REQUEST FOR PROPOSAL (RFP)
LIBRARY RFID

Library RFID and Self-Service Technology Systems and Software

Harrison Memorial Library

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Section A: RFP Introduction

A.1   Purpose of the RFP

A.1.1   The City of Carmel-by-the-Sea is seeking proposals from qualified vendors to install Radio Frequency Identification System (RFID) hardware, software and self-service systems, and to add Koha ILS-compatible patron self service options.

The Library currently uses barcodes and barcode readers to manage the collection. However, the system no longer meets the City's needs.

Radio Frequency Identification (RFID) is used to check out, check in, identify, and manage materials in the Library's collections.

Among other benefits, the system should free staff from many routine tasks, provide an enhanced level of statistical reporting and system management, address risk of potential repetitive motion injuries, reduce material losses, improve circulation efficiency and shelf accuracy, and maximize service to the community through greater levels of customer self service. Additional options are sought to enhance customer satisfaction through additional online payment options, innovative combinations of self-service software and more efficient transaction throughput on updated RFID equipment.

The Library is seeking a vendor who most fully understands the Library's needs and offers creative, economic, long-lasting, and practical solutions.   Proposals should be written to meet and exceed the Library's goals.

A.2   About the City

Carmel-by-the-Sea was first incorporated as a City in 1916. It was founded by artists and writers-among them Jack London, George Sterling, Mary Austin and Robinson Jeffers. Carmel-by-the-Sea is known for its urban forest, its beach and natural parklands and its village atmosphere. The City's boundary is one square mile in area, with a population that has remained steady at around 4,000. It is located within Monterey County approximately 120 miles south of San Francisco.

As a General Law City, Carmel-by-the-Sea has a Council/City Administrator form of government. The Council consists of the Mayor and four Council members, all of whom are elected at large. The City's annual budget is about $25.5 million and it employs approximately 94 full-time equivalent (FTE) staff in order to provide a variety of municipal services, including library and community activities, planning and zoning, building inspections, public safety (ambulance, fire and police), maintenance of beach, parks, facilities and the urban forest, public works and general administration.

Background Summary	
Population	4,000
Number of Employees	94 FTE
City Operating Budget (General Fund FT 21-22)	$25.5 M
Fiscal Year	July 1 – June 30
Governance Structure	City Administrator / Council

A.3   Project Background

The City of Carmel-by-the-Sea currently has two library facilities: the Main Library serving adults and teens; and the Park Branch, housing our children's department, the local history collection, administrative offices, technical services and our Foundation offices.

The primary reason for implementing an RFID system is to allow the Library to redeploy staff into the community and to expand service offerings beyond the Library walls, as well as to free up staff time from repetitive, manual processes and redirect that time to more meaningful customer service transactions within the Library. The Library's goal is to increase self-service by deploying easy to use self-service stations in key areas throughout the libraries.

The Library has a collection of approximately 60,000 items and serves approximately 9,000 registered borrowers. Over 100,000 visitors walk through our doors annually and total circulation is about 100,000. The Library's collection is composed of books, audiobook CDs, DVDs, Playaways and magazines.

The Library wishes to provide a consistent, attractive and intuitive self-service solution for their patrons. All self-service stations will work the same and offer the same range of options: check-out, check-in, renewal, holds and account management, fines and options for fee payment with cash or credit/debit cards.

Approximate collection details and business levels for each library are listed in the table below:

Library	Collection total	CD/DVD Media	Books	Circulation
Main Library		8,600	30,000	74,000
Park Branch Library		1,400	20,000	26,000
TOTAL		10,000	50,000	100,000

A.4   Notice to Proposers

Failure to carefully read and understand this RFP may cause the proposal to be out of compliance or rejected by the Library. Only the format described in the RFP and the attachments included with this RFP will be accepted as compliant for the submitted proposal. Failure to completely fill out all required attachments may result in disqualification.

A.5   Library's Rights Reserved

A.5.1   The Library reserves the right to select the proposal(s) that in its sole judgment best meets the needs of the Library. The lowest proposed cost will not be the sole criterion for recommending the contract award.

A.5.2   The Library reserves the right to award multiple contracts from this RFP. While selecting one proposal that provides all functionality for the entire RFP across all scope options is preferred, the Library will be evaluating proposals for Scope Options separately and this may result in award of contract to different proposals for each Scope Option.

A.5.3   The Library reserves the right to reject any or all proposals and to waive technicalities and informalities when such waiver is determined by the City to be in the City's best interest.

A.5.4   The Library may modify this RFP by issuance of one or more written addenda to all parties who have been furnished with the RFP.

A.5.5   The Library reserves the right to meet with select proposers at any time to gather additional information. Furthermore, the Library reserves the right to remove or add functionality (i.e., modules and components) until the final contract signing.

A.5.6   The Library reserves the right to revise the RFP prior to the date that proposals are due. All registered proposers will be notified of revisions to the RFP. The Library reserves the right to extend the date by which the proposals are due.

A.5.7   This RFP does not commit the Library to award a contract, all proposals submitted in response to this RFP become the property of the Library and public records, and as such, may be subject to public review.

A.5.8   The Library shall not be liable for any pre-contractual expenses incurred by prospective vendors or selected contractors, including but not limited to costs incurred in the preparation or submission of proposals. The Library shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP

A.6   Communication Regarding this RFP

All communication from prospective proposers regarding this RFP must be in writing by email to the address listed in section A.8 of this RFP. Communication by telephone or in person will not be accepted. Attempts by, or on behalf of, a prospective or existing vendor to make telephone or personal contact with any City employee regarding this RFP, may lead to the elimination of that vendor from further consideration.

Attempts by, or on behalf of, a prospective or existing vendor to contact or to influence any member of the selection committee, any member of the City Council, or any employee of the City of Carmel-by-the-Sea with regard to the acceptance of a proposal may lead to elimination of that vendor from further consideration.

A.7   Register as a Proposer

All firms interested in receiving further correspondence regarding this RFP are requested to register by sending an email to Ashlee Wright at awright@ci.carmel.ca.us and provide the following information: (1) Company name; (2) name of contact person; (3) email address; and (4) phone number of contact person.

A.8   Inquiries and Requests for Clarification

A.8.1   In an effort to maintain fairness in the process, inquiries concerning this procurement, including questions related to technical issues, are to be directed through email to the following contact. Questions over the phone will not be accepted.

Contact:	Ashlee Wright
Title:	Library and Community Activities Director
Email:	awright@ci.carmel.ca.us

A.8.2   All questions concerning the RFP must reference the RFP page number, and section heading. Questions will be answered and posted to the City's website in the form of an addenda to the RFP. When addenda are issued, all firms that have registered as a proposer will be notified through email.

A.9   Procurement Schedule

The City reserves the right to change the procurement schedule. If changes are made, proposers will be notified by the City in the form of an addendum to this RFP, emailed directly to all registered proposers and posted on the City's website http://www.ci.carmel.ca.us/

Procurement Schedule	
July 13, 2022	RFP released
July 29, 2022	Pre-proposal question deadline (4:00 PM PDT)
August 26, 2022	**Proposals due/Opened – (10:00 AM PDT)**
September 2, 2022	Proposers notified for software demonstrations
Week of September 19, 2022	Discovery sessions completed as applicable
Week of September 26, 2022	Notice of Intent to Award
Week of October 3, 2022	Award of contract by the Library
October 2022	Finalize contract and commence Implementation

A.9.1   Software demonstrations will be held via zoom and will cover all functional areas listed in this RFP. To avoid unnecessary delays, the Library expects that proposers will be available for software demonstrations and Discovery sessions on the dates identified on the procurement schedule. Proposers that cannot demonstrate their software during the dates prescribed by the Library may be

eliminated. Software demonstrations will focus on software, however it will also cover implementation. The Library reserves the right to change the dates as needed.

A.9.2 Discovery sessions will consist of an additional meeting with proposers to focus on implementation issues as needed. It is the expectation of the Library that all key project team members will be available for the on-site Discovery sessions.

A.10 Evaluation Criteria

The Library will review all proposals received as part of a documented evaluation process. The Library will evaluate each proposer according to specific criteria and then will elevate proposers to the next level. The sole purpose of the proposal evaluation process is to determine which solution(s) best meets the Library's needs. The criteria that will be used to evaluate proposals may include, but are not limited to the following:

A.10.1 Proposal Evaluation

A. Implementation Approach, including training
B. Project Management Approach/Plan
C. Technical Compatibility
D. Past Experience with Similar Organizations and References
E. Overall Understanding of the Library's Needs
F. Integration of System
G. Cost

A.10.2 Software Demonstrations

A. Software demonstrations (Evaluation of software including system wide features such as reporting, workflow, security, ease of use, etc)
B. Implementation Approach

A.10.3 Discovery

A. Software – Ability of software to meet the Library's needs
B. Project Team Experience
C. Implementation Roles and Responsibilities
D. Implementation Schedule
E. Ongoing Support for the System
F. Compliance with contract terms (See Appendix A- General Terms and Conditions)

The Library reserves the right to determine the suitability of proposals on the basis of any or all of these criteria or other criteria not included in the above list. Proposals will be scored separately for each of the scope options.

A.11 Proposal Submission Instructions

A.11.1 Proposals are to be submitted in sealed packages with the name and address of the Proposer and clearly marked on the exterior of the envelope or box "Proposal for RFID System".

A.11.2 Proposals shall be submitted by the deadline to:

> Library Director
> Harrison Memorial Library
> P.O. Box 800
> Mission and Sixth
> Carmel-by-the-Sea, CA 93921
> Phone: 831.624.1366

A.11.3 Proposers are required to separate their proposals into two sections, a technical proposal and a price proposal.

- **Proposers are required to submit ONE (1) print copy of the technical proposal non-bound and suitable for being copied by Library staff in a sealed package that is clearly labeled with the proposer's company name, the RFP name and the words "Technical Proposal". Hard copies of the technical proposal must include a submittal letter signed by an authorized agent of each firm involved in the proposal. The letter should include appropriate contact information for each firm.**

- **Proposers are required to submit ONE (1) hard copies of the price proposal non-bound and suitable for being copied by City staff in a sealed package, clearly labeled with the proposer's company name, the RFP name and the words "Price Proposal".**

A.11.4 Proposals are due by 10:00 A.M. PDT on August 26, 2022. The Library shall record the date and time received on the exterior of the envelope or box. Proposals shall be opened in public at 10:00 A.M. PDT on August 26, 2022. Proposers do not need to be in attendance for the opening. The Library will then review proposals based upon the evaluation criteria in A.11.

A.1.1 Late proposals will not be accepted. Corrections and/or modifications received after the closing time will not be accepted. Emailed proposals will not be accepted.

A.1.2 Failure to comply with the requirements of this RFP may result in disqualification. Proposals received subsequent to the time and date specified above will not be considered. Please note the following as part of the submittal process.

A.1.3 Signature of the proposal by the proposer constitutes acceptance by the proposer of terms, conditions, and requirements set forth herein.

A.1.4 Use the Submittal Checklist (Attachment 2) to ensure that all required documents, forms, and attachments have been completed and submitted as instructed.

A.1.5 By submitting a proposal, the proposer is providing a guarantee to the Library that, if chosen, it will be able to provide the proposed products and services

during the period of time discussed in the RFP.

A.1.6 **Upon submission, all proposals shall be treated as confidential documents until the selection process is completed. Once the notice of intent to award is issued by the Library, all proposals and any subsequent contract, shall be deemed public record per the California Government Code Sections 6250-6270,"California Public Records Act." Propriety material must be clearly marked as such. Proposer must clearly identify the sections of the proposal with the word "confidential" printed on the top right corner of each page for which privilege is being claimed and each page shall be easily separated from the proposal in order to allow public inspection of the non-confidential portions of the proposal. The Library will consider a proposer's request for exemption from disclosure; however, the Library will make its decision based upon applicable law.**

A.2   Organization of Proposal

The proposal must be organized into the following major sections. Specific instructions for each section are provided in Section B of this RFP. Any required attachments must be included in the proper section as indicated by the instructions.

1	Cover Letter, Executive Summary and Checklists
2	Overview of Proposed System/Scope of Services
3	Company Background
4	Client References
5	Functional Requirements/Computing Environment
6	Implementation
7	Training
8	Maintenance and Support Program
9	Exceptions to the RFP
10	Additional Documents
11	Cost (TO BE SUBMITTED UNDER SEPARATE COVER)

Section B: Detailed Submittal Requirements

So that competing proposals can be compared equally, proposers must assemble their proposals in strict adherence to the layout requirements identified in Section A.13. Failure to follow all proposal layout requirements may result in disqualification. Proposals should be prepared as simply as possible and provide a straightforward, concise description of the proposed products and services to satisfy the requirements of the RFP. Attention should be given to accuracy, completeness, relevance, and clarity of content. Proposals must address the following questions and contain the following Sections.

B.1   Cover Letter, Executive Summary and Checklists

B.1.1   Cover letter must be completed and included as the first page of the proposal. The cover letter must be on the proposer's official business letterhead stationery and be signed by an individual that is authorized to bind the firm contractually. Please include

- ▪ Proposer's name and address
- ▪ Contact person's name
- ▪ Contact person's telephone, fax and email

B.1.2   Executive Summary shall not exceed five (5) pages and should summarize the proposal by providing salient features of the proposal as noted below. Avoid technical jargon as much as is feasible and do not include pricing or cost information.

- ▪ The proposer's background and qualifications, including all subcontractors, for providing software and services in a small city;
- ▪ A discussion that demonstrates that the proposer understands the purpose of the RFP and the Library's goals, outcomes and objectives;
- ▪ A summary of the proposed solution, the proposer's assumptions and how the solution meets the Library's needs;
- ▪ An overview of the proposed system architecture, operating system and application software and a detailed description of the benefits that can be expected by implementing the proposed solution/system; and
- ▪ Description of the Library's role and responsibilities in implementing the proposed solution

B.1.3   Checklists should be completed and include

- ▪ RFP Checklist (Attachment 1)
- ▪ Signature Page (Attachment 2)
- ▪ Addendum Acknowledgement Form (Attachment 3)

B.2   Scope of Services

(Proposal Section 2.0) This section of the proposal should include a general discussion of the proposer's overall understanding of the project and the scope of work proposed.

Any optional components, configurations, or equipment that bidders would like to propose may be included as an appendix to the primary proposal response. Each option should clearly delineate all costs associated with that option and include an explanation of the benefits over the proposal provided in the bidder's primary response.

B.2.1   Overall solution approach should include a discussion regarding the approach to

working with the Library and include the following items:

- The suggested organizational structure for the project, including both proposer's staff, and subcontractors/sub consultants to be used by proposer, and Library staff, identify the roles each would play, and the effort involved In these roles and skills necessary to satisfy these roles
- Partnering, meaning how the firm proposes to work with other vendors whose solutions the City may implement as part of the ERP

B.2.2 For each additional firm identified in the Scope of Proposal, explain the following:

- Role of the firm in the project
- Statement about whether the primary proposer's contract will/will not encompass the third-party product/service and/or whether Library will have to contract on its own for the product/service

B.3   Company Background

(Proposal Section 3.0) Each proposal must provide information about any firm involved with this proposal including the software vendor, implementation vendor, and/or any third party vendors so that the Library can evaluate the proposer's stability and ability to support the commitments set forth in response to the RFP. The Library, at its discretion, may require a proposer to provide additional supporting documentation or clarify requested information.

B.4   Client References

(Proposal Section 4.0) The Library considers references for both the software and implementation services to be an important part of its decision-making process to award a contract. Proposers should assume that all provided references will be contacted. The name(s), phone numbers, and email addresses of the project manager or person with broad knowledge of the project for each reference must be listed. Failure to provide this information may result in the proposer not being elevated. The Library reserves the right to contact additional clients for references, if deemed necessary.

B.4.1 Provide three (3) public sector client references for projects completed within the last five (5) years. Ideally, references should be similar in size to the Library and have a similar implementation scope.

For each reference, please provide the following:

- Name of the library/company
- ILS in use (if applicable)
- Contact name(s), including phone number and email address
- Brief description of relevant projects or work that you have completed for this client

B.5 Implementation Plan

(Proposal Section 6.0) This section should describe the proposed implementation plan, including:

- Proposed phasing for roll-out of proposed system
- Overview of key implementation phases or activities
- Description of key deliverables
- Number of staff the vendor will have assigned to the project
- Major roles and responsibilities for each key phase and activity for implementation.

B.5.1 Provide project team resumes for key members of the implementation team expected to be on the Library's project. It is understood that assigning resources at this point may be difficult, however resumes provided should at least be representative of the staff that would make up the Library's project team.

B.5.2 Explain proposed project management services including:

- Role of the vendor project manager
- Role of the Library project manager
- Proposed project status reports format and process
- Proposed quality assurance procedures
- A description of how the project manager will ensure that the Library's goals are met through this project

B.5.3 Explain the expected Library staffing for the project including:

- Number of resources
- Key responsibilities for each resource
- Assumed participation in the project (average portion of FTE). This should include all time spent working on the project (including time spent with and without vendor consultants)
- Assumptions about prior skills / competencies of resources

B.6 Training Plan

(Proposal Section 7.0) This section should include the proposed knowledge transfer and training plan and a description of all products and services proposed to train both the project team and end users.

B.6.1 Provide an overview of proposed training plan/strategy, specifying how and when training is to be delivered for both on-site and off-site training and web training services for the core project team, end users, and technology personnel (if required).

B.6.2 Explain any roles and responsibilities the Library is expected to provide for the training effort including, but not limited to, training coordination, training material

development, training delivery, etc.

B.7   Maintenance and Support Program

(Proposal Section 8.0) The proposal must specify the nature of any post-implementation and on-going support provided by the vendor including:

B.7.1   Include explanation of approach to maintenance and support, including:

- Tiers of service, if any
- Help desk hours and policies
- Response times and other information to provide a complete picture of how the firm proposes to provide ongoing support for the Library under a maintenance/service level agreement

B.7.2   Complete Attachment 6 (Maintenance and Support)

B.8   Exceptions to the RFP

(Proposal Section 9.0) All requested information in this RFP must be supplied. Proposers may take exception to certain requirements in this RFP. All exceptions shall be clearly identified in this section, and a written explanation shall include the scope of the exceptions, the ramifications of the exceptions for the Library, and the description of the advantages or disadvantages to the Library as a result of exceptions. Section D of this RFP contains standard contract terms and conditions that the Library expects to be part of the final agreements for these services. Please indicate your willingness to comply with each condition by noting any exceptions. The Library, at its sole discretion, may reject any exceptions or specifications within the proposal.

B.9   Sample Documents

(Proposal Section 10.0) Proposers should include sample copies of the following documents. Although they are sample forms, the documents must contain all material terms so that the Library can fairly evaluate the proposer's forms.

B.9.1   Sample software licensing agreement

B.9.2   Sample maintenance agreement

B.9.3   Sample implementation services agreement

B.9.4   Sample implementation project plan

B.9.5 Sample Training Plan

B.10   Cost Proposal

(Proposal Section 11.0): TO BE SUBMITTED UNDER SEPARATE COVER.   Proposers should submit their cost proposal in a separate and sealed packet according to the format

provided in Attachment 11 (Cost) to this RFP. Do not cite cost anywhere else in the proposal in order to prevent evaluators from viewing this information. The Library's Evaluation Team will review cost proposals after evaluating the non-cost information in the technical proposal and prior to selecting proposers for software demonstrations.

B.10.1 Complete and submit Attachment 7

- It is important that proposers use the format presented in this RFP even if an additional format is provided. Attachment 7 (Cost) should include total price for all software, services, and additional costs to acquire all software and services referenced in the proposal including third party prices. If third party products or services are included, do not provide a separate version of Attachment 7 (Cost) for each third-party product.

- Do NOT use "To Be Determined" or similar annotations for cost estimates. The Library is asking proposers to estimate prices and hours for all categories with the understanding that they may have to make assumptions. Such assumptions should be stated. Proposers may submit additional pricing sheets as an addendum to the cost template; however the cost template MUST be completed.

- The Library may award a purchase contract, based on initial offers received without discussion of such offers. A proposer's initial offer should, therefore, be based on the most favorable terms available. The Library may also request revised pricing offers from proposers, and/or enter into contract negotiations thereafter.

- Proposers must submit implementation costs as fully loaded rates that include all necessary travel.

- The Library will require fixed maintenance fees for five (5) years following implementation.

Section C: Scope of Project

C.1   Project Scope

The Library is seeking RFID solutions that will include tags, hardware, software, installation, staff training and on-going support and maintenance. Bidders must be able to demonstrate a proven ability to provide and implement the following:

- ISO 28560-2 compliant RFID tags for all circulating library material. Initial purchase: 60,000 book tags; 12,000 full coverage media tags.
  - Tags should easily affix to all circulating library items regardless of format and be guaranteed for the lifetime of the item to which they are affixed
- RFID staff workstation hardware and software (5) which enable staff to use either barcode scanners or RFID pads to input barcodes in all ILS modules

- Multi-purpose self-service kiosk stations (3) that allow patrons to checkout material, get receipts, renew items, manage holds and perform other account management functions.
  - Should support the option to add fine/fee payment by credit/debit card in the future.
- Handheld devices (2) for inventory, shelf-reading, and locating material.
  - As an option, a multipurpose handheld device capable of checking out material to patrons in the stacks
- Easily maneuverable mobile tagging stations (or components) (3) for loan, lease or purchase.
- Integration of all hardware and software with the Library's Koha ILS that streamlines staff and patron workflows.
- Administrative software that allows for the management and reporting functions of the self-checkouts.
- **As an option:** an outsourced solution for tagging the Library's entire collection that includes planning, staffing, and supervision on a strict timeline.

C.2   Project Staffing

The Library will make every effort to staff the project appropriately and understands that staffing a project is key to its success. However, having a small staff, dedicated project team staffing will be difficult. The Library may seek an outside consultant to help with implementation efforts.

C.3   Statement of Work

The Library will require the development of a detailed statement of work, including a high-level project plan, prior to contract signing. The statement of work will include at least the following and may include additional items the Library deems necessary:

- Project Scope
- Phase details
- Project resources
- Project roles and responsibilities
- Project change control procedures
- Time commitments and project timelines
- High level project plan

Except as otherwise explicitly stated in the Agreement, the vendor will furnish all labor, materials, equipment, products, tools, transportation, and supplies required to complete the services. Any additional services not identified in the Agreement will be mutually agreed to in writing by each party through a change order process.

C.4   Project Schedule

The City expects a project start of November / December 2022

Section D: Contract Terms and Conditions

Attached are standard contract terms and conditions that the Library expects to be part of an agreement with the finalist proposer(s)—Exhibit 2-General Terms and Conditions. Please indicate your willingness to comply with each condition by noting any exceptions per the instructions in section B.9 of this RFP. Contract terms in the final agreement should include but will not be limited to those listed below.

Section E: Attachments

E.1 Attachment 1 (RFP Submittal Checklist)

Section	Item	Vendor Response Section Title	Vendor Response Begins on Page
B.1	**Cover letter, Executive Summary and Checklist (Attachments 1-3)**		
E.1	Attachment 1- RFP Checklist		
E.2	Attachment 2- Signature page		
E.3	Attachment 3- Addendum Acknowledgement Form		
B.2	**Scope of Services**		
B.3	**Company Background**		
E.4	Attachment 4- Company Background		
B.4	**Client References**		
E.5	Attachment 5-Technical Specification		
B.6	**Implementation Plan**		
B.7	**Training Plan**		
B.8	**Maintenance and Support Program**		
E.6	Attachment 6- Maintenance/Support		
B.9	**Exceptions to the RFP**		
B.10	**Sample Documents**		
B.11	**Cost**		
E.7	Attachment 7- Cost		

E.2   Attachment 2 (Signature Page)

The undersigned proposer, having examined this RFP and having full knowledge of the condition under which the work described herein must be performed, hereby proposes that the proposer will fulfill the obligations contained herein in accordance with all instructions, terms, conditions, and specifications set forth; and that the proposer will furnish all required products/services and pay all incidental costs in strict conformity with these documents, for the stated prices as proposed.

Signature_____ Date _____

E.3   Attachment 3 (Addendum Acknowledgement Form)

This page is used to acknowledge any and all addenda that might be issued. Any addendum issued within five days of the solicitation due date, will include a new due date to allow for addressing the addendum's issues. Your signature indicates that you took the information provided in the addendums into consideration when providing your complete response.

Please sign and date
ADDENDUM NO. 1 Acknowledgement   _____

Signature   Date

ADDENDUM NO. 2 Acknowledgement   _____

Signature   Date

ADDENDUM NO. 3 Acknowledgement   _____

Signature   Date

ADDENDUM NO. 4 Acknowledgement   _____

Signature   Date

ADDENDUM NO. 5 Acknowledgement   _____

Signature   Date

If no addenda were issued, please indicate below, sign the form and return with your response.

_____
Proposer/Firm

_____
Authorized Signature

E.4   Attachment 4 (Company Background)

Complete one form for each firm included in the proposal.

Company Name:	
Location of corporate headquarters:	
Location of nearest office/location to the City:	
Proposer Experience	
Number of years in business:	
Number of years providing systems/services to public sector:	
Customer Base:	
Number of public sector clients, including number in California	
Number of local government clients	
Number of clients on current version (specify version)	
Market Focus:	
Identify other industries serviced	
User Group:	
Identify national and regional user groups	
Explain the purpose and function of user groups	
Organization Characteristics:	
Number of Employees: If Proposer is a subsidiary, identify # of employees in proposing company/division	
Total Revenue: If Proposer is a subsidiary, identify revenues of proposing company/division	
Ownership: Privately held? Publicly traded? Parent Company?	

E.5   Attachment 5 (Technical Specifications)

When any required explanation exceeds 100 words, please provide the explanation on an attached sheet, labeled "Attachment 5 Appendix", numbered using the sequences provided below. Any additional information requested in the requirements below should also be included in the Appendix and numbered appropriately.

This form can be provided in Microsoft Word format for the convenience of the Bidder upon request to Library Administration (awright@ci.carmel.ca.us). Making changes to any of the text in the left hand column is expressly prohibited and any changes noted will result in disqualification of the Bidders entire proposal.

E.5.1 GENERAL REQUIREMENTS

5.1a) The proposed system shall be fully compliant with ISO 28560-2 per NISO RP-6-2012 which specifies ISO 18000-3 Mode 1 RFID tags. System must support inclusion of both mandatory and optional commands, and all tags and devices writing to the tags must conform to ISO 28560-2 as defined in NISO RP-6-2012.	
5.1b) Bidder must demonstrate experience working with ISO 28560-2 in libraries.	
5.1c) All RFID components must be FCC Part 15- Certified. Attach copies of all pertinent certifications as an appendix.	
5.1d) The proposed system and all of its components must be entirely compatible with, and in no manner interfere with, the Koha Integrated Library System, its computer clients, or other components.	
5.1e) Bidder must be willing to work with Bywater Solutions to resolve any RFID-ILS functionality problem.	
5.1f) The proposed system must not interfere with other equipment, automated library system clients, or PCs that may be nearby.	
5.1g) The proposed system must be able to function on both wired and wireless TCP/IP networks.	
5.1h) The bidder must offer a 12-month, 100% money-back performance guarantee on all equipment purchased and covered by a 12-month warranty or service agreement.	

E.5.2 RFID Tags

5.2a) Tags must be tested for over 100,000 read/write cycles and be guaranteed for the life of the items to which they are affixed. Provide documentation as an appendix.	
5.2b) Bidder will name its tag bidder and any quality assurance guarantees.	
5.2c) The proposed system must provide tags with a minimum memory of 1,024 bits.	
5.2d) All data on the RFID tag, including the item identifier field, must be fully rewriteable.	
5.2e) Tags must support the option to lock and/or password-protect selected fields on the tag (e.g. barcode number). Describe locking and password protection options	
5.2f) Tags must enable the AFI setting to be stored directly on the tag as defined in ISO 28560.	
5.2g) Bidder should provide recommendations for handling multipart sets of CDs and DVDs, as well as recommendations for handling mixed media sets (e.g. book and CD)	
5.2h) Bidder should list all media tag options offered, including effectiveness and provide pricing for each option.	

E.5.3 Conversion Station(s)

5.3a) Bidder will describe its tagging software and the process for converting library material (both books and AV).	
5.3b) Bidder can provide components of a conversion station for use with Library-provided carts and/or laptops. Describe options.	
5.3c) Conversion of an existing collection must require no more than a computer, barcode scanner, and RFID reader/antenna in addition to software, all of which can be placed on a mobile cart, so that the complete operation can be performed in the stacks.	
5.3d) Bidder can provide a mobile conversion station	

integrally designed on a compact cart with wheels to support easy conversion in the narrow library aisles. The mobile conversion station shall be available for lease or purchase. Describe.	
5.3c) The mobile conversion station must be battery operated and should not require an AC connection to operate.	
5.3d) The mobile conversion station must function in standalone mode, not requiring an interface with the integrated library system.	
5.3e) The mobile system must be easy to use and able to convert at a rate of at least 200 items per hour with two people per conversion station. Please provide an example of a library in which this number was achieved, with contact information.	
5.3f) During tagging process, any conversion system must automatically interrupt if barcode scanner fails to scan all digits in the bar code.	
5.3g) Tag programming application should perform an immediate confirmation read of a programmed tag to ensure that the tag has been written exactly as intended.	
5.3h) Tag programming application must be able to perform a confirmation read of tags in one-at-a-time or multiple mode, so the staff can see all data programmed onto tags.	
5.3i) When tag programming errors occur, the system must react in real-time using optional sound and/or visual alerts.	
5.3j) Any proposed system must be able to convert items from a list (when an optical barcode is unavailable or unreliable).	
5.3k) Any proposed system must be able to weed items by uploading and reading a weed list (a list of items to be removed from the Library) during the conversion process, to automatically alert staff to weed an item upon scanning the barcode, rather than applying an RFID tag.	
5.3l) Any proposed system must include the ability to log all items that have been programmed by an ID number. The system must have the option to save a cumulative list of all item IDs written to RFID tags in a file.	

5.3m) Any proposed system must have a visible scan line to facilitate correct placement of material on the conversion station.	
5.3n) Any proposed system must be able to handle varying barcode locations and orientations.	
5.3o) Bidders must provide CSA or UL listing number and FCC listing for the mobile conversion system.	

E.5.4 Staff Workstations

5.4a) The proposed system must be able to mount in, on, or under the work surface of a circulation station even when positioned under existing library slate, granite, wooden or laminate-topped desks	
5.4b) The proposed system must include readers with a read range of 8 inches minimum for book tags. Provide information about warranties as it pertains to read range of workstation readers.	
5.4c) The proposed system must be capable of processing RFID tags or barcodes in the same circulation transaction.	
5.4d) A barcode reader must be able to operate concurrently with an RFID reader.	
5.4e) The proposed system readers must be able to read tags and display (on the staff screen) the information on the tags including any or all of the programmed data elements. Describe how this works with Koha ILS.	
5.4f) The proposed system must support efficient staff processing of both check-in and check-out transactions as well as modifying patron records and item records. Describe the workflow at a typical staff circulation workstation that performs both check-in and check-out of library materials including describing any function keys required, and indicators on the staff screen that alert staff items have been checked-in (and out) and the security setting applied properly.	
5.4g) The proposed system must secure item within one second of checking-in the item.	
5.4h) The proposed system must unlock item within one	

second of checking-out the item.	
5.4i) The proposed system must support efficient handling of holds. Describe what happens when an item being checked-in triggers a hold.	
5.4j) The proposed system must have the ability to read, program, and reprogram RFID tags without changing screens or modules. Describe how tags can be reprogrammed during a typical staff check-in or check-out transaction.	
5.4k) The proposed system must not require mouse activations to process most items. Describe any situations where mouse activations are required.	
5.4l) RFID client software must be capable of running in Windows 7 or higher, 64-bit, at a non- administrative level.	
5.4m) The proposed system must be able to process sets and provide a notification if a missing part is detected.	
5.4n) The proposed system must be able to block and/or prompt the user on sets with missing parts prior to sending data to the ILS. This capability must be configurable.	
5.4o) Proposed system must provide full functionality in bookmobiles and/or satellite library locations where the connectivity to the ILS is provided and the Koha staff client is running. Describe the functionality of the system on mobile platforms such as iOS or Android OS.	
5.4p) Bidder must provide CSA or UL listing number for complete circulation staff workstation.	

E.5.5 Technical Services Staff Workstations

5.5a) The proposed system must permit the operator to access commands to set or reset tag security independent of the ILS.	
5.5b) The proposed system must support efficient staff processing of material. Describe the workflow at a typical staff technical services workstation.	
5.5c) The proposed system must be able to block or prompt the user on sets with missing parts prior to sending data to	

the ILS. This capability must be configurable.	
5.5d) The proposed system must be able to read multiple tag data formats without impacting performance.	
5.5e) The proposed system must be able to print and dispense tags automatically and simultaneously.	
5.5f) The proposed system must be easy to use and able to tag at a rate of at least 200 items per hour.	
5.5g) The proposed system must be able to handle varying barcode locations and orientations.	
5.5h) The proposed system must allow configuration of item identifier parameters to automatically prevent programming of partially scanned or incorrectly scanned barcodes.	
5.5i) The proposed system must be able to tag items from a list (when an optical barcode is unavailable or unreliable).	
5.5j) The proposed system must be able to work with a weed list (a list of items to be removed from the Library), to automatically alert staff to weed an item upon scanning the barcode, rather than applying an RFID tag.	
5.5k) Bidder must provide CSA or UL listing number for complete technical services staff workstation.	

E.5.6 Self-Checkout Stations

5.6a) Check-out station must be able to check out multiple items in a stack and support efficient workflows for patrons. Describe how the check- out process works from the patron's point of view when checking out multiple items of various types (e.g. books, DVDs) simultaneously. Provide screenshots.	
5.6b) Minimally, the proposed system's RFID self- checkout units must be able to read barcodes, communicate with the ILS to update the Library's inventory, and turn security off.	
5.6c) The proposed system must interface with the Library's existing integrated library system (Koha) using the SIP2, NCIP or BIC Library Communications Framework (BLCF) protocol. Please describe this interface and any standards	

that are involved in this communication.	
5.6d) The proposed system must be able to connect through the Library's local area network via an Ethernet connection and/or secured wireless network.	
5.6e) The proposed system must be capable of processing RFID tags or item barcodes in the same transaction.	
5.6f) After being unable to detect an RFID tag in an item, station must automatically request that the patron scans the item's barcode, allowing checkout even if the tag is missing or damaged.	
5.6g) The proposed system must read the current type of library card used by the Library which is a .30" PVC card with an A/B Codabar barcode with a Mod 10 check digit, and should be able to facilitate a migration to other technologies under consideration by the Library (e.g. RFID or NFC based patron cards). Describe library card types with which your system is compatible.	
5.6h) Bidder has multiple self-checkout form factors available, including freestanding kiosk, countertop, and height adjustable for ADA requirements. Describe options.	
5.6i) The proposed system must have the ability to print out all information for a patron checkout or check-in transaction on a single receipt. Such receipts should be customizable to incorporate library identity, hours, and so forth. Staff members must be able to make these changes easily without going back to the bidder. Describe the ways the receipt may be customized by the Library and how this is accomplished.	
5.6j) Self-checkout unit must be able to be remotely monitored. Describe the options for remotely monitoring each check-out station.	
5.6k) Patrons must be able to renew items at the self-checkout stations without having the items in hand.	
5.6l) The proposed system must be capable of reading item barcodes located in various locations.	
5.6m) The proposed system must display ILS system information relating to the patron or item status. Describe.	
5.6n) The proposed system's self-checkout units should	

have customizable messages based on patron and item status. Staff members must be able to make these changes easily without going back to the bidder. Describe how the Library can modify these customizable messages.	
5.6o) Option must be available to enter patron username, PINs, and barcode numbers on the touch screen in addition to scanning library cards.	
5.6p) The proposed system must be able to process sets and provide a notification to patron, before completing the check-out or check-in transaction, if a missing part is detected.	
5.6q) Self-checkout system software and hardware must meet ADA guidelines, and include features such as a large touch screen interface, user- selectable high-contrast interface, and large type size. Describe all attributes that address ADA requirements.	
5.6r) The proposed system must have customizable instructions and graphics that can be configured by library staff without going back to the bidder. Describe how the Library can modify these instructions and graphics.	
5.6s) Station must block both patrons and items that are blocked by the Library's ILS. Describe how the patron and staff are notified when a patron encounters a block	
5.6t) Each self-check unit must be able to display at least two languages on banners, instructions, messages, and receipts. Please list languages currently available and how these can be configured on each self-check machine.	
5.6u) Patrons must have the option to print a receipt, print no receipt, or have the receipt emailed.	
5.6v) The proposed system must have the ability to perform offline transactions and maintain records of all barcodes checked out when the ILS is offline, and then upload transactions when the ILS is back online.	
5.6w) The proposed system must turn on/off the security feature on RFID tags to allow secure library operation during offline situations.	
5.6x) Self-checkout stations can be customized with a large number of colors or other options. Please elaborate on	

whether or not this is available and the cost associated with each option.	
5.6y) The proposed system must provide CSA or UL listing number and FCC certification numbers for the complete self-checkout system.	
5.6z) Self-checkout stations must be the newest model released by the bidding firm with monitors no smaller than 21" touchscreen HD Portrait view. Describe the system's ability to view library programmatic information while user is using kiosk.	

E.5.7 Handheld Inventory and/or Multipurpose Handheld Device

5.7a) Both devices must be lightweight, ergonomic, have a comfortable grip for staff use and should reach top and bottom shelves easily.	
5.7b) Both devices should feature an easy-to-use, generously sized screen display (provide screen size)	
5.7c) Both devices operate for a minimum of four hours before needing recharging and come with extra batteries.	
5.7d) Both devices can store more than 500,000 records at any one time. Indicate maximum storage capacity for each type of device.	
5.7e) Both devices can read at least ten items of a thickness of 1/8" thick or more per second with near 99% accuracy. What is the read range of the device?	
5.7f) Both devices have a simple process to load records from the ILS. Describe the steps in this process.	
5.7g) Both devices can identify item status, barcode, call number and location.	
5.7h) The inventory device must be able to shelf-read and identify specific items by title and barcode that are shelved incorrectly. This capability is sensitive enough to locate items that are out of place by as little as 5 inches. Indicate how the device signals that an item has been located.	
5.7i) Devices have audio signaling capabilities and volume	

control.	
5.7j) The inventory device accommodates searching to identify items on multiple user defined search lists (e.g. missing, claims returned, lost, etc.)	
5.7k) The inventory device provides a method to keep track of which items have been found and which have not been found.	
5.7l) Devices allow users to scan items on metal library carts or metal shelves to identify individual items which have not been properly checked in before reshelving. Indicate any difference in read accuracy when encountering metal carts or shelving.	
5.7m) Indicate additional capabilities such as wireless operation, direct connection to the Library's catalog or USB connection options.	
5.7n) The multipurpose device must allow staff to check-out items while in the stacks using a patron's library card (or library card number)	
5.7o) Describe any additional functionality, as well as additional portable devices that may add functionality to the Library's ILS.	

E.5.8 Reporting, Management & Configuration Tools

5.8a) Bidder offers comprehensive messaging and monitoring solution that allows staff to receive alerts including:
 	
  A. Real-time activity at self check-out stations
  B. Real-time monitoring of SIP connection and ILS connectivity for all connected devices
  C. Ability to control personalized alerts for pertinent staff	

5.8b) Solution will provide customer and item transactions by day of the week, customer and item transactions by hour of day, item count by item type, item count by item status,and total item counts across each and every unit, whether in one location or across a system.	
5.8c) The proposed system must provide performance statistics. Describe available reporting features and the	

statistics that can be seen.	
5.8d) Staff must be able to monitor the status of individual or multiple self-checkout stations within a site or system-wide, and will be alerted to the status of each station, including if patron requires assistance, receipt paper is running low, station has gone offline, etc. Staff must be able to perform this function by logging in to a web interface on any computer with internet access.	
5.8e) An administrator must be able to set up alerts for selected staff associated with devices within their area of responsibility. Describe options for distributing management and alerts for multiple users.	
5.8f) Authorized staff must be able to configure individual or multiple network attached devices within a site or system-wide by logging in to a web interface on any staff station, with these changes being pushed to all units across a system or a branch.	
5.8g) Authorized staff must be able to run and view diagnostic logs for each network attached device to ensure they are operating properly by logging in to a web interface on any staff station.	
5.8h) Describe how staff is able to generate reports without having to contact bidder.	

E.6 Attachment 6 (Maintenance and Support)

Post-implementation Support:	
Days of on-site support after go-live	
Other on-site support after go-live (month end, quarter end, year end, open enrollment, etc.)	
Support Options:	
Support Packages Offered (Bronze, Silver, Gold, etc.)	
Support Package Proposed	
Other Support:	
Remote desktop support	
Additional on-site support	
Telephone Support:	
Hours available (and time zone)	

Problem Reporting and Resolution Procedures	
Response time for various levels of severity	
User Groups:	
Local User Group	
User Group Members (number)	
Third Parties:	
Support provided for third party products?	
Upgrades/Patches:	
Upgrade Frequency (major and minor releases)	
How are upgrades delivered?	
Are upgrades required?	
How many versions are currently supported?	

E.7 Attachment 7 (Cost)- Submit Under Separate Cover

Proposer Name: _____

Please complete the table below with pricing information. Prices should be F.O.B. to the central site and/or the facilities where they are to be installed, and include training, installation, and any other items necessary for complete system operation. Unless otherwise stated, quantities listed are estimates only, and the library does not guarantee to purchase the quantities specified.

1. Products (One-Time Costs)	Quantity	Price Per Unit	Extended Price
ISO 28560-2 Compliant RFID Book Tags	60,000		
ISO 28560-2 Compliant Full-coverage AV Tags	12,000		
Conversion Station – lease	3 (4 months)		
Option: Conversion Station – purchase	3		
Circulation/Tech Services Staff Workstations (includes RFID pad, software and other required peripherals; PC provided by Library)	5?		
Self-Checkout station (Kiosk – includes ALL hardware, software & standalone capability)	3		
Management/Reporting software tools	1		
Portable Inventory Device	2		
Option: Multipurpose Handheld Device (if functionality is different than Inventory device)	2		
Option: Outsourced solution for tagging Library's entire collection			
Tax			
Installation/Implementation (Total			

for hardware/software listed above)			
Shipping	. .	.	.
TOTAL RFID SOLUTION:			$

2. Additional One-time Costs

Description	Proposed Price
Project Management	
Training (Training for 10 on check-in/check-out functions; technical services functions for 5; management/reporting functions for 5)	
Travel expenses	
Other One-Time Costs	
Total One-Time Costs	

3. Recurring Annual Costs

Description (maintenance and support fees, software licenses, etc.)	Proposed Price
Total Costs	

PROFESSIONAL SERVICES AGREEMENT
for the
[Name of the Project and/or type of services
Agreement #]

THIS AGREEMENT is executed this _____ day of _____, 20___, by and between the City of Carmel-By-The-Sea, a municipal corporation, (hereinafter "City"), and [Name of Consultant and entity type], (hereinafter "Consultant"), collectively referred to herein as the "parties".

WHEREAS, the City wishes to engage Consultant to perform the services required by this Agreement; and

WHEREAS, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions; and

WHEREAS, Consultant represents that it is trained, experienced and competent and holds all necessary licenses and certifications to perform the services required by this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows:

1. **SERVICES**

   A. **Scope of Services**. Consultant agrees to provide to the City, as the scope of services ("Scope of Services") under this Agreement, the following: [insert general description of the scope of work]. The Scope of Services is attached hereto as Exhibit "A." The Scope of Services under this Agreement should include, but is not limited to, a project description, project phases, task descriptions, identification of key personnel, identification of subconsultants, their key personnel and general description of services that will be performed, as further set forth in this Agreement and attachments hereto. Consultant agrees to all of the following:

      i.   Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.

      ii.   Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit "B" [Key Personnel], which is made a part of this Agreement.

      iii. Consultant must make every reasonable effort to maintain the stability and continuity of Consultant's key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify City and obtain City's written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.

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iv.   Consultant must obtain City's prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.

v.   Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

vi.   City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. Acceptance of any of Consultant's work by City will not constitute a waiver of any of the provisions of this Agreement.

vii.   The Consultant must maintain any work site in the City in a safe condition, free of hazards to persons and property resulting from its operations.

B.   **Change Orders**.

i.   Agreements and Change Orders exceeding $24,999 require City Council approval to be valid.

ii.   The City may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and City. The cost or credit to City resulting from changes in the services will be determined by the written agreement between the parties. However, any increase in compensation beyond the compensation limit amount approved by the City Council must be authorized in advance by the City Council and any service provided by Consultant in the absence of such approval are at Consultant's sole risk.

iii.   Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by City.

iv.   If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the City Administrator with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.

C.   **Familiarity with Services and Site.**

i.   By executing this Agreement, Consultant represents that Consultant:

a.   has thoroughly investigated and considered the Scope of Services to be performed;

b. has carefully considered how the services should be performed;
c. understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
d. possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.

ii. If services involve work upon any site, Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform District of such fact and will not proceed except at Consultant's own risk until written instructions are received from City.

2. COMPENSATION

A. **Total Fee**. Subject to any limitations set forth in this Agreement, the City agrees to pay and Consultant agrees to accept as full and fair consideration for the performance of this Agreement, hourly fees as set forth in Consultant's Compensation & Fee Schedule (Exhibit "C"), in a total amount not-to-exceed _____ Thousand ____ Hundred and ____ Dollars ($_____.00). Such compensation is the "Maximum Authorized Expenditure" under this Agreement. The Fee Schedule includes, but is not limited to, fees for each phase and task, not-to-exceed total fee, hourly rates, reimbursable rates and subconsultant mark-up rates. The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount. Payment of any compensation to Consultant is contingent upon performance of the terms and conditions of this Agreement to the satisfaction of the City. If the City determines that the Services set forth in the written invoice have not performed in accordance with the terms of this Agreement, the City is not responsible for payment until the Services have been satisfactorily performed.

B. **Invoicing**. Consultant must submit to the City monthly written invoices to the City's Project Representative, identified in Section 5 below. Invoices must be prepared in a form satisfactory to the City, describing the services rendered and associated costs for the period covered by the invoice. The City will provide invoicing format upon request. Consultant may not bill the City for duplicate services performed by more than one person. Consultant's invoices must include, but are not limited to, the following information:

i. Project Title, the City's Purchase Order number and City's Project Code(s) for each project;

ii. Invoice number and date;

iii. A brief description of services performed for each project phase and/or task;

iv. The budgeted amount for each phase, task and item, including the total amount, with the same for approved Change Orders, if any;

v.   Amount invoiced to date divided by the agreed total compensation, expressed as a percentage, with the same for approved Change Orders, if any;

vi.   The amount earned and invoiced to date for each phase, task and/or item, including the total amount, with the same for approved Change Orders, if any;

vii.   The amount previously invoiced for each phase, task and/or item, including the total amount, with the same for approved Change Orders, if any;

viii.   The amount due for the period covered by this invoice for each phase, task, and/or item, including the total amount, with the same for approved Change Orders, if any;

ix.   For time and materials authorizations, the number of hours spent, by whom and their hourly rate for each phase, task and/or item, including the total amount;

x.   The costs incurred, including reimbursables, for each phase, task, and/or item for the agreed total compensation and approved Change Orders, if any, along with a brief description of those costs;

xi.   The total amount due for the period covered by this invoice, including subconsultants and vendors of services or goods;

xii.   Copies of subconsultant, vendor, and reimbursable invoices including hourly breakdowns when requested by City.

xiii.   Copies of subconsultant and vendor lien releases.

Any such invoices must be in full accord with any and all applicable provisions of this Agreement. Consultant must submit invoices to the City on or before the sixteenth (16th) day of each month for services performed in the preceding month.

The City will review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid.

Except as to any charges for work performed or expenses incurred by Consultant that are disputed by City, the City will pay on each such invoice within thirty (30) days of receipt; provided, however, that if Consultant submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement. If any charges or expenses are disputed by City, the invoice will be returned by City to Consultant for correction and resubmission, and the City will not be obligated to process any payment to Consultant until thirty (30) days after a correct and complying invoice has been submitted by Consultant. Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to City at the time of payment. City reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work is found to be non-conforming to the terms of this Agreement.

The City is not obligated to pay Consultant a greater percentage of the Maximum Authorized Expenditure than the actual percentage of services completed as of the invoice date.

Consultant agrees to remit and is responsible for all withholding taxes, income taxes, unemployment insurance deductions, and any other deductions required by applicable federal, state or local laws and regulations for Consultant, its employees, subconsultants and vendors of services or goods.

C. **Adjustment of Maximum Authorized Expenditure**. The City may increase or decrease the Maximum Authorized Expenditure by issuing a Change Order to the Agreement in accordance with Section 1.B "Change Orders" above. Should Consultant consider that any request or instruction from the City's Project Representative constitutes a change in the scope of services, Consultant will advise the City's Project Representative, in writing, within fourteen (14) calendar days of such request or instruction. Without said written advice within the time period specified, the City is not obligated to make any payment of additional compensation to Consultant.

D. **Hourly Rates**. Payment for all authorized services, including payment for authorized on-call, as-needed services, will be made by the City to Consultant in accordance with the various hourly rates as set forth in the Consultant's Compensation & Fee Schedule (Exhibit "C").

E. **Subconsultants and Vendors**. Invoices for subconsultants and vendors of services or goods will be paid by the City to Consultant in accordance with the various rates as set forth in the Consultant's Compensation & Fee Schedule (Exhibit "C"). All reimbursable expenses will be considered as included within the Maximum Authorized Expenditure. Consultant is solely responsible for payment to subconsultants and vendors of services or goods, and the City is not responsible or liable for any payments to subconsultants and vendors, either directly or indirectly.

F. **Audit and Examination of Accounts**:

   i.   Consultant must keep and will cause any assignee or subconsultant under this Agreement to keep accurate books of records and accounts, in accordance with sound accounting principles, which pertain to services to be performed under this Agreement.

   ii. Any audit conducted of books of records and accounts must be kept in accordance with generally accepted professional standards and guidelines for auditing.

   iii. Consultant must disclose and make available any and all information, reports, books of records or accounts pertaining to this Agreement to the City and any city of the County of Monterey, or other federal, state, regional or governmental agency which provides funding for these Services.

   iv. Consultant must include the requirements of Section 2F, "Audit and Examination of Accounts", in all contracts with assignees or subconsultants under this Agreement.

v.   All records provided for in this Section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than four (4) years after full completion of the Services. All records, which pertain to actual disputes, litigation, appeals or claims, must be maintained and made available for a period of not less than four (4) years after final resolution of such disputes, litigation, appeals or claims.

[INCLUDE THE FOLLOWING SECTION IF PSA IS FOR AN ON-CALL AGREEMENT OR CONTAINS OPTION FOR ON-CALL WORK]

G.   **On-Call Agreements.** The amount of work (scope of services) to be requested during the Agreement term cannot be well defined at the outset. The Consultant agrees to perform the work on an on-call basis in such increments and at such times as defined in written work requirements issued by the City as the need arises. The Consultant agrees that the offer to perform the work at the various rates as set forth in the Consultant's Fee Schedule (Exhibit "C") remains in effect for all work requirements issued by the City during the Agreement term or until the exhaustion of the Agreement funding limit, whichever occurs first. The City does not guaranty a minimum dollar value of work.

3.   AGREEMENT TERM

A.   **Term**. The work under this Agreement will commence by [start date of contract] and must be completed by [end date of contract] unless sooner terminated or the City grants an extension of time in writing pursuant to the terms of this Agreement, except for provisions in this Agreement that will survive the termination or completion of this Agreement. Consultant will perform Change Order services as set out in Section 1.B, "Amendment of Services (Change Orders)", in a timely manner or in accordance with the agreed upon Change Order Project Schedule.

B.   **Timely Work**. Consultant will perform all Services in a timely fashion, as set forth more specifically in Section 3.A, "Term", and Section 3.C, "Project Schedule", of this Agreement. Failure to perform is deemed a material breach of this Agreement, and the City may terminate this Agreement with no further liability hereunder, or may authorize, in writing, an extension of time to the Agreement.

C.   **Project Schedule**. Services must be completed by Consultant in accordance with the Project Schedule set forth in Exhibit "C". The parties may, from time to time, by Change Order, alter the Project Schedule. Consultant will provide the Services pursuant to the Project Schedule or any applicable Project Schedule Change Order. If at any time Consultant discovers that the Project Schedule cannot be met, Consultant must promptly notify the City in writing and provide a revised Project Schedule for review and consideration by City.

[THE FOLLOWING PARAGRAPH TO BE INCLUDED IF A PROJECT SCHEDULE IS NOT REQUIRED BUT SPECIFIC PROJECT DATES ARE KNOWN OR REQUIRED]

If a Project Schedule is not required, Consultant will perform the Services under this Agreement in accordance with the following phase, task and/or milestone dates:

D. **Notice to Proceed**. Upon execution of this Agreement by both parties and the receipt of all documentation required by this Agreement to be provided by Consultant to the City, including proof of insurance and tax identification numbers, the City will issue a written Notice to Proceed to the Consultant. The City may, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the work. Upon receipt of such notices, Consultant will diligently proceed with the Services authorized and complete those Services within the agreed time specified in said notice. Consultant will not proceed with any of the Services unless they have received a Notice to Proceed from the City.

4. **CONSULTANT'S EMPLOYEES AND SUBCONSULTANTS**

A. **Listed Employees and Subconsultants.** Consultant will perform the Services using the individuals listed in the Key Employees and Subconsultants List attached hereto in Exhibit "B".

B. **Substitution of Employees or Subconsultants:**

i. Consultant may not substitute any key employee or subconsultant listed in Exhibit "B" without the prior written approval of the City, and such approval will not be unreasonably withheld. The City wil not approve removal or substitution of employees or subconsultants for the reason that Consultant or its affiliates has called on such individuals to perform services for another client of the Consultant.

ii. If, at any time, the City reasonably objects to the performance, experience, qualifications or suitability of any of Consultant's employees or subconsultants, then Consultant may, upon written request from the City, replace such employee or subconsultant. Consultant must, subject to scheduling and staffing considerations, make reasonable efforts to replace the individual with an individual of similar competency and experience.

iii. Whether or not the City consents to, or requests a substitution of any employee or subconsultant of Consultant, the City will not be liable to pay additional compensation to Consultant for any replacement or substitution.

C. **Sub-agreements with Subconsultants.** Consultant will incorporate the terms and conditions of this Agreement into all sub-agreements with subconsultants in respect of the Services necessary to preserve all rights of the City under this Agreement. Consultant is fully responsible to the City of all acts and omissions of subconsultants and of persons employed by any subconsultant.

D. **Not an Agent of the City.** Nothing in this Agreement will be interpreted to render the City the agent, employer, or partner of Consultant, or the employer of anyone working for or subcontracted by Consultant, and Consultant must not do anything that would result in anyone working for or subcontracted by Consultant being considered an employee of the City. Consultant is not, and must not claim to be, an agent of the City.

E. **Independent Contractor**:

i. Consultant is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City may not control or direct the details, means, methods or processes by which Consultant performs the Services. Consultant is responsible for performance of the Services and may not delegate or assign any Services to any other person except as provided for in this Agreement. Consultant is solely liable for the work quality and conditions of any partners, employees and subconsultants.

ii. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Consultant may not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Consultant will be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Consultant's performance of Services under this Agreement. Consultant will defend, indemnify and hold the City harmless from any and all liability, which the City may incur because of Consultant's failure to pay such taxes.

5. **REPRESENTATIVES AND COMMUNICATIONS**

A. **City's Project Representative.** The City appoints the individual named below as the City's Project Representative for the purposes of this Agreement ("City's Project Representative"). The City may unilaterally change its project representative upon notice to Consultant.

Name: _____

Title: _____

Address:

Telephone: _____

Email: _____

B. **Consultant's Project Manager.** Consultant appoints the person named below as its Project Manager for the purposes of this Agreement ("Consultant's Project Manager").

Name: _____

Title: _____

Company: _____

Address: _____

Telephone: _____

Email: _____

C. **Meet and Confer**. Consultant agrees to meet and confer with the City's Project Representative, its agents or employees with regard to Services as may be required by the City to insure timely and adequate performance of this Agreement.

D. **Communications and Notices**. All communications between the City and Consultant regarding this Agreement, including performance of Services, will be between the City's Project Representative and Consultant's Project Manager. Any notice, report, or other document that either party may be required or may wish to give to the other must be in writing and will be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

6. **INDEMNIFICATION**

Consultant hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Consultant will defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, Court costs, reasonable attorneys' fees as may be determined by the Court, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant or subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee will not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnitee.

Notwithstanding the provisions of the above paragraph, Consultant agrees to indemnify and hold harmless the City from and against all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Consultant or Consultant's employees, subconsultants, representatives, patrons, guests or invitees.

In no event will the obligation of the Consultant exceed the limitations on the duty to defend and indemnify as set forth in Civil Code Sections 2782, 2782.6, and 2782.8.

7. **INSURANCE**

Consultant must submit and maintain in full force all insurance as described herein. Without altering or limiting Consultant's duty to indemnify, Consultant must maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

A. Commercial General Liability Insurance including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate.

B. <u>Professional Liability Insurance</u> with limits of not less than $1,000,000 per occurrence or claim and $2,000,000 in the aggregate. Consultant will have a policy for professional liability coverage that provides coverage on an occurrence basis or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the City's acceptance of the work.

C. <u>Automobile Liability Insurance</u> covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing Services under this Agreement, with a combined single limit of not less than $1,000,000 per occurrence.

D. <u>Workers' Compensation Insurance</u>. If Consultant employs others in the performance of this Agreement, Consultant must maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of $1,000,000 per occurrence.

E. <u>Other Insurance Requirements</u>:

i. All insurance required under this Agreement must be written by an insurance company either:

a. admitted to do business in California with a current A.M. Best rating of no less than A:VI; or
b. an insurance company with a current A.M. Best rating of no less than A:VII. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

ii. Each insurance policy required by this Agreement may not be canceled, except with prior written notice to the City.

iii. All liability and auto policies must:

a. Provide an endorsement naming the City of Carmel-by-the-Sea, its officers, officials, employees, and volunteers as additional insureds. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

b. Provide that such Consultant's insurance is primary as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Carmel-by-the-Sea is excess to the Consultant's insurance and will not contribute with it.

c. Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.

d. Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or its equivalent.

iv.　Prior to the start of work under this Agreement, Consultant will file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City. Consultant will file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

v.　Neither the insurance requirements hereunder, nor acceptance or approval of Consultant's insurance, nor whether any claims are covered under any insurance, may in any way modify or change Consultant's obligations under the indemnification clause in this Agreement, which will continue in full force and effect. All coverage available to the Consultant as named insured will also be available and applicable to the additional insured. Notwithstanding these insurance requirements, Consultant is financially liable for its indemnity obligations under this Agreement.

vi.　All policies must be written on a first dollar coverage basis or contain a deductible provision. Any deductibles or self-insured retentions ("SIR") must be declared to and approved by the City. At the option of the City, either: the insured will reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers; or Consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. In no event will any SIR or insurance policy contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured, or by any means including other insurance, or which is intended to defeat the intent or protection of an additional insured.

vii.　City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

viii.　Consultant must require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements in this Agreement.

ix.　If Consultant, for any reason, fails to have in place at all times during the term of this Agreement all of the required insurance coverage, the City may, but is not obligated to, obtain such coverage at Consultant's expense and deduct the cost from the sums due Consultant. Alternatively, City may terminate the Agreement.

x.　The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Should any coverage carried by the Consultant or any subcontractor of any tier have limits of liability that exceed the limits or have broader coverage than required in this Agreement, those higher limits and that broader coverage are deemed to apply for the benefit of any person or organization included as an additional insured and those limits and broader coverage will become the required minimum limits and insurance coverage in all sections of this Agreement. Any insurance proceeds available to City in excess of the limits and coverages

required by this Agreement, and which is applicable to a given loss, must be made available to City to compensate it for such losses.

xi. Consultant must give City prompt notice of claims made of lawsuits initiated that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability insurance policies.

xii. The Consultant hereby waives any right of subrogation that any of its insurers may have or that they may accrue out of the payment of any claim related to the Consultant's performance of this Agreement, regardless of whether any endorsements required by this section are obtained.

8. PERFORMANCE STANDARDS

A. Consultant warrants that Consultant and Consultant's agents, employees, and subconsultants performing Services under this Agreement are specially trained, experienced, and competent and have the degree of specialized expertise contemplated within California Government Code Section 37103, and further, are appropriately licensed to perform the work and deliver the Services required under this Agreement.

B. Consultant, its agents, employees, and subconsultants must perform all Services in a safe and skillful manner consistent with the usual and customary standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields in accordance with sound professional practices. All work product of Consultant must comply with all applicable laws, rules, regulations, ordinances and codes. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and will advise City of any changes in any laws that may affect Consultant's performance of this Agreement. All Services performed under this Agreement that are required by law to be performed or supervised by licensed personnel must be performed in accordance with such licensing requirements.

C. Consultant must furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Consultant may not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

D. Consultant agrees to perform all work under this Agreement to the satisfaction of City and as specified herein. The City's Project Representative or his or her designee will evaluate the work. If the quality of work is not satisfactory, City in its discretion may meet with Consultant to review the quality of work and resolve the matters of concern, and may require Consultant to repeat the work at no additional fee until it is satisfactory.

9. CITY INFORMATION AND RESOURCES

A. **Available Information.** The City will make available to Consultant all relevant information, plans, maps, reports, specifications, standards and pertinent data which is in the hands of the City and is required by Consultant to perform the Services. Consultant may rely upon the accuracy and completeness of such information and data furnished by the City, except where it is stated otherwise or unreasonable.

B. **City Resources.** The City acknowledges that Consultant's ability to provide the Services in accordance with this Agreement may be dependent on the City providing available information and resources in a prompt and timely manner as reasonably required by Consultant. To the extent that the City fails to provide City resources, Consultant will not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event will such delay or failure to provide City resources constitute a breach of this Agreement by the City, nor will Consultant be entitled to extra compensation for same. Consultant's sole remedy shall be an extension of time to complete the Scope of Services.

C. **Obligations of Consultant.** No reviews, approvals, or inspections carried out or supplied by the City will derogate from the duties and obligations of Consultant, and all responsibility related to performance of the Services will be and remain with Consultant.

10. **OWNERSHIP AND USE OF MATERIALS**

A. **Ownership of the Materials.** All data, studies, reports, calculations, field notes, sketches, designs, drawings, plans, specifications, cost estimates, manuals, correspondence, agendas, minutes, notes, audio-visual materials, photographs, models, software data, computer software (if purchased on the City's behalf) and other documents or products produced by Consultant under this Agreement (collectively, "the Materials") are and will remain the property of the City even though Consultant or another party may have physical possession of them or a portion thereof. Consultant hereby waives, in favor of the City, any moral rights Consultant, its employees, subconsultants, vendors, successors or assignees may have in the Materials.

B. **No Patent or Copyright Infringement.** Consultant guarantees that in its creation of the Materials produced under this Agreement, no federal or state patent or copyright laws were violated. Consultant agrees that all copyrights, which arise from creation of the work or Services pursuant to this Agreement, will be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Consultant covenants that it will defend, indemnify and hold City harmless from any claim or legal action brought against the City for alleged infringement of any patent or copyright related to City's use of Materials produced by Consultant and its employees, agents and subconsultants under this Agreement.

C. **Delivery and Use of the Materials.** All Materials will be transferred and delivered by Consultant to the City without further compensation following the expiration or sooner termination of this Agreement, provided that the City may, at any time prior to the expiration or earlier termination of this Agreement, give written notice to Consultant requesting delivery by Consultant to the City of all or any part of the Materials in which event Consultant must forthwith comply with such request. The Materials created electronically must be submitted in a format and medium acceptable to the City. The Materials may be used by the City in any manner for the intended purpose or as part of its operations associated with the Materials.

D. **Survival of Ownership and Use Provisions.** The provisions contained in Section 10, Ownership and Use of Materials survives the expiration or earlier termination of this Agreement, and that this Section is severable for such purpose.

E. **Additional Copies**. If the City requires additional copies of reports, or any other material that Consultant is required to furnish as part of the Services under this Agreement, Consultant must provide such additional copies, and the City will compensate Consultant for the actual costs related to the production of such copies by Consultant.

11. CONFIDENTIALITY

A. **No Disclosure.** Consultant must keep confidential and may not disclose, publish or release any information, data, or confidential information of the City to any person other than representatives of the City duly designated for that purpose in writing by the City. Consultant may not use for Consultant's own purposes, or for any purpose other than those of the City, any information, data, or confidential information Consultant may acquire as a result of the performance of the Services under this Agreement. Consultant must promptly transmit to the City any and all requests for disclosure of any such confidential information or records. The obligations under this Section will survive the expiration or earlier termination of this Agreement.

B. **California Public Records Act.** Consultant acknowledges that the City is subject to the California Public Records Act (Government Code Section 6250 et seq.), known as the "PRA", and agrees to any disclosure of information by the City as required by law. Consultant further acknowledges that it may have access to personal information as defined under the PRA, and Consultant will not use any such personal information for any purposes other than for the performance of Services under this Agreement without the advance written approval of the City.

All Scopes of Services and related documents received will be public records, with the exception of those elements, identified by the Consultant as business trade secrets and are plainly marked "Trade Secret", "Confidential" or "Proprietary". If disclosure is required under the PRA or otherwise by law, the City will not be liable or responsible for the disclosure of any such records and the Consultant will indemnify, defend, and hold the City harmless for any such disclosure.

12. CONFLICT OF INTEREST

Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City relating to this Agreement or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.), and California Government Code section 1090.

Consultant is required to file a Form 700 in compliance with the City's Conflict of Interest Code unless a written determination by the City Administrator is made modifying or eliminating said requirement, or unless otherwise exempted by law.

In addition, Consultant, Consultant's employees, and subconsultants agree as follows:

A. That they will conduct their duties related to this Agreement with impartiality, and must, if they exercise discretionary authority over others in the course of those duties, disqualify themselves

from dealing with anyone with whom a relationship between them could bring the impartiality of Consultant or its employees into question;

B. May not influence, seek to influence, or otherwise take part in a decision of the City knowing that the decision may further their private interests;

C. May not accept any commission, discount, allowance, payment, gift, or other benefit connected, directly or indirectly, with the performance of Services related to this Agreement, that causes, or would appear to cause, a conflict of interest;

D. May have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Services related to this Agreement, and if such financial interest is acquired during the term of this Agreement, Consultant must promptly declare it to the City, and;

E. May not, during the term of this Agreement, perform a service for, or provide advice to, any person, firm, or corporation, which gives rise to a conflict of interest between the obligations of Consultant under this Agreement and the obligations of Consultant to such other person, firm or corporation.

13. DISPUTE RESOLUTION

A. **Dispute Resolution Procedures.** The parties will make reasonable efforts to promptly resolve any dispute, claim, or controversy arising out of or related to this Agreement ("Dispute") using the Dispute Resolution Procedures set forth in this Section.

B. **Negotiations.** First, the City's Project Representative and Consultant's Project Manager will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations. Should these negotiations be unsuccessful in resolving the Dispute, the matter will be promptly referred to the City Administrator or designee, and the Consultant's Principal, who will meet and confer, in good faith, to resolve the Dispute to mutual satisfaction of the parties.

C. **Mediation.** If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days of the date that the matter was referred to the City Administrator pursuant to subsection B above, either party may, by notice to the other party, submit the Dispute for formal mediation to a mediator selected mutually by the parties from the Monterey Superior Court's Court-Directed Mediator Panel list. The duration of any such mediation may not exceed 2 hours unless otherwise agreed to by the parties. The cost of the mediation (including fees of mediators) will be borne equally by the parties, and each party will bear its own costs of participating in mediation. The mediation will take place within or in close proximity to the City of Carmel-by-the-Sea.

In any mediation conducted pursuant to this section, the provisions of California Evidence Code section 1152 willl be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation. In the event the parties are unsuccessful in resolving the dispute through the mediation process, then the parties agree that the dispute will be submitted to Binding Arbitration to a single Arbitrator in accordance with the existing Rules of Practice and

Procedure of the Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

D. **Arbitration.** The submission to Mediation and Arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrator will have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and is subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" will be determined in the Arbitration, and the prevailing party will be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs will include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees will be considered costs recoverable in that proceeding, and be included in any award.

14. **TERMINATION OF AGREEMENT**

A. **Termination for Cause or Default.** The City reserves the right to immediately terminate this Agreement, in whole or in part, if Consultant or any subconsultant defaults or fails to deliver the Services in accordance with the terms and conditions of this Agreement. Such termination must be in writing, setting forth the effective date of termination, and will not result in any penalty or other charges to the City, and may be issued without any prior notice. Without limitation, Consultant is in default of its obligations contained in this Agreement if Consultant, or any subconsultant:

   i.   Fails to perform the required Services within the term and/or in the manner provided under this Agreement;

   ii. Fails to supply sufficient, properly skilled workers or proper workmanship, products, material, tools and equipment to perform the Services;

   iii. Fails to observe or comply with all laws, ordinances, including all requirements of governmental or quasi-governmental authorities, including federal, state, and local government enactments, bylaws, and other regulations now or, following the date of this Agreement, in force that pertain to;

   iv. Fails to observe or comply with the City's reasonable instructions;

   v.   Breaches the Conflict of Interest provisions of this Agreement; or

   vi. Otherwise violates any provision of this Agreement.

B. **Termination for Convenience.** The City may, at its option and sole discretion, terminate this Agreement, in whole or in part, with or without cause, at any time during the Agreement Term for the convenience of the City, upon ten (10) days written notice to the Consultant.

C. **Steps after Termination:**

i. Upon termination of this Agreement by the City for any reason, the City will pay Consultant for satisfactorily performed Services and disbursements incurred by Consultant to the date of termination pursuant to this Agreement, less any amounts necessary to compensate the City for damages or costs incurred by the City arising from Consultant's default. Termination will be without prejudice to any other rights or remedies the City may have.

ii. Upon receipt of written notice of termination of this Agreement by the City for any reason, Consultant must:

a. Promptly cease all Services, including Services provided by any subconsultant, unless otherwise directed by the City; and

b. Deliver to the City all the Materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. Such Materials are to be delivered to the City in completed form; however, notwithstanding the provisions of Section 10, Ownership and Use of Materials, herein, the City may condition payment for services rendered to the date of termination upon Consultant's delivery to the City of such Materials.

iii. If this Agreement is terminated by the City for any reason, the City is hereby expressly permitted to assume the projects and Services, and to complete them by any means including, but not limited to, an agreement with another party.

15. LEGAL ACTION / VENUE

A. Should either party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement will be controlled by and construed under the laws of the State of California, excluding California's choice of law rules.

B. Venue for any such action relating to this Agreement will be in Monterey County.

C. If any legal action or proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party may recover reasonable attorneys' fees as may be determined by the Arbitrator, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

16. MISCELLANEOUS PROVISIONS

A. **Non-discrimination**. During the performance of this Agreement, Consultant, and its subconsultants, may not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, or sexual orientation, either in Consultant's employment practices or in the furnishing of services to recipients. Consultant further acknowledges that harassment in the workplace is not permitted in any form, and will take all necessary actions to prevent such conduct.

B. **Acceptance of Services Not a Release**. Acceptance by the City of the Services to be performed under this Agreement does not operate as a release of Consultant from professional responsibility for the Services performed.

C. **Force Majeure**. Either party is absolved from its obligation under this Agreement when and to the extent that performance is delayed or prevented, and in the City's case, when and to the extent that its need for vehicles, materials, or Services to be supplied hereunder are reduced or eliminated by any course, except financial, for reasons beyond its control. Such reasons include, but are not limited to: earthquake, flood, epidemic, fire, explosion, war, civil disorder, act of God or of the public enemy, act of federal, state or local government, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

D. **Headings**. The headings do not govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.

E. **Entire Agreement**. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the terms, conditions, and Services and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written, relating to the subject matter thereof pursuant to Section 1B, "Change Order of Services". Any Change Order to this Agreement will be effective only if it is in writing signed by both parties hereto and will prevail over any other provision of this Agreement in the event of inconsistency between them.

F. **Conflict between Agreement and Exhibits**. In the event of a conflict between a provision in this Agreement and a provision in an Exhibit attached to this Agreement, the provisions in this Agreement will take precedence.

G. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and may be signed in counterparts, but all of which together will constitute one and the same Agreement.

H. **Multiple Copies of Agreement**. Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that governs should any difference exist among counterparts of this Agreement.

I. **Authority**. Any individual executing this Agreement on behalf of the City or Consultant represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

J. **Severability**. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired thereby. Limitations of liability and indemnities will survive termination of the Agreement for any cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

K. **Non-exclusive Agreement**. This Agreement is non-exclusive and both the City and Consultant expressly reserve the right to enter into agreements with other Consultants for the same or similar services, or may have its own employees perform the same or similar services.

L. **Assignment of Interest**. The duties under this Agreement are not assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer constitutes a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.

M. **City Business License**. Prior to receiving a Notice to Proceed from the City, Consultant will obtain and maintain a valid City of Carmel-by-the-Sea Business License for the duration of the Agreement. Costs associated with the license are the responsibility of Consultant.

N. **Laws**. Consultant agrees that in the performance of this Agreement it will comply with all applicable federal, state and local laws and regulations. This Agreement will be governed by and construed in accordance with the laws of the State of California and the City of Carmel-by-the-Sea.

IN WITNESS WHEREOF, the parties enter into this Agreement hereto on the day and year first above written in Carmel-by-the-Sea, California.

CITY OF CARMEL-BY-THE-SEA   CONSULTANT

_____   _____
Mayor, City Administrator, or Designee Signature   Consultant Signature

_____   _____
Printed Name   Date   Printed Name   Date

_____   _____
Title   Title

                                                                            _____
                                                                            Consultant Legal Company Name

APPROVED AS TO FORM:

By: _____   Date: _____
Brian Pierik, City Attorney

ATTEST:

By: _____ Date: _____
     Yashin Abbas, Interim City Clerk

[EDIT LIST OF ATTACHMENTS]

Exhibit "A"   Scope of Services
Exhibit "B"   Key Personnel & Compensation
Exhibit "C"   Fee Schedule
Exhibit "D"   Project Schedule