

**RANCHO MIRAGE  
PUBLIC LIBRARY FOUNDATION**

**71-100 HIGHWAY 111  
RANCHO MIRAGE, CA 92270  
(760) 341-7323**

**REQUEST FOR PROPOSALS  
FOR  
DEVELOPMENT DIRECTOR SERVICES**

**ISSUED:  
JULY 19, 2016**

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**RANCHO MIRAGE  
PUBLIC LIBRARY FOUNDATION**

**REQUEST FOR PROPOSALS  
FOR  
DEVELOPMENT DIRECTOR  
SERVICES**

**ANNOUNCEMENT:**

The Rancho Mirage Public Library Foundation ("Library Foundation") invites proposals from qualified, competent, knowledgeable, and experienced development director firms that will provide full-service professional services to raise funds for the Library Foundation 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 development director services.

**PROPOSALS/OFFER SUBMITTAL:**

Proposals will be accepted until **2 p.m. on August 26, 2016**, and each must be submitted in a sealed envelope plainly marked on the outside "**SEALED BID FOR DEVELOPMENT DIRECTOR SERVICES - DO NOT OPEN WITH REGULAR MAIL**" to:

City of Rancho Mirage Public Library  
Attn: David Bryant, Library Director  
71-100 Highway 111  
Rancho Mirage, California 92270

**SCOPE OF SERVICES:**

The selected firm shall provide to the Library Foundation 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:

**Background:**

The mission of the Rancho Mirage Public Library Foundation is to raise funds for one of California's most successful libraries. The Library is particularly notable for its programming calendar, its annual January Rancho Mirage Writers Festival, largest at any public library in America, its quality collection in print and digital formats, its special

collections, and award winning Summer Reading Club for children drawing families from a wide area of the Coachella Valley.

The Strategic Planning Committee of the Library Foundation has developed a set of objectives for a part-time Development Director who is a self-starter, able to work on his/her own schedule to deliver the results that the Foundation Board of Directors have outlined below. The professional will be an independent contractor with a contract running through the 2016/17 FY.

Applicants should bring a successful track record in fundraising for not-for-profits. They should have great familiarity with Rancho Mirage, the Coachella Valley, and area philanthropists.

The experienced professional we seek should have the focus, experience, timely follow-up, superb communication skills with prospects and donors, as well as strong direction for the annual solicitations and the ongoing "Create Your Literary Legacy" project.

The contractor will report to the Library Director.

**Scope of Work:**

**Development/fundraising duties:**

1. Identify and cultivate new contributors, expanding the donor database to increase gift giving to negate the need for spending reserves in 2016/17.
2. Working with the Board's grants committee to research, identify, and write grants focused on these programmatic areas: Children's Summer Reading Club, Library Programming, and Collection Development.
3. Develop, with the Foundation Board and Library Director, a marketing plan for the Library's *Literary Legacy* naming opportunities program.
4. Develop, with the Foundation Board and Library Director, the annual fall 2016 and spring 2017 solicitations, their message and goals.
5. By the completion of FY 2016/17, develop a program of deferred giving with a marketing action plan.
6. Develop a strategy for recognizing donors.

**Ongoing administrative duties:**

1. Enter contributions in donor database; send letters (form or custom) acknowledging donations including donor designated intentions for gifts.

2. Attend and present development updates at eleven monthly Board of Directors meetings. Attend and present an annual review at the annual (July) meeting. Present progress toward the objectives previously listed to the Board, the Board Chair, and the Library Director as they request it.

**GENERAL INSTRUCTIONS FOR SUBMITTAL:**

A. Proposal Submittal:

The proposer shall submit one (1) original and three (3) copies of the proposal by **2:00 p.m. (Pacific Standard Time), August 26, 2016, to:**

City of Rancho Mirage Public Library  
Attn: David Bryant, Library Director  
71-100 Highway 111  
Rancho Mirage, California 92270

B. Due Date and Time:

Proposals submitted after **2:00 p.m. on August 26, 2016**, may, at the sole discretion of the City of Rancho Mirage Public Library staff (“Library”), be rejected as non-responsive and returned without review. For a proposal to be considered on time, it must be date stamped by Library staff upon receipt. At the discretion of the Library, a “late” proposal may be considered only if a selection cannot be determined from among proposals received on time. The Library 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 DEVELOPMENT DIRECTOR SERVICES - 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 Library 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

Written comments or questions from proposers must be received by **2:00 p.m. Friday, August 19, 2016** (“Addenda Due Date”), and must be submitted via the following approved written methods addressed to David Bryant, Library Director:

1. At [davidb@ranchomiragelibrary.org](mailto:davidb@ranchomiragelibrary.org), or
2. Via fax to (760) 341-5213, or
3. Via mail, as long as the correspondence is received and date stamped by the Library on or prior to the Addenda Due Date.

Any questions raised verbally shall not be addressed by the Library Foundation. Submittal of written comments or questions shall not be considered by the Library Foundation unless submitted in an approved method on or before the specified time on the Addenda Due Date. Written comments or questions received via approved method within the time prescribed herein will be addressed by the Library Foundation’s issuance of an addendum to this RFP. Notwithstanding anything else herein, if it becomes necessary for the Library Foundation 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 made available to each recipient of record. Recipients of record shall consist of proposers on the original “bidders” list, or proposers that have requested RFPs and have provided pertinent contact information in writing to the Library. Addenda will also be posted and published on the City of Rancho Mirage’s website, <http://www.ranchomirageca.gov>, as well as everywhere else the RFP was originally posted and published. Though the Library Foundation shall post any addenda information on the City’s website as soon as it becomes available, it shall be the responsibility of the proposers to maintain current, up to date contact information with the Library if any addenda are to be posted. All addenda shall become part of the RFP.

**D. Pre-contractual Expenses:**

The Library Foundation 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 Library Foundation or the Library or City of Ranch Mirage. 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 Library Foundation, a form of which is attached hereto as **Exhibit "A."**

G. Insurance and Acknowledgement

Each proposal shall include a breakdown of all costs associated with issuance of the insurance endorsements described in and pertaining to Section 18 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 within thirty (30) days after the date of contract award.

**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 development director 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, development director services. Include company names, beginning/end dates of contracts, and names, titles and telephone numbers the Library Foundation can contact as references for your firm.
6. Furnish as an appendix, your firm's financial information (last year's Income Statement and Balance Sheet) that accurately describes the financial stability of your firm (financial statements will remain confidential and will be revealed only to individuals involved in the evaluation process and award of contract).

D. Proposed Staffing and Project Organization

1. Discuss the staffing of the proposing firm who would be assigned to work on the Library Foundation'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 Library Foundation.
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 Library Foundation'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 Library your firm would request from the Library Foundation in order to complete the work described.
3. Provide a summary of the firm's proposed services, with a focus on any technologies, innovations, and processes that the firm will offer to help the Library Foundation meet its objectives.

F. Cost and Price

1. This section shall disclose all charges to be assessed the Library Foundation 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 development director service fees.
3. For all staff declared in the organizational chart, provide a schedule of hourly labor rates.

G. Appendices

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

**PROPOSAL EVALUATION AND CONTRACT AWARD:**

A. Evaluation Panel

An evaluation panel consisting of Library 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 Library Foundation Board 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 Library Foundation

Upon selection of the most qualified proposer, the Library may require the finalist to make an oral presentation to the evaluation panel and/or the Library Foundation Board or Library Director. The Library Foundation 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 Library Foundation shall not be liable for any costs incurred by the proposer in connection with the preparation and submittal of the proposal.

**EXHIBIT "A"**  
**AGREEMENT**

**PROFESSIONAL SERVICES AGREEMENT**  
**BY AND BETWEEN THE**  
**RANCHO MIRAGE PUBLIC LIBRARY FOUNDATION**  
**AND**

\_\_\_\_\_

This Professional Services Agreement (hereinafter, this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Rancho Mirage Public Library Foundation, a California non-profit public benefit corporation, located in the County of Riverside, State of California, hereinafter referred to as the "Foundation," and \_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to as "Consultant."

**RECITALS:**

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

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

**WHEREAS**, the Library Foundation Board approved this Agreement during its meeting of \_\_\_\_\_, 20\_\_\_\_.

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

**Section 1.            RECITALS**

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth in full herein.

**Section 2.            SCOPE OF SERVICES**

Consultant shall provide to the Foundation those services as set forth in the Scope of Services, at the time, place, and in the manner specified therein, in a manner

satisfactory to the Foundation and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. In the event any conflict exists between the Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

**Section 3.                  COMPLETION DATE**

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

**Section 4.                  COMPENSATION**

The Foundation agrees to pay Consultant for and in consideration of the faithful performance of the consulting services and duties set forth in this Agreement, and Consultant agrees to accept from the Foundation, as and for compensation for the faithful performance of said services and duties, an amount not to exceed a total compensation of \_\_\_\_\_ Dollars and No Cents (\$\_\_\_\_\_ ) during the term of this Agreement.

**Section 5.                  METHOD OF PAYMENT**

a. Consultant shall submit invoices to the Foundation on a monthly basis describing the work performed. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. The Foundation shall pay Consultant no later than thirty (30) days after approval of the invoice by Foundation staff provided that the services reflected in the invoice were performed to the reasonable satisfaction of the Foundation in accordance with the terms of this Agreement, that the number of hours of service set forth in the invoice reflect the amount of time ordinarily expended for such service by members of the profession currently practicing in the same locality under similar conditions, and that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of this Agreement.

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

David Bryant, Library Director  
City of Rancho Mirage Public Library  
71-100 Highway 111  
Rancho Mirage, CA 92270  
Telephone: (760) 341-7324  
Facsimile: (760) 341-5213  
Email: davidb@ranchomiragelibrary.org

**Section 6.           EXTRA WORK**

At any time during the term of this Agreement, the Foundation may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the Foundation to be necessary for the proper completion of the Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, Extra Work, without written authorization from the Foundation.

**Section 7.           TERMINATION**

This Agreement may be terminated by the Foundation immediately for cause. The Foundation may terminate this Agreement without cause upon thirty (30) days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

**Section 8.           OWNERSHIP OF DOCUMENTS**

All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the Foundation upon payment to Consultant for such work, and the Foundation shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at its expense, provide such reports (including any electronic copies), plans, studies, documents and other writings to the Foundation upon written request.

**Section 9.           CONFIDENTIALITY**

a. All ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without prior written consent of the Foundation, be used by Consultant for any purposes other than the performance of the services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential.

b. Consultant shall not use the Foundation's insignia or photographs relating to the project for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the Foundation.

**Section 10.**

**CONSULTANT'S BOOKS AND RECORDS**

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

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

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

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

**Section 11.**

**INDEPENDENT CONTRACTOR'S STATUS: NOT AGENT OF THE FOUNDATION**

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

Consultant have any authority, expressed or implied, to bind the Foundation to any obligation whatsoever.

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

a.        Consultant represents and acknowledges the following:

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

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

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

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

(5)        The Foundation will not be requested or demanded to assume any liability for the direct payment of any salary, wage or other such compensation to any person employed by Consultant to perform the services described in this Agreement.

(6)        Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the Foundation.

b.        The Foundation represents and acknowledges the following:

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

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

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

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

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

(6) Consultant is not required to devote full time to the business operations of the Foundation in order to perform the services set forth in this Agreement.

(7) Unless deemed necessary under certain circumstances, Consultant is not required to perform the services set forth in this Agreement at Foundation-owned property.

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

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

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

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her 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. Consultant further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

\_\_\_\_\_  
Initials

**Section 14. CONFLICTS OF INTEREST**

a. Consultant (including principals, associates and professional employees) covenants and represents that it does not have any investment or interest in real

property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source or income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

b. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- (1) Does not make or participate in:
  - (i) the making or any governmental decisions regarding approval of a rate, rule, or regulation, the adoption or enforcement of laws;
  - (ii) the issuance, denial, suspension or revocation of permits, licenses, applications, certificates, approvals, orders, or similar authorization or entitlement;
  - (iii) authorizing the Foundation to enter into, modify, or renew a contract;
  - (iv) granting the Foundation approval to a contract that requires Foundation approval and to which the Foundation is a party, or to the specifications for such a contract;
  - (v) granting the Foundation approval to a plan, design, report, study, or similar item; or
  - (vi) adopting, or granting Foundation approval of, policies, standards, or guidelines for the Foundation or for any subdivision thereof.

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

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

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

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

b. By executing this Agreement, Consultant warrants that:

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

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

d. Consultant represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City of Rancho Mirage business license.

**Section 16.                    COMPLIANCE WITH LAWS**

Consultant shall comply with all local, state and federal laws and regulations applicable to the services required hereunder.

**Section 17.                    INDEMNIFICATION**

a. Consultant shall defend, indemnify and hold harmless the Foundation, 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

negligence or willful misconduct of the Foundation, its officers, agents, employees or volunteers.

b. The Foundation does not, and shall not, waive any rights that it may have against Consultant under this Section because of the acceptance by the Foundation, or the deposit with the Foundation, 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.

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

## **Section 18. INSURANCE REQUIREMENTS**

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

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

(2) General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury and property damage. Consultant shall provide insurance on an

occurrence, not claims-made basis. Consultant acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess coverage, personal and advertising injury coverage shall be triggered by an “offense” while bodily injury and property damage coverage shall be triggered by an “occurrence” during the policy period.

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

(4) Professional Liability Coverage. Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant’s Services, whether such Services are performed by Consultant or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim, and two million dollars (\$2,000,000) in the aggregate.

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

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

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

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

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

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

(6) Each policy required herein must be endorsed to provide that the policy shall not be cancelled or reduced in coverage (except by paid claims) unless the insurer has provided Consultant with thirty (30) days prior written notice of cancellation or reduction in coverage. Consultant shall provide Foundation 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. Consultant's failure to do so shall be considered a material breach of this Agreement.

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

d. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to the Foundation as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the Foundation on or before commencement of performance of this Agreement. Consultant agrees to ensure that the most current certification of insurance is on file with the Foundation at all times during the term of this Agreement.

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

f. Maintain Coverages. In the event this Agreement is terminated for any reason prior to the completion of all obligations and requirements of this Agreement, Consultant agrees to maintain all coverages required herein until the Foundation provides written authorization to terminate the coverages following the Foundation'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. Consultant agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is

maintained by any subcontractors or others involved in any way with the performance of Services, to the extent such is permissible under this Agreement, Consultant shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the Foundation or its officers, employees, servants, volunteers, agents and independent contractors.

**Section 19.                   NOTICES**

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

To the Foundation: David Bryant, Library Director  
City of Rancho Mirage Public Library  
71-100 Highway 111  
Rancho Mirage, CA 92270  
Telephone: (760) 341-7323  
Facsimile: (760) 341-5213  
Email: davidb@ranchomiragelibrary.org

To Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

b.       Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

**Section 20.                   ENTIRE AGREEMENT**

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

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

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

**Section 21.                    MODIFICATIONS AND AMENDMENTS**

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

**Section 22.                    ASSIGNMENT AND SUBCONTRACTING**

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

b. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written consent of the Foundation. If the Foundation consents to such subcontract, Consultant shall be fully responsible to the Foundation for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between the Foundation and subcontractor nor shall it create any obligation on the part of the Foundation to pay or to see to the payment of any monies due to any such subcontractor other than as required by law.

**Section 23.                    WAIVER**

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

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

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

**Section 24.                    SEVERABILITY**

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

**Section 25.          VENUE**

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

**Section 26.          LITIGATION EXPENSES AND ATTORNEYS' FEES**

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

**Section 27.          EXECUTION IN COUNTERPARTS**

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

**Section 28.          PROHIBITED INTERESTS**

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

**Section 29.          EQUAL OPPORTUNITY EMPLOYMENT**

Consultant represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race, 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, Consultant shall not refuse to

hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

**Section 30.                  TIME OF THE ESSENCE**

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

**Section 31.                  PRINCIPAL REPRESENTATIVES**

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

b. The Library Director, David Bryant shall be the Principal Representative of the Foundation for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

**Section 32.                  NON-LIABILITY OF FOUNDATION'S OFFICERS AND EMPLOYEES**

No officer or employee of the Foundation shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by the Foundation or for any amount which may become due to Consultant or to its successor, or for any breach of any obligation of the terms of this Agreement.

**Section 33.                  INTERPRETATION**

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

**Section 34.                  PROTECTION AND CORRECTION OF WORK**

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

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

**Section 35. CAPTIONS AND HEADINGS**

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

**Section 36. GOVERNING LAW**

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

**Section 37. CUMULATIVE REMEDIES**

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

**Section 38. NO THIRD PARTY BENEFICIARIES**

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

**Section 39. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT**

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

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

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

**RANCHO MIRAGE PUBLIC  
LIBRARY FOUNDATION**

**NAME**

\_\_\_\_\_  
Shari Stewart, Chair

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert J. Lee, Assistant General  
Counsel

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**EXHIBIT "B"**

**CERTIFICATE OF EXEMPTION**

**FROM WORKERS' COMPENSATION INSURANCE**

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

\_\_\_\_\_ Date: \_\_\_\_\_, 2016  
Name & Signature

**EXHIBIT “B”**

**ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS**

In recognition of \_\_\_\_\_ (“Company”) having submitted a proposal to the Rancho Mirage Public Library Foundation Request for Proposals for Development Director Services, **dated July 19, 2016** (“RFP”), issued by the Rancho Mirage Public Library Foundation (“Library Foundation”), and in further recognition that the Library Foundation requires Company to comply with certain insurance requirements as set forth in Section 18 (“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