of this Agreement as though fully set forth herein.

**2. Project Information.**

- Location: \_\_\_\_\_ as depicted in Contractor's proposal dated \_\_\_\_\_, 2023, and attached hereto and incorporated herein as Exhibit "A" ("Scope of Services" or sometimes "Project").
- Project description, including significant materials to be used and equipment to

be installed: \_\_\_\_\_, in the City of Rancho Mirage, California, as set forth in the Scope of Services. In the event any conflict exists between this Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

- License classification applicable to Project: \_\_\_\_\_
- Approximate start date: \_\_\_\_\_
- Approximate completion date: \_\_\_\_\_
- Substantial completion of work evidenced by: Inspection and approval by City Staff.
- It is expressly agreed that except for extensions of time duly granted by the City, in writing, time shall be of the essence.
- The parties agree that the specifications, standards, and procedures set forth in the 2021 Greenbook: Standard Specifications for Public Works Construction (“Greenbook”) shall govern the completion of the Project, and to such extent the Greenbook is incorporated herein by this reference; provided, however, in the event any conflict exists between this Agreement and the Greenbook, this Agreement shall supersede unless otherwise required by law.

**3. Contractor Information**

- Address: \_\_\_\_\_
- License Number: \_\_\_\_\_

**4. Insurance Coverage**

a. Contractor shall procure and maintain at its own expense, until expiration of the term of this Agreement as defined in Section 10, commercial general liability insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss or damage resulting from the wrongful or negligent acts by the Contractor or its officers, employees, servants, volunteers and agents and independent contractors. Contractor shall provide insurance on an occurrence, not claims-made basis. Contractor acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess insurance, personal and advertising injury coverage shall be triggered by an “offense” while bodily injury and property damage coverage shall be triggered by an “occurrence” during the policy period.

b. Contractor shall further procure and maintain at its own expense, until expiration of the term of this Agreement as defined in Section 10, commercial vehicle liability insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, and Two Million Dollars in the aggregate (\$2,000,000), covering any vehicle utilized by Contractor or its officers,



employees, servants, volunteers and agents and independent contractors in performing the services required by this Agreement.

c. Unless Contractor has no employees and is exempt from worker's compensation requirements, Contractor shall further procure and maintain at its expense, until expiration of the term of this Agreement as defined in Section 10, workers' compensation insurance providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by the Contractor pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the City. Contractor agrees to waive its statutory immunity under any workers' compensation or similar statute, as respecting the City, and to require any and all subcontractors and any other person or entity involved in the Project to do the same.

Worker's Compensation Insurance:

Contractor has no employees and is exempt from workers' compensation requirements.

Contractor carries workers' compensation insurance for all employees.

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

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

f. In the event this Agreement is terminated for any reason prior to the completion of all obligations and requirements of this Agreement, Contractor agrees to maintain all coverages required herein until the 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. Contractor 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.

h. In the event Contractor 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 Contractor. Any insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

i. The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, 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 Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, sub-contractors, or anyone employed directly or indirectly by any of them.

j. Contractor agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by any subcontractors or others involved in any way with the Project, Contractor shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the City, and/or their 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 performed for the Project, shall be sufficient cause for City to terminate this Agreement.

k. The requirements set forth in Section 4f shall survive termination of this Agreement.

## **5. Insurance Documentation**

a. Contractor 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. Contractor shall ensure that the most current certification of insurance shall

be delivered to and retained by the City at all times until expiration of the term of this Agreement as defined in Section 10.

b. Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by comprehensive general liability and commercial vehicle liability policies shall bear endorsements whereby it is provided that the City, and its officers, employees, servants, volunteers, agents and independent contractors are named as additional insureds with respect to liability arising out of work performed by or on behalf of Contractor, 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.

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

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

e. Alternatively, when a carrier does not issue a thirty (30) days written notice of cancellation endorsement or a thirty (30) days written notice of cancellation to City and the policy is cancelled or reduced in coverage, Contractor shall provide the City with any such written notice of cancellation or reduction in coverage by no later than two (2) business days after receiving notice of the same by the insurer. Contractor's failure to do so shall be considered a material breach of this Agreement.

f. With the exception of workers' compensation insurance, all insurance policies required to be provided by Contractor or any other party must be endorsed to provide that the policies shall apply on a primary and noncontributing basis in relation to any insurance or self-insurance, primary or excess, maintained or available to the City, and their officers, employees, servants, volunteers, agents and independent contractors.

## **6. Security**

a. Contractor shall, concurrently with the execution hereof and to the extent not already completed, furnish a payment bond at no expense to the City, in substantially the same form as that attached hereto and made part hereof as Exhibit "B," in an amount equal to \_\_\_\_\_ Dollars and No Cents (\$\_\_\_\_\_), as security of the

payment of all persons performing labor and furnishing materials in connection with this 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.

b. Contractor shall, concurrently with the execution hereof and to the extent not already completed, furnish a performance bond at no expense to the City, in substantially the same form as that attached hereto and made part hereof as Exhibit "C," or deposit an amount with the City equal to \_\_\_\_\_ Dollars and No Cents (\$\_\_\_\_\_), as security for the faithful performance of this 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.

c. The surety on any and all bonds and the form thereof shall be satisfactory to the City Attorney.

d. The payment bond shall remain in force and shall not be released until at least seven (7) months after the date of recordation of the Notice of Completion or Notice of Acceptance, whichever occurs first. The performance bond shall remain in force until at least (1) year after the date of final acceptance of the Project, unless the City determines, in its sole and absolute discretion, to release the Performance Bond earlier and notifies Contractor of the same in writing.

## **7. Compensation; Payments; Liquidated Damages**

a. Contractor shall be paid compensation not to exceed \_\_\_\_\_ Dollars and No Cents (\$\_\_\_\_\_ ) for the services rendered by Contractor pursuant to this Agreement, including profit, labor, and materials, in accordance with the Scope of Services.

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

c. Pursuant to Public Contract Code Section 9203, the City shall retain no less than five percent of the compensation to be paid to Contractor which shall be released to the Contractor no later than sixty (60) days from the date of the City's acceptance of the work pursuant to this Agreement.

d. **LIQUIDATED DAMAGES:** In accordance with Government Code 53069.85, if performance by the Contractor is delayed, such delay or failure would result in damages to the City in an amount not readily ascertainable by the parties, and being that it is impracticable and difficult to fix the amount of such damages, the parties hereby agree that such damages would be approximately equal to amounts incurred by City, and that Contractor shall pay the City \$500 per day the project is completed beyond September 30, 2023, and that Contractor shall pay this amount as liquidated damages for each and every day of delay, and that such amount is reasonable and not a penalty. The Parties agree that each day the project is not complete by 12:01 a.m. Pacific Standard Time shall constitute a day for purposes of this Section, and shall include weekends and holidays. Such liquidated damages may be deducted from any payments due or to become due to the Contractor.

## **8. Substitution of Securities**

a. 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.

b. 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 hereunder, as evidenced by the City's acceptance of the work pursuant to Section 13 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.

## **9. Extra Work and Change Orders**

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

**10. Term**

Contractor will perform the services set forth in the Scope of Services and in any approved change orders pursuant to Section 9 of this Agreement, the term of which shall commence as of \_\_\_\_\_, and shall expire one (1) year following the City's acceptance of the Project pursuant to this Agreement, or upon release of the Performance Bond in accordance with Section 6.d. of this Agreement, whichever occurs first.

**11. 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.

**12. Civil Code Section 1542 Waiver**

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

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

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

\_\_\_\_\_  
Initials

**13. Acceptance of Work**

Acceptance of the Project shall be by action of the City Council or its designee. Neither the acceptance nor prior inspections or failure to inspect shall constitute a waiver by the City of any defects in the Project. From and after acceptance, the Project shall be owned and operated by the City. As a condition to acceptance, Contractor shall certify to the City in writing that all of the Project performance has been performed in strict

conformity with this Agreement and that all costs have been paid, satisfactory to the City, guaranteeing such performance.

#### **14. Warranty**

a. In addition to Contractor's other obligations under this Agreement, Contractor warrants all work and materials to be of good quality and fit for the purpose and intended use, for a duration that shall continue until expiration of the term of this Agreement as described in Section 10, or the longest period permitted by law, whichever is later. If any defects in materials or workmanship become evident prior to expiration of the warranty granted in this Section, the Contractor shall, at its own expense, make any repair(s) or replacement(s) necessary to restore the work to full compliance with this Agreement. 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 the 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, the 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.

b. If, in the opinion of the City, nonconforming work creates a dangerous condition or requires immediate correction or repair to prevent further loss to the City or to prevent interruption of operations, the City shall attempt to give the Contractor notice. If Contractor cannot be contacted or does not comply with the City's request for correction within a reasonable time as determined by the City, the 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 the City will not relieve Contractor or Contractor's sureties or insurers of the guarantees and indemnities of this Agreement.

c. This section does not in any way limit the City's remedies available under the law, or the guarantee or warranty on any items for which a longer guarantee is specified or on any items for which a manufacturer or supplier gives a longer guarantee or warranty period. Contractor agrees to act as a co-guarantor with such manufacturer or supplier and shall furnish the 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.

#### **15. Indemnification**

a. 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.

b. The City does not, and shall not, waive any rights that it may have against Contractor 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 4i, any applicable insurance policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

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

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

## **16. Default**

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 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 days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

**17. Licenses, Certifications and Permits**

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

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

c. 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 or its subcontractors shall forfeit to the City twenty-five dollars (\$25) for each worker employed in the performance of this Agreement for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Section 1813 of the Labor Code. In the event the total cost of the Project is thirty thousand dollars (\$30,000.00) or more, Contractor shall further comply with provisions set forth in Labor Code Section 1777.5 pertaining to employment of properly registered apprentices, including without limitation the obligation to (i) pay employed apprentices the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of craft or trade to which he or she is registered; (ii) employ apprentices in at least the ratio as set forth in said section; (iii) submit contract award information to an applicable apprenticeship program; and (iv) contribute to California Apprenticeship Council.

d. Contractor and all subcontractors hired to perform any work under the 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).

e. Notwithstanding anything else to the contrary, Contractor hereby acknowledges that all contractors and subcontractors must be registered with the Department of Industrial Relations ("Department") pursuant to Labor Code Section 1725.5 in order to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract, including this Agreement, that is subject to the payment of prevailing wages. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In accordance with Section 3700 of the Labor Code, Contractor must secure payment of compensation to all Contractor's employees. 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.

**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: Ryan Stendell, Director of Public Works  
City of Rancho Mirage  
69-825 Highway 111  
Rancho Mirage, CA 92270  
Telephone: (760) 770-3224  
Facsimile: (760) 770-3261  
Email: ryans@RanchoMirageCA.gov

To Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

## **20. Substitution of Subcontractor**

Pursuant to *Synergy Project Management v. the City and County of San Francisco*, 33 Cal.App.5th 21 (2019), the City may initiate substitution proceedings and direct Contractor to remove any subcontractor from performing any work on the Project, in the event the City deems such subcontractor's performance to be substantially unsatisfactory and not in substantial accordance with the Project's plans and specifications.

## **21. General Conditions**

a. 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.

b. 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.

c. 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 of any other default by the other party.

d. 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.

e. 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.

f. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

g. Entire Agreement. This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and supersedes any and all other agreements, either oral or written, between the City and

Contractor. 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.

h. Conflicts of Interest. Contractor covenants that it does not have any interest, nor shall it acquire an interest, directly or indirectly, which would conflict in any manner with the performance of Contractor's services under this Agreement. In the event the City officially determines that Contractor must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Contractor shall file the subject Form 700 with City Hall, as specified under the Notice provisions of this Agreement, pursuant to the written instructions provided by the City.

i. Termination. 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, Contractor shall be entitled to compensation for services performed up to the effective date of termination. For purposes of this Section, the City Manager or his or her designee shall have the authority to take action on behalf of the City.

[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: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Ryan Stendell, Director of Public Works

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Steven B. Quintanilla, City Attorney

**AGREEMENT EXHIBIT "A"**

**SCOPE OF SERVICES  
SEE ATTACHED PROPOSAL  
DATED \_\_\_\_\_**

## AGREEMENT EXHIBIT "B"

### 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, for the construction of 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 diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement. If Surety fails to perform within the times specified in the agreement, Surety shall promptly on demand deposit with CITY such amount as CITY may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall extend, notwithstanding any controversy between Principal and CITY regarding Principal's failure under the agreement. Principal and Surety agree that any payment by Surety pursuant to this paragraph should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligation 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

Steven B. Quintanilla, City Attorney

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name/Title

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 the agreement.

**AGREEMENT EXHIBIT "C"**  
**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, for the construction of 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.

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 consultants, 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.

Surety agrees that should it fail to take over and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement, Surety will promptly on demand deposit with CITY such amount as CITY may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall exist, notwithstanding any controversy between Principal and CITY regarding Principal's failure under the agreement, and payment by Surety 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

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

APPROVED AS TO FORM:

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

Steven B. Quintanilla, City Attorney

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name/Title

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 the agreement.

**AGREEMENT EXHIBIT “D”**

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

\_\_\_\_\_  
Signature

**RFP EXHIBIT “B”  
ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS**

In recognition of \_\_\_\_\_ (“Company”) having submitted a proposal to the City of Rancho Mirage Request for Proposals for **RANCHO MIRAGE COMMUNITY PARK TENNIS COURT PICKLEBALL CONVERSION, dated June 14, 2023** (“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 Sections 4 and 5 (“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

**RFP EXHIBIT “C”**

**SEE ATTACHED  
PROJECT LAYOUT**

**Project Layout:**

