



PUBLIC WORKS DEPARTMENT
2220 Hackett Road
Ceres, CA 95307
(209) 538-5732

Public Works Department

April 19, 2023

Request for Proposals 2023 Elevator Maintenance Services Due: June 1, 2023, at 2:00 PM

The purpose of this Request for Proposals is to hire a qualified contractor to provide service and maintenance of the elevators located at the Ceres Community Center and Police Department (Public Safety Building).

- Conveyance Number: 083488 Unit ID or Serial # E-93543
located at **Ceres Public Safety Building**, 2727 Third Street, Ceres, CA. 95307
- Conveyance Number: 152790 Unit ID or Serial # EX8857
located at **Ceres Community Center**, 2701 Fourth Street, Ceres, CA. 95307

All interested parties are required to submit proposals in accordance with the conditions and dates outlined in this RFP.

SCOPE OF SERVICES

This Scope of Services includes tasks to be completed to assist the City with service and maintenance of its existing elevators. Items within this scope include:

1. Preventive Maintenance Program
2. Full coverage parts repair and replacement
3. Load testing
4. Smoke testing
5. 24 Hour telephone service for emergency call service

Specifications:

1. Preventive Maintenance Program
 - a. Control and Landing position systems
 - b. Signal fixtures
 - c. Machines, drives, motors, governors, sheaves, and wire ropes
 - d. Power units, pumps, valves, and jacks
 - e. Car and hoist way door operating devices and door protection equipment
 - f. Load weights, car frames and platforms, and counterweights
 - g. Safety mechanisms
 - h. Lubricate equipment for smooth and efficient performance
 - i. Adjust elevator parts and components to maximize performance and safe operations
2. Full coverage parts repair and replacement
 - a. Contractor shall provide full coverage parts repair and or replacement for all components within the 2 elevators found worn due to normal wear
 - b. All replacement parts shall be new or refurbished and meet quality standards
 - c. Contractor shall re-lamp all signals as required during visit
3. Load Testing
 - a. Perform annual load testing as per State of California regulations
4. Smoke Testing
 - a. Perform annual smoke and fire alarm testing as per State of California regulations outside of normal operating hours
5. 24-Hour telephone service for emergency call service
 - a. Contractor must be able to respond to emergency calls 24/7 with trained staff to make any repairs necessary to continue the operation of the elevator system

GENERAL INFORMATION

1. Contract term is for three (3) years.
2. The Contractor shall be responsible for the skills, methods, actions, and work done by their personnel. The Contractor shall work directly with the City's Public Works Department in determining the quality of the work being performed. The Contractor shall give personal supervision to the work performed and shall be available for consultation.
3. Any information that the City cannot provide to the Contractor that is necessary to properly perform the scope of services is the responsibility of the Contractor to obtain and/or develop.
4. The City reserves the right to reject any and all bids.
5. No interpretation of the meaning of the bid or specifications will be made to any bidder orally. All requests for interpretations and/or clarification shall be in the

form of an e-mail. (See notes below for contact information)

6. Responses to requests for interpretation and/or clarification as well as any supplemental instructions will be in the form of written addendum to the bid. Addendum shall be placed on the City's website under RFP and Bid Opportunities for this project on the date noted below, May 5, 2023. Failure of any bidder to receive any such addendum shall not relieve such bidder from any obligation under their bid as submitted. All addendums so issued shall become part of the contract documents. **Any addendum posted must be acknowledged and returned, signed, and attached to bid submission.**
7. If the work performed does not meet the specifications and repeated requests are made to have the work corrected without satisfaction, the City may enforce a monetary penalty or terminate this contract. Any unsatisfactory issues will be noted as to the time and date of communication to the contractor for correction. Corrections shall be made within three (3) days of notice. Multiple notifications for the same issues over a period and or failure to correct issues may constitute a breach of contract.
8. Attached is a copy of the City's Standard Agreement for Professional Services. Once a contractor is selected, they will be expected to sign a contract and meet or exceed the insurance requirements listed as Exhibit B in the contract packet. NO EXCEPTIONS.
9. The City guarantees no minimums or maximums for the amount of work issued during this contract.
10. Preliminary orders and orders to correct or show cause. Contractor shall correct in a timely manner and file appropriate forms and paperwork for the State of California to remain compliant and maintain permitted status.

The work to be done includes the furnishing of all labor, materials, tools, equipment, and incidentals necessary to complete all the work provided for in the Scope of Services. All work shall be done in accordance with standard methods and practices for elevator maintenance standards.

INVOICING AND PAYMENT

Contractor shall invoice the City for services performed monthly. All invoices shall be sent via email by the 10th day of the preceding month to Elyse.Davis-Capoeman@ci.ceres.ca.us

1. Preventative Maintenance activities completed monthly shall be billed in 12 equal monthly invoices per year of the contract term.
2. All other activities completed during the month shall be billed separately from the preventative maintenance activities.
3. Maintain a log of each visit including date, time, and work accomplished to be submitted as back-up with the invoice.
4. Contractor shall not be paid for partial work.

ASSUMPTIONS

1. The bidder shall carefully examine the site(s) of work. A pre-bid meeting can be requested prior to May 5, 2023. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and scope of services to be performed, and the quantities of materials and equipment to be furnished as to the requirements.
2. Proposals may be rejected if they show any alteration of form, additions not called for, conditional bids, incomplete bids, obviously unbalanced prices, erasures, or irregularities of any kind. The City reserves the right to reject any and all proposals.
3. All proposals must be returned on both Bid Form and Bid Summary in the attached forms. Bids can be mailed, hand delivered or emailed. Any incomplete bids shall be rejected.
4. Contractor shall be responsible to hold all licenses and certifications required to perform any task within these specifications.
5. The contractor chosen as the Successful Bidder will be required to obtain a City of Ceres business license.

DELIVERABLES:

1. Provide an introductory letter that contains a statement of the company's interest in the work, years in business, short list of clients with contact name and phone number for reference verification.
 - o Provide documentation showing the company's certifications and licensing as it relates to elevator service and maintenance.
 - o Provide a detailed description of the company's overall approach to preventive maintenance, load testing, and smoke testing as it relates to the specific elevators listed.
 - o All parts provided as part of this agreement shall be paid on a percentage markup. The actual invoice for the parts used must be accompanied with the invoice to receive payment.
2. All requests for information or clarification for this project shall be in the form of an e-mail to Public Works Administrative Secretary, Elyse Davis at Elyse.Davis-Capoeman@ci.ceres.ca.us.
3. Response to all requests for information or clarification will be in the form of addenda. Addenda shall be posted to the City's website under Bid and RFP Opportunities for this project. Addenda must be noted as received on bid summary or bid will be considered incomplete.
4. Important Dates:
 - a) RFP Advertisement Date: April 19, 2023
 - b) Requests for Interpretation and Clarification: May 5, 2023
 - c) Addenda Due to Contractors: May 12, 2023
 - d) Bids Due: June 1, 2023 @ 2:00 PM

There will not be a formal bid opening for this RFP. Each contractor that submits a bid packet will be contacted individually once a Successful Bidder is determined.

- e) Tentative City Council Award Date: June 26, 2023**
- f) New Service Agreement will begin August 1, 2023 (tentative)**

5. Bid Submission:

- a) Proposals shall be submitted to the Public Works Department by mail, hand delivery or email.
- b) Completely fill out Bid Summary below. Failure to complete Bid Summary shall result in an incomplete bid by Contractor.
- c) Supply Contact information for three references of work currently being performed of equal size.
- d) Provide Certificates of Insurance with limitations noted in Exhibit B of the Standard Agreement for Professional Services attached hereto.

6. Bids can be mailed, hand delivered or emailed to:

Elyse.Davis-Capoeman@ci.ceres.ca.us

Administrative Secretary
City of Ceres
Public Works Department
2220 Hackett Road
Ceres, CA 95307



CONTRACTOR BID INFORMATION

THE UNDERSIGNED AFFIRMS THAT IT IS DULY AUTHORIZED TO SUBMIT THIS BID, THAT THIS BID HAS NOT BEEN PREPARED IN COLLUSION WITH ANY OTHER RESPONDENT, AND THAT THE CONTENT OF THIS BID HAS NOT BEEN COMMUNICATED TO ANY OTHER RESPONDENT. CITY RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.

Name of Company:	
Company Address:	
Project and Location:	
Fed Tax ID#:	
City of Ceres Buss. License #:	
W-9 (If this is first time doing business with the City of Ceres)	
E-mail information or clarification in the form of addenda was received?	
Dept. of Industrial Relations (DIR) # (\$25,00.00 and over) and address if different than above location:	
Name of Project Manager:	
Representative's E-mail:	
Representative's Phone #:	
\$1,000,000 Certificate of Insurance:	
City Council Approval Date (\$25,000.00 and over)	
Name/Title of Authorized Signer:	
Authorized Signature	



Elevator Services
Bid Summary

Description	Cost
Annual Cost	
Monthly rate	
Scheduled time hourly rate	
Scheduled overtime hourly rate	
Emergency call out hourly rate	
Materials markup (Note % Markup)	

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into in the CITY of Ceres, State of California, this XX day of XXX 2023, by and between the CITY OF CERES, a municipal corporation of the State of California, hereinafter referred to as "CITY", and XXXXXXXXXXXXXXXX, hereinafter referred to as "CONTRACTOR" each individually a "Party" or collectively the "Parties"). There are no other parties to this Agreement.

NOW, THEREFORE, in consideration of this Agreement, and the mutual promises, covenants, and stipulations hereinafter contained, the parties agree as follows:

1. SCOPE OF SERVICES / PLANS AND SPECIFICATIONS

In compliance with all terms and conditions of this Agreement, the CONTRACTOR shall provide the contracted services specified in the "Scope of Services" attached hereto as Exhibit A and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the CITY entering into this Agreement, CONTRACTOR represents that it is a provider of work and services consistent with the standards of care, diligence and skill ordinarily exercised by contractors in similar circumstances in accordance with sound practices and that CONTRACTOR is experienced in performing the work and services contemplated herein. CONTRACTOR covenants that it will follow sound practices and standards in performing the work and services required hereunder and that all work product will be of good quality, fit for the purpose intended.

2. COMPLIANCE WITH LAW

All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the CITY and any Federal, State, or local governmental agency having jurisdiction in effect at the time service is rendered.

3. LICENSES, PERMITS, FEES, & ASSESSMENTS

CONTRACTOR shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement. CONTRACTOR shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties, and interest, which may be imposed by law and arise from or are necessary for the CONTRACTOR'S performance of the services required by this Agreement, and shall indemnify, defend and hold harmless CITY against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against CITY hereunder.

4. FAMILIARITY WITH WORK

By executing this Agreement, CONTRACTOR warrants that CONTRACTOR: (a) has thoroughly investigated and considered the Scope of Services to be performed; (b) has carefully considered how the services should be performed; and, (c) fully understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement. If services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the CONTRACTOR discover any latent or unknown conditions which will materially affect the performance of the services hereunder, CONTRACTOR shall immediately inform the CITY of such fact and shall not proceed except at CONTRACTOR'S risk until written instructions are received from the City's contract officer for this Agreement ("Contract Officer").

5. FURTHER RESPONSIBILITIES OF PARTIES

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

6. ADDITIONAL SERVICES

CITY shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the CONTRACTOR, incorporating therein any adjustment in (i) the contract sum, as set forth in Exhibit A, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the CONTRACTOR. Any change in compensation of ten percent (10%) or less of the Contract Sum, or in the time to perform, may be approved by the Contract Officer. Any greater change, taken either separately or cumulatively must be approved by City Council. It is expressly understood by CONTRACTOR that the provisions of this section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. CONTRACTOR hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than CONTRACTOR anticipates and that CONTRACTOR shall not be entitled to additional compensation, therefore.

7. TERM OF AGREEMENT

This Agreement shall be effective XXX XX, 2023 and will continue effect until XXX XX, 2023 or when completed, unless terminated earlier in accordance with the provisions of the termination clause in this Agreement.

8. COMMENCEMENT OF WORK

CONTRACTOR shall not undertake any work or incur any costs whatsoever under the terms of this Agreement except upon the prior receipt of a fully executed Purchase Order from the Ceres Department of Finance. Any costs incurred by CONTRACTOR prior to receipt of a purchase order shall be at CONTRACTOR'S expense.

9. COMPENSATION

For the services rendered pursuant to this Agreement, the CONTRACTOR shall be paid the amounts as provided in Exhibit A. The total compensation to CONTRACTOR shall not exceed **(\$XXX,XXX.XX)** unless the Parties mutually agree in writing otherwise.

10. TIME OF ESSENCE

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

11. SCHEDULE OF PERFORMANCE

CONTRACTOR shall begin to perform work required by the Scope of Services as provided in Exhibit A, immediately following receipt of a Notice to Proceed from the CITY. In addition to extensions granted under paragraph 12, when requested by the CONTRACTOR, other extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer, if the extension is determined, in the sole discretion of the Contract Officer, to be justified and reasonable. The Contract Officer's decision shall be final.

12. FORCE MAJEURE

The time period(s) specified in the Schedule of Performance for performance of the work rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control of CONTRACTOR and without the fault or negligence of CONTRACTOR, including but not limited to severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the CITY, if the CONTRACTOR shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall CONTRACTOR be entitled to recover damages against the CITY for any delay in the performance of this Agreement, however caused, CONTRACTOR'S sole remedy being extension of the Agreement pursuant to this Section.

13. OBLIGATIONS OF CONTRACTOR

Throughout the term of this Agreement, CONTRACTOR shall possess, or secure all licenses, permits, qualifications and approvals legally required to conduct business. CONTRACTOR warrants that he has all of the necessary professional capabilities and experience, as well as all tools, instrumentalities, facilities and other resources necessary to provide CITY with the contracted services contemplated by this Agreement. CONTRACTOR further warrants that he will reasonably follow the current, generally accepted, and professional practices and provide professional advice and recommendations regarding the performance of all work under this Agreement.

14. SUBCONTRACTING

Should the CONTRACTOR elect to engage any subcontractor(s) to perform any portion of the work, CONTRACTOR shall provide the CITY written notice of the name, address, telephone number, and State contractor's license number of each such subcontractor, together with proof of workers' compensation coverage for each such contractor. CONTRACTOR shall remain fully responsible for all acts or omissions of said subcontractors, their employees, agents or assigns.

15. INTEREST OF CONTRACTOR

CONTRACTOR warrants that he/it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR warrants that, in performance of this Agreement, CONTRACTOR shall not employ any person having any such interest. CONTRACTOR agrees to file a Statement of Economic Interests with the CITY Clerk at the start and end of this Agreement if so required at the option of CITY.

16. RECORDS

CONTRACTOR shall keep, and require subcontractors to keep, such books and records as shall be necessary to document the work required by this Agreement and enable the Contract Officer to evaluate the performance of such work.

The Contract Officer shall have full and free access to such books and records at all times during normal business hours of CITY, including the right to inspect, copy, audit, and make records and transcripts from such records. Such records shall be maintained for a period of four (5) years following completion of the services hereunder, and the CITY shall have access to such records in the event any audit is required.

17. AMENDMENTS

Both parties to this Agreement understand that it may become desirable or necessary during the performance of this Agreement, for CITY or CONTRACTOR to modify the Scope of Services provided for under this Agreement. Any material extension or change in the Scope of Services shall be discussed with CITY and the change and cost shall be memorialized in a written amendment to the original Agreement prior to the performance of the additional work.

Until a change order is so executed, CITY will not be responsible to pay any charges CONTRACTOR may incur in performing such additional services, and CONTRACTOR shall not be required to perform any such additional services.

18. INDEPENDENT CONTRACTOR

All acts of CONTRACTOR, his agents, officers, and employees and all others acting on behalf of CONTRACTOR relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers, or employees of CITY. CONTRACTOR, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of CITY. CONTRACTOR has no authority or responsibility to exercise any rights or power vested in CITY. No agent, officer, or employee of CITY is to be considered an employee of CONTRACTOR. It is understood by both CONTRACTOR and CITY that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.

CONTRACTOR, his agents, officers and employees are and, at all times during the term of this Agreement, shall represent and conduct themselves as independent contractors and not as employees of CITY.

CONTRACTOR shall determine the method, details and means of performing the work and services to be provided by CONTRACTOR under this Agreement. CONTRACTOR shall be responsible to CITY only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to CITY'S control with respect to the physical action or activities of the CONTRACTOR in fulfillment of this Agreement. CONTRACTOR has control over the manner and means of performing the services under this Agreement. CONTRACTOR is permitted to provide services to others during the same period service is provided to CITY under this Agreement. If necessary, CONTRACTOR has the responsibility for employing other persons or firms to assist CONTRACTOR in fulfilling the terms and obligations under this Agreement.

If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by the CONTRACTOR.

It is understood and agreed that as an independent contractor and not an employee of CITY neither the CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any entitlement as a CITY employee, right to act on behalf of CITY in any capacity whatsoever as an agent, or to bind CITY to any obligation whatsoever.

As an independent contractor, CONTRACTOR hereby indemnifies and holds CITY harmless from any and all claims that may be made against CITY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

19. NOTICES

Any and all notices permitted or required to be given hereunder shall be deemed duly given and effective (1) upon actual delivery, if delivery is by hand; or (2) five (5) days after delivery into the United States mail if delivery is by postage paid registered or certified (return receipt requested) mail. Each such notice shall be sent to

the parties at the address respectively indicated below or to any other address as the respective parties may designate from time to time in writing.

FOR CONTRACTOR: Name:
Address:

Attention:
Phone:

FOR CITY: Name: CITY of Ceres
Address: 2720 Second St.
Ceres, CA 95307
Attention: Sam Royal
Phone: (209) 538-5617

20. INSURANCE REQUIREMENTS

Insurance shall be provided as specified in Exhibit B.

21. TERMINATION OF AGREEMENT

Termination on Occurrence of Stated Events

This Agreement shall terminate automatically on the date on which any the following events occur: (1) bankruptcy or insolvency of CONTRACTOR, (2) legal dissolution of CONTRACTOR, or (3) death of key principal(s) of CONTRACTOR.

Termination by CITY for Default of CONTRACTOR

Should CONTRACTOR default in the performance of this Agreement or materially breach any of his provisions, at its option CITY may terminate this Agreement by giving written notification to CONTRACTOR. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to perform required services or duties, willful destruction of CITY'S property by CONTRACTOR, dishonesty, or theft.

Termination by CONTRACTOR for Default of CITY

Should CITY default in the performance of this Agreement or materially breach any of its provisions, at his/its option CONTRACTOR may terminate this Agreement by giving written notice to CITY. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement

shall include but not be limited to any of the following: failure to pay CONTRACTOR as hereafter provided, willful destruction of CONTRACTOR'S property by CITY, dishonesty, or theft.

Termination by CITY for Lack of Budgeted Funds

CITY may terminate this Agreement effective July 1 of any given year upon CITY'S determination to not appropriate sufficient funds for this Agreement for the ensuing fiscal year. In such event, CITY shall give CONTRACTOR not less than 30 days written notice.

Termination for Failure to Make Agreed-Upon Payments

Should CITY fail to pay CONTRACTOR all or any part of the payments set forth in this Agreement on the date due, at his option CONTRACTOR may terminate this Agreement if the failure is not remedied within thirty (30) days after CONTRACTOR notifies CITY in writing of such failure to pay. The termination date shall be the effective date of the notice.

Termination by CITY for Change of CONTRACTOR'S Tax Status

If CITY determines that CONTRACTOR does not meet the requirements of federal and state tax laws for independent contractor status, CITY may terminate this Agreement by giving written notice to CONTRACTOR. The termination date shall be the effective date of the notice.

Voluntary Termination

The parties may terminate this contract upon mutual written Agreement.

In the Event of Termination

If this Agreement is terminated pursuant to this Paragraph, CONTRACTOR shall cease all his work on the project as of the termination date and shall see to it that his employees, subcontractors, and agents are notified of such termination and cease their work. If CITY so requests, and at CITY'S cost, CONTRACTOR shall provide sufficient oral or written status reports to make CITY reasonably aware of the status of CONTRACTOR'S work on the project.

If the Agreement is terminated pursuant to any of the subsections contained in this paragraph, CITY will pay CONTRACTOR an amount based on the

percentage of work completed on the termination date; this percentage shall be determined by CITY in its sole discretion. If the Agreement is terminated pursuant to the subparagraph entitled Termination by CITY for Default of CONTRACTOR, CONTRACTOR understands and agrees that CITY may, in CITY'S sole discretion, refuse to pay CONTRACTOR for that portion of CONTRACTOR'S services which were performed by CONTRACTOR on the project prior to the termination date and which remain unacceptable and/or not useful to CITY as of the termination date.

22. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless CITY and its officers, officials and employees from and against all claims, damages, losses and expenses including reasonable attorney fees arising out of the performance of the work described herein, caused in whole or in part by any act or omission of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

CONTRACTOR'S obligation to defend, indemnify, and hold CITY, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for CONTRACTOR to procure and maintain a policy of insurance.

23. RETENTION

CITY shall retain ten percent (10%) of the contract price until final completion and acceptance of the project. The CITY shall release the retention not later than sixty (60) days after the date of completion of the work of improvement as defined in Public Contract Code, Section 7107. In the event of a dispute between the CITY and the CONTRACTOR the CITY may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

24. ENTIRE AGREEMENT

This Agreement and its exhibits contain the entire understanding between CONTRACTOR and CITY. Additional or new terms contained in this Agreement which vary from CONTRACTOR'S proposal are controlling and are deemed accepted by

CONTRACTOR by shipment of any article or other commencement of performance hereunder. All previous proposals, offers and communications relative to this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement. No future waiver of or exception to any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by all the parties.

25. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

26. WAIVER

The waiver by any party to this Agreement of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

27. AUDIT

CITY'S duly authorized representative shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify CONTRACTOR'S charges to CITY under this Agreement.

CONTRACTOR agrees to retain reports, records, documents, and files related to charges under this Agreement for a period of four (4) years following the date of final payment for CONTRACTOR services. CITY'S representative shall have the right to reproduce any of the aforesaid documents.

28. CONTRACT BONDS

CONTRACTOR shall provide in accordance with Sections 3247 and 3248 of the California Civil Code a payment bond for not less than 100% of the Agreement price. CONTRACTOR shall also provide a faithful performance bond for not less than 100% of the Agreement price. All bonds must be executed by a corporate surety licensed to conduct business in the State of California and approved by the CITY.

29. PAYMENT OF PREVAILING WAGES

CONTRACTOR shall pay to all persons performing work under this Agreement the general prevailing rate of per diem wages as determined by the Department of Industrial Relations of the State of California.

30. WARRANTY

CONTRACTOR does hereby warrant and guarantee for a period of one year from acceptance of the work of improvement by the CITY that the work of improvement will be free of all defects caused by defective work or defective materials. Should the CITY give written notice to the CONTRACTOR of any defects in the work of improvement within the said one year period, CONTRACTOR shall cause all necessary repairs or replacements to be made without cost to the CITY. Should CONTRACTOR fail to make the required repairs or replacements within thirty (30) days from receipt of notice from the CITY, the CITY may cause the repairs or replacements to be made by contract with a third party or by use of CITY forces. The cost of such repairs or replacements shall be paid by the CONTRACTOR. Should CONTRACTOR fail to make payment for the cost of said repairs or replacements, in addition to the cost of said repairs or replacement CONTRACTOR shall pay the CITY's actual cost of litigation including attorney fees.

31. NONDISCRIMINATION

During the performance of this Contract, CONTRACTOR and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. CONTRACTOR and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) and the applicable regulations promulgated hereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the

California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

This CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

32. GOVERNING LAW

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Stanislaus, State of California, or any other appropriate court in such county, and CONTRACTOR covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

33. HEADINGS NOT CONTROLLING

Headings used in the Agreement are for reference purposes only and shall not be considered in construing this Agreement.

34. CITY BUSINESS LICENSE

CONTRACTOR will have a CITY of Ceres business license, as required.

35. ATTORNEYS' FEES

If either party to this Agreement is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable if such action is prosecuted to judgment.

IN WITNESS WHEREOF, the parties have executed this Agreement on
the dates indicated below.

Dated _____, 2023

Dated _____, 2023

CITY OF CERES, a municipal corporation

CONTRACTOR

By _____
Alex Terrazas, City Manager

By _____
Signature

Typed name/title

APPROVED AS TO FORM

CONTRACTOR'S Federal ID#:

Nubia Goldstein, City Attorney

ATTEST

CONTRACTOR'S CA State License
Board #:

Fallon Martin, City Clerk

EXHIBIT B

INSURANCE REQUIREMENTS FOR CONTRACTORS

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, his agents, representative, employees or subcontractors.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Offices (ISO) Commercial General Liability coverage (occurrence Form CG 00 01).
2. Insurance Services Office (ISO) Form CA 00 01 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- | | | |
|---|--------------------|--|
| 1. General Liability:
(including operations, products
and completed operations) | \$2,000,000 | per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. |
| 2. Automobile Liability: | \$2,000,000 | per accident for bodily injury and property damage |
| 3. Workers' Compensation | \$1,000,000 | Vendor shall maintain Worker's Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). |

4. Employer's Liability: **\$1,000,000** Per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the entity shall be entitled to coverage at the higher limits maintained by the contractors.

SPECIFICATIONS FOR COMMON SITUATIONS

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the entity. At the option of the entity, either (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity, its officers, officials, employees and volunteers or (b) the contractor shall provide a financial guarantee satisfactory to the entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The entity, its officers, officials, employees, and volunteers are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided with two endorsement forms: 1) in the form of an additional insured endorsement to the Contractor's insurance or as a separate owner's policy (CG 20 10 11 85 or its equivalent language) and 2) a CG 20 37 10 01 endorsement form or its equivalent language. A later edition of the CG 20 10 form along with the CG 20 37 coverage form will give some protection to the entity for specific locations.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days

prior written notice by certified mail, return receipt requested, has been given to the entity.

4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Waiver of Subrogation

Contractor hereby agrees to waive subrogation which any insurer of contractor may acquire from contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

SPECIFICATIONS FOR COMMON SITUATIONS (continued)

The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the entity for all work performed by the contractor, its agents, employees, independent contractors and subcontractors.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the entity. This is only a recommendation. The entity may decide to accept an insurer with a rating of less than A:VII depending on various circumstances.

It is also recommended that the insurer for the contractor/consultant/vendor/lessee be "admitted" in California. This means that the insurer is licensed to do business in California, is subject to his insurance regulations and contributes to the guarantee fund. However, there may be situations where a non-admitted insurer will have more financial strength (and the ability to respond to claims) than some admitted insurers. Please contact your broker, legal counsel or BRS when faced with this situation.

Those recommendations are applicable to almost any risk and exposure discussed in this manual.

Verification of Coverage

Contractor shall furnish the entity with copies of original certificates and endorsements, including amendatory endorsements, effecting coverage required by this clause. The endorsements should be on forms provided by the entity or on other than the entity's forms, provided those endorsements or policies confirm to the requirements. All certificates and endorsements are to be received and approved by the entity before work commences; however, failure to do so shall not operate a waiver of these insurance requirements. The entity reserves the right to require complete, certified

copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.