

**CITY OF RANCHO MIRAGE**

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

**REQUEST FOR PROPOSALS  
FOR CIVIL ENGINEERING DESIGN SERVICES FOR  
CITYWIDE ACCESS RAMP SURVEY/UPGRADE, CP 12-280**

**Issued:  
February 13, 2015**

## TABLE OF CONTENTS

ANNOUNCEMENT.....	1
PROPOSALS/OFFER SUBMITTAL.....	1
SCOPE OF PROJECT AND SERVICES NEEDED.....	1
GENERAL INSTRUCTIONS FOR SUBMITTAL.....	2
PROPOSAL FORMAT AND CONTENT.....	4
PROPOSAL EVALUATION AND CONTRACT AWARD.....	5
EXHIBIT "A" (AGREEMENT FORM).....	6

**CITY OF RANCHO MIRAGE  
REQUEST FOR PROPOSALS  
FOR CIVIL ENGINEERING DESIGN SERVICES FOR  
CITYWIDE ACCESS RAMP SURVEY/UPGRADE, CP 12-280  
CIVIL ENGINEERING DESIGN SERVICES**

**ANNOUNCEMENT:**

The City of Rancho Mirage ("City") invites proposals from qualified, competent, knowledgeable, and experienced Civil Engineering & Surveying companies (sometimes, "Consultant") that will provide full-service Civil Engineering & Surveying services as noted below 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.

The work to be accomplished includes, in general terms, all aspects of Civil Engineering and Surveying services as noted below.

**PROPOSALS/OFFER SUBMITTAL:**

Proposals will be accepted until **4:00 P.M. on Friday, February 27, 2015**, and each must be submitted in a sealed envelope plainly marked on the outside "**SEALED BID FOR CIVIL ENGINEERING DESIGN SERVICES FOR C.P.12-280 - DO NOT OPEN WITH REGULAR MAIL**" to:

The City of Rancho Mirage  
Attn: William A. Enos, City Engineer  
69825 Highway 111  
Rancho Mirage, California 92270

**SCOPE OF PROJECT AND SERVICES NEEDED:**

**Project Description**

The City desires that all access ramps at intersections and driveway approaches on Arterial Streets in the City meet current requirements for safety and ADA accessibility. The City is seeking a Consultant who is knowledgeable in current safety and ADA requirements for access ramps to inspect the ramps, identify deficiencies, determine what is needed to bring to compliance, estimate costs, prioritize, and present the findings in a professionally prepared report.

**Services Needed**

The selected firm shall provide to the City all the necessary services to fulfill its duties and obligations under the Agreement which duties and obligations include but are not limited to, the following:

**Preliminary Engineering Services:**

- 1.) Inspect and inventory all access points (including driveways) on Arterial roadways with regard to surface, landing, width, slopes, truncated domes, etc. and determine compliance with current safety and ADA access requirements. Identify specific deficiencies at each location and scope of improvements needed to bring into compliance. The Arterial roadways to be included in this study are: Highway 111, Bob Hope Drive, Los Alamos Drive (from Dinah Shore Dr. to Ramon Rd.), Da Vall Drive, Country Club Drive, Frank Sinatra Drive, Gerald Ford Drive, Dinah Shore Drive, Ramon Road.

- 2.) Develop a cost estimate of recommended improvements for each location. Assist the City to develop a criteria for phasing of the improvements (if budget exceeded) and prioritize improvements based on criteria. The construction budget for this project is \$430,000.
- 3.) Provide a professional report presenting the results of this study including description of the process, intent, limitations, and findings of the study including a spreadsheet of individual access points, location, deficiency, cost to remedy, and priority ranking.
- 4.) All work shall be completed in 45 calendar days. Consultant shall provide a schedule of how the work will be completed in the allotted time with the proposal.

**Design Services:**

- 1.) The Scope of Design services is not known at this time, however, if the Consultant provides satisfactory services in the preconstruction phase of the work, the City may enter into a negotiated contract with the Consultant to complete the design work identified. Consultant shall provide a Statement of Qualifications of past work on similar projects, list of staff that would do the design, and a list of Hourly Fees for consideration.

**GENERAL INSTRUCTIONS FOR SUBMITTAL:**

A. Proposal Submittal:

The proposer shall submit one (1) original and two (2) copies by **4:00 P.M.** (Pacific Standard Time), **Friday, February 27, 2015**, to:

City of Rancho Mirage  
Attn: William A. Enos, City Engineer  
69825 Highway 111  
Rancho Mirage, California 92270

B. Due Date and Time:

Proposals submitted after **4:00 P.M.** on **Friday, February 27, 2015**, 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/time stamped by City staff upon receipt. At the discretion of the City, a "late" proposal may be considered only if a selection cannot be determined from among proposals received on time. The City shall not be responsible for, nor accept any as a valid excuse, any delay in mail service, or any other method of delivery used by the proposer. All proposals shall be enclosed in a sealed envelope with the words clearly written on the front, "**SEALED BID FOR CIVIL ENGINEERING DESIGN SERVICES FOR C.P.12-280 DO NOT OPEN WITH REGULAR MAIL.**" Failure of the proposer to properly identify the sealed envelope proposal as described may result in the proposal being considered non-responsive. All proposals shall be firm offers subject to acceptance by the City and may not be withdrawn for a period of 180 calendar days following the last day to accept proposals. Proposals may not be amended after the due date except by consent of the City. All proposals must clearly address all of the requirements outlined in this RFP. Each proposal shall be limited to twenty (20) pages and must include a minimum of three (3) references, which include the address, telephone number, and email address of each reference. Resumes and brochures may be added to the proposal, provided they are located in an appendix at the back of the proposal. Should the proposer have concerns about meeting any noted requirements, the proposer shall include a clearly labeled subsection with individual statements specifically identifying the concerns and exceptions.

C. RFP Addenda and Clarifications in Written Comments

Comments or questions from proposers must be submitted in writing and received by no later than the end of the business day on **Friday, February 20, 2015** (“Addenda Due Date”), and must be submitted via the following approved written methods addressed to William Enos, City Engineer:

1. At [bille@RanchoMirageCA.gov](mailto:bille@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 asked 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 sent to each recipient of record. Recipients of record shall consist of proposers on the original “bidders” mailing list, or proposers that have requested RFPs and have provided pertinent contact information in writing to the City. Addenda will also be posted and published on the City’s website, [www.rancho MirageCA.gov](http://www.rancho MirageCA.gov), as well as everywhere else the RFP was originally posted and published. Though the City shall mail out any addenda to RFP recipients of record, and in addition will post any addenda information on the City website and publish and post in accordance with the above, as soon as it becomes available, it shall be the responsibility of the proposers to maintain current, up to date contact information with the City if any addenda are to be mailed. All addenda shall become part of the RFP.

D. Pre-contractual Expenses:

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

E. Conflicts of Interest:

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

F. Proposed Contract:

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

## **PROPOSAL FORMAT AND CONTENT:**

### A. Presentation

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

### B. Proposal Content

#### 1. Transmittal Letter

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

#### 2. Table of Contents

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

### C. Qualifications, Related Experience and References

1. This section shall establish the ability of the proposer to satisfy all aspects of the required work with current or recently completed Civil Engineering and Surveying services work, similar to the work required in this RFP.
2. Background information of the firm, including the date of founding, legal form, number and location of offices, number of employees, days and hours of operation and any other pertinent information.
3. Disclose any conditions (e.g., bankruptcy, pending litigation, planned office closures, mergers) and organizational conflicts of interest that may affect the ability of the proposer to perform the required duties.
4. Certify that the firm is not debarred, suspended or otherwise declared ineligible to contract with any other federal, state or local public agency.
5. Provide a list of business clients to which your firm is currently providing, or has recently provided, Civil Engineering & Surveying services. Include company names, beginning/end dates of contracts, and names, titles and telephone numbers the City can contact as references for your firm.

#### D. Proposed Staffing and Project Organization.

1. Discuss the staffing of the proposing firm who would be assigned to work on the City's project.
2. Identify the key personnel that would be assigned to the project, and anticipated hours to be worked 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 to 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 listed services; include all costs associated with the operating budget, including all service fees.
3. For all types of service proposed, provide a schedule of hourly labor rates.

G. Appendices

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

**PROPOSAL EVALUATION AND CONTRACT AWARD:**

A. Evaluation Panel

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

B. Evaluation Criteria

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

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

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

**EXHIBIT "A"**  
**AGREEMENT**  
(See Attached)

## **AGREEMENT FOR DESIGN PROFESSIONAL SERVICES**

This Agreement for Design Professional Services (hereinafter, "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Rancho Mirage, a municipal corporation in the County of Riverside, State of California (hereinafter, the "City") and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter, "Design Professional").

### **RECITALS**

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

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

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

### **AGREEMENT**

#### **SERVICES OF CONSULTANT**

1. Scope of Services; Extra Work.

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

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

2. Familiarity with Work.

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

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

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

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

5. Licenses.

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

B. Design Professional represents and warrants to the City that it shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Design Professional to practice its profession.

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

**COMPENSATION**

6. Contract Sum. For the services rendered pursuant to this Agreement, Design Professional shall be paid compensation in accordance with the Fee Proposal attached hereto and incorporated herein by this reference as Exhibit "B," but in no event shall Design Professional's compensation exceed \_\_\_\_\_ Dollars and \_\_\_\_ Cents (\$\_\_\_\_\_.\_\_\_\_\_) without additional written authorization from the City.

7. Payment.

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

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

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

**PERFORMANCE SCHEDULE**

8. Term and Time of Performance. The term of this Agreement shall, and the services of Design Professional are to commence upon execution of this Agreement and shall continue until the City approves all authorized work. All such work shall commence on \_\_\_\_\_, and be completed by no later than \_\_\_\_\_.

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

**COORDINATION OF WORK**

10. Independent Design Professional. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Design Professional, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Design Professional’s employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. It is understood that Design Professional, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Design Professional shall obtain no rights to any compensation, benefits, or retirement benefits that accrue to the City’s employees and not to independent contractors, and it hereby expressly waives any claim it may have to any such rights.

11. Civil Code Section 1542 Waiver. Design Professional expressly waives any and all rights and benefits conferred upon it by the provisions of section 1542 of the California Civil Code which reads as follows:

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

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

\_\_\_\_\_  
Initials

12. Conflicts of Interest.

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

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

13. Assignment and Subcontracting. The parties recognize that a substantial inducement to the City for entering into this Agreement is the professional reputation, experience and competence of Design Professional. Assignments of any or all rights, duties or obligations of the Design Professional under this Agreement will be permitted only with the express consent of the City. Design Professional shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City, or except to the extent that Exhibit "C" may reflect use of subcontractors by Design Professional. If the City consents to such subcontract, Design Professional shall be fully responsible to the City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between the City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law.

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

14. Design Professional represents and acknowledges the following:

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

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

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

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

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

15. The City represents and acknowledges the following:

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

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

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

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

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

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

G. Except for attendance at certain required meetings, Design Professional is not required to perform the services set forth in this Agreement on City-owned property.

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

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

## **RECORDS AND REPORTS**

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

### 17. Licensing of Intellectual Property.

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

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

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

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

19. Books and Records.

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

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

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

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

**INSURANCE**

20. Insurance Requirements.

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

i. Worker's Compensation Coverage. Design Professional shall procure and maintain, at its own expense, Worker's Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California. If any class of employees employed by Design Professional pursuant to

this Agreement is not protected by the California State Worker's Compensation Law, Design Professional shall provide adequate insurance for protection of such employees to the satisfaction of the City. Design Professional agrees to waive its statutory immunity under any worker's compensation or similar statute, as respecting the City, and to require any and all subcontractors and any other person or entity involved in the Services to do the same.

ii. General Liability Coverage. Design Professional shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars in the aggregate (\$2,000,000) for bodily injury, personal injury and property damage. Design Professional shall provide insurance on an occurrence, not claims-made basis. Design Professional acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess insurance, personal and advertising injury coverage shall be triggered by an "offense" while bodily injury and property damage coverage shall be triggered by an "occurrence" during the policy period.

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

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

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

i. 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 Design Professional, including materials, parts or equipment furnished in connection with such work or operations.

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

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

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

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

vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

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

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

E. Imposition of Insurance Requirements. Provided the City gives its written consent for any persons other than Design Professional to perform any part of the Services, Design Professional agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Design Professional enters into contracts or whom Design Professional hires or retains pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required herein, at minimum, and name as additional insureds the parties to this Agreement. Design Professional agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.

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

G. Failure to Obtain Coverages. Design Professional agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by any subcontractors or others involved in any way with the performance of Services, to the extent such is permissible under this Agreement, Design Professional shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the City or its officers, employees, servants, volunteers, agents and independent contractors.

## **INDEMNIFICATION**

21. Indemnity. To the fullest extent permitted by law, the Design Professional, as defined in Section 2782.8 of the Civil Code, shall indemnify, defend (with independent counsel approved by the City) and hold harmless the City, and its directors, officers, and employees from and against all liabilities (including without

limitation all claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs and costs of alternative dispute resolution) regardless of nature or type that arise out of, pertain to, or relate to the negligence, reckless, or willful misconduct of the Design Professional or the acts or omissions of an employee, agent or subcontractor of the Design Professional. The provisions of this paragraph shall survive completion of the services or the termination of this Agreement. The provisions of this section are not limited by the provisions hereof relating to insurance.

## **ENFORCEMENT OF AGREEMENT**

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

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

24. Default.

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

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

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

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

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

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

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

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

29. Authority to Enter Agreement. Design Professional has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

30. Termination. The City may terminate this Agreement immediately for cause. The City may terminate this Agreement without cause upon fifteen days written notice of termination. Upon termination, Design Professional shall be entitled to compensation for services performed up to the effective date of termination.

#### **PRINCIPAL REPRESENTATIVES**

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

32. The City's \_\_\_\_\_, \_\_\_\_\_, shall be the Principal Representative of the City for purposes of communicating with Design Professional on any matter associated with the performance of the services set forth in this Agreement.

#### **CITY OFFICERS AND EMPLOYEES**

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

34. Prohibited Interests. Design Professional maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee or independent contractor working solely for Design Professional, to solicit or secure this Agreement. Further, Design Professional warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee or

independent contractor working solely for Design Professional, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

35. Equal Opportunity Employment. Design Professional represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race, 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, Design Professional shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

**MISCELLANEOUS**

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

If to the City:

\_\_\_\_\_, \_\_\_\_\_  
City of Rancho Mirage  
69-825 Highway 111  
Rancho Mirage, CA 92270  
Telephone: (760) \_\_\_\_\_  
Facsimile: (760) \_\_\_\_\_  
Email: \_\_\_\_\_@ranchomirageca.gov

If to Design Professional:

\_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_

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

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

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

40. Labor Laws. All work or services performed within the State of California pursuant to this Agreement by Design Professional, Design Professional's employees and independent contractors, or its subcontractors and its subcontractors' employees and independent contractors shall be performed by individuals lawfully permitted to

perform such work or services in the State of California and/or the United States of America pursuant to all applicable State and/or Federal labor laws, rules and regulations including, but not limited to, any State or Federal law, rule or regulation prohibiting the employment of undocumented workers or any person not lawfully permitted to perform said work or services in the State of California or the United States of America. Documentation must be promptly submitted to the City at the request of the City, for the purpose of determining whether or not the work or services provided pursuant to this Agreement are being provided in compliance with this section.

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

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

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

**CITY OF RANCHO MIRAGE**

**DESIGN PROFESSIONAL**

\_\_\_\_\_  
Randal K. Bynder, City Manager

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

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Bruce Harry, Director of Public Works

**ATTEST:**

\_\_\_\_\_  
Cynthia Scott, City Clerk

**APPROVED AS TO FORM:**

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

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**SEE ATTACHED  
PROPOSAL DATED \_\_\_\_\_**

**EXHIBIT "B"**

**FEE SCHEDULE**

**SEE ATTACHED  
FEE PROPOSAL**