*DRAFT*

**REQUEST FOR PROPOSALS (RFP)**

***FIRESMART***

***PUBLIC DEMONSTRATION GARDEN PROJECT***

***AT***

***THE SLEEPY HOLLOW COMMUNITY CENTER***

**ISSUED BY:**

**[](https://www.shfpd.org/%22%20%5Co%20%22Go%20to%20the%20homepage)**

**1317 BUTTERFIELD ROAD**

**SAN ANSELMO, CALIFORNIA 94960**

**Thomas J. Finn**

**Director/Secretary**

***RESPONSES DUE: MARCH \_\_, 2022 AT 5:00 P.M.***

***FIRESMART***

***PUBLIC DEMONSTRATION GARDEN PROJECT***

***AT***

***THE SLEEPY HOLLOW COMMUNITY CENTER***

**Background**

 The Sleepy Hollow Fire Protection District (the “Agency”) is inviting qualified firms to submit proposals to provide professional services for the installation of a FireSmart Public Demonstration Garden (the “Project”) on the grounds of the Sleepy Hollow Community Center (the “Community Center”). The Project will consist of discrete planting areas located on the grounds of the Community Center property, including areas that abut the Community Center building and non-contiguous areas adjacent to the property’s boundaries and egress and parking areas.

 The scope of work includes Garden site preparation and installation of ornamental plants associated with “firescaping” (a design technique that reduces house and property vulnerability to wildfire), together with landscape features, interpretive signage, lighting, and irrigation.

 The goal of the Project is to successfully influence residents to adopt “FireSmart” landscape practices and thus reduce the potential for District-wide conflagration.

 Proposals shall be submitted electronically at:

 <https://www.planetbids.com/_______>

 The Agency requests to receive proposals from firms that have recent experience in installing landscape garden projects for other local agencies and private companies. Copies of the proposal documents are available at no cost at this website:

 <https://www.planetbids.com________>

**Request for Proposal (RFP) Schedule**:

* March \_\_, 2022 -- Request for Proposals released

* \_\_\_\_\_ \_\_, 2022 -- Deadline for requests for clarification/questions – 5:00 p.m.
* \_\_\_\_\_ \_\_, 2022 -- Deadline for proposal submission – 5:00 p.m.

**Minimum Qualifications**

 Proposer must be a responsible firm that has been in continuous existence and has provided continuous services for the relevant requirements contained herein for at least three (3) years. Less than the minimum required experience may eliminate that Proposer from further consideration.

**Evaluation of Proposers and Selection Criteria**

* Qualifications and Expertise of the Firm (50%)
* Schedule of Proposed Fees (50%)

**Agency's Rights**

 The Agency reserves the right to reject any and all proposals or to waive any irregularities or informalities in any proposals should it deem this necessary for the public good; reject the proposal of any Proposer who has been delinquent or unfaithful in any former contract with the Agency; and to take all proposals under advisement for a period of ninety (90) days. No Proposer may withdraw its proposal for a period of ninety (90) days after the date from the opening thereof. The award of the contract, if made, will be in accordance with the evaluation criteria provided in the proposal documents.

**Point of Contact**

 The Agency’s primary contact for this Project is Thomas J. Finn, District Director/Secretary, at (415) 256-8300 or via e-mail at *tfinn@well.com* .

**Format for the Proposal**

 The Proposal shall include, as a minimum:

 1. A transmittal letter stating that the person submitting the Proposal is authorized to contract on behalf of the Proposer firm; that this RFP shall be incorporated in its entirety as a part of the Proposer's quote; that all federal, State, and local laws and regulations shall be adhered to; that Agency officials shall have access to all records pertinent to this Project for not less than three (3) years following completion; and that the Proposer will comply with the Copeland (Anti-Kickback) Act ([18 U.S.C. §874](https://www.law.cornell.edu/uscode/text/18/874) and [40 U.S.C. §3145](https://www.law.cornell.edu/uscode/text/40/3145)) and the implementation regulation (29 C.F.R. Part 3) issued pursuant thereto, and any amendments thereof.

 2. Qualifications applicable to this Project, including general information about the firm; the names, experience, and proposed duties of the Proposer's staff to be assigned to this Project; a description of recent similar projects completed; and similar information regarding any consultants and/or subcontractors that are included in the Proposal. Resumes of all proposed personnel shall be included as an attachment.

 3. Client references (government agencies preferred), including the names, titles, addresses, telephone numbers, and e-mail addresses of the appropriate persons that the Agency can contact regarding similar work experience. A minimum of three (3) references should be provided for work performed within the last three (3) years.

 4. A brief description of the Proposer's approach to the tasks required to complete the scope of work.

 5. A cost proposal and schedule for the proposed scope of work. The cost proposal shall include labor hours, labor rates, and fixed costs.

**Scope of Work**

 The following is a general outline of the scope of work to be provided by the firm to whom the contract is awarded. While it is believed that this scope includes all elements essential to complete the Project, those submitting proposals are advised to include any additional items that they believe have been omitted. The Agency desires to install a FireSmart Public Demonstration Garden that will have the following features:

 1. Commercial grade that is meant to be permanent and durable.

 2. Come with a five (5)-year warranty.

 3. Programmable landscape lighting to illuminate with different lights for different occasions.

 4. The design must be stamped by a registered engineer.

 5. The proposed design must be in compliance with the Sleepy Hollow Fire Protection District Fire Code and regulations of the County of Marin.

 6. The proposal the Agency is seeking is for installation/construction only.

**Review**

 A. Review the existing infrastructure and meet with Agency staff and the Landscape Architect to initiate the Project.

 B. Review the site and planting areas and make any recommendations with respect to the planting areas to support the Project.

 C. Review the electrical service and water service of the Community Center building and property and certify that (1) the electrical circuit can accommodate the additional electrical load from the collective string of landscape lights to be installed as part of the Project, and (2) the water service can accommodate the additional usage by the irrigation system to be installed as part of the Project. If it is determined that the additional electrical load and/or the additional water usage cannot be supported by the existing infrastructure, then the contractor shall include recommendations that will support the Project.

 D. Prepare a detailed plan and/or a sample display for the Project.

**Labor and Material**

 E. Provide all labor and materials for the installation of the Project and any necessary equipment to have the landscape lights and irrigation system in a working condition. If any parts of the Community Center building or property or the ornamental plants or landscape lights and irrigation system are damaged during the installation of the Project, the contractor shall be responsible for the cost of repairing the damage.

 F. Participate in one walk-through final check of the Project to assure the work is in substantial conformance with the approved construction documents.

**Sanitary Facilities & Storm Water Pollution Prevention**

 G. The Contractor shall provide all necessary sanitary disposal (toilet) accommodations for the use of all workmen on the job site and shall maintain the same in a clean and sanitary condition.

 H. The intent of these provisions is to enforce federal, State, and other local agencies regulations designed to eliminate storm water pollution. Storm drains discharge directly to creeks and the Bay without treatment. Storm water pollution due to construction operations shall be controlled by keeping pollution out of storm drain systems, reducing the exposure and discharge of materials and wastes to storm water, and by reducing erosion and sedimentation. In this Section H, the term “storm drain system” shall refer to any storm water conduits, storm drain inlets, and other storm drain structures, street gutters, channels, watercourses, creeks, lakes, and the San Francisco Bay.

 1. **Material Storage.** The Contractor shall comply with the following practices for materials storage:

The Contractor shall propose designated areas of the Project site, for approval by the Landscape Architect, suitable for material delivery, storage, and waste collection that, to the maximum extent practicable, are near construction entrances and at least ten feet (10′) away from catch basins, gutters, drainage courses, and creeks. During wet weather or when rain is forecast within seventy-two (72) hours, the Contractor shall store materials that can contaminate rainwater or be transported by storm water or other runoff to the storm drain system inside a building or cover them with a tarp or other waterproof material secured in a manner that would prevent any of the materials from contacting the rainwater. The storage and disposal of all hazardous materials such as paints, thinners, solvents, and fuels; and all hazardous wastes such as waste oil, must meet all federal, State, and local standards and requirements.

1. **Street Sweeping.** At the end of each working day or as directed by the Landscape Architect, the Contractor shall clean and sweep roadways and on-site paved areas of all materials attributed to or invoiced in the work. The Contractor shall not use water to flush down streets in place of street sweeping.
2. **Hazardous/Waste Management.** The storage and disposal of all hazardous materials, such as pesticides, paints, thinners, solvents, and fuels; and all hazardous wastes, such as waste oil and antifreeze; shall comply with all federal, State, and local standards and requirements. When rain is forecast within seventy-two (72) hours or during wet weather, the Landscape Architect may prevent the Contractor from applying chemicals in the outside areas.
3. **Spill Prevention and Control.** The Contractor shall take any and all precautions to prevent accidental spills during the work under this contract. The Contractor shall keep a stockpile of spill cleanup materials such as rags or absorbents, readily accessible on-site. In the event of a spill, the Contractor shall immediately contain and prevent leaks and spills from entering the storm drain system, and properly clean up and dispose of the waste and clean up materials. If the waste is hazardous, the Contractor shall comply with all federal, State and local hazardous waste requirements.The Contractor shall not wash any spilled material into the streets, gutters, storm drains, or creeks.
4. **Grading and Excavation Operations.** The Contractor shall implement sedimentation and erosion control measures to prevent sediments or excavated material from entering the storm drain system. The erosion and sedimentation control materials and methods shall be in accordance with ABAG Standards for Erosion and Sediment Control Measures and/or the procedures and methods described in the California Storm Water Best Management Practice Handbook – Construction Activity (latest edition).

1. **Vehicle/Equipment Cleaning.** The Contractor shall not perform vehicle or equipment cleaning on site or in the street using soaps, solvents, degreasers, steam cleaning equipment, or equivalent methods. The Contractor shall perform vehicle or equipment cleaning, with water only, in a designated, bermed area that will not allow rinse water to run off-site or into the storm drain system.
2. **Vehicle/Equipment Maintenance and Fueling.** The Contractor shall perform maintenance and fueling of vehicles or equipment in a designated, bermed area or over a drip pan that will not allow run-on of storm water or runoff of spills. The Contractor shall use secondary containment, such as a drip pan, to catch leaks or spills any time that vehicle or equipment fluids are dispensed, changed, or poured. The Contractor shall clean up leaks and spills of vehicle or equipment fluids immediately and dispose of the waste and cleanup materials as hazardous waste. The Contractor shall inspect vehicles and equipment arriving on-site for leaking fluids and shall promptly repair leaking vehicles and equipment. Drip pans shall be used to catch leaks until repairs are made. The Contractor shall recycle waste oil and antifreeze, to the maximum extent practicable.
3. **Contractor Training and Awareness.** The Contractor shall train employees/subcontractors on the water pollution prevention requirements contained in these provisions. The Contractor shall inform all subcontractors of the water pollution prevention contract requirements and include appropriate subcontract provisions to ensure that these requirements are met.

 Full compensation for conforming to the provisions herein specified shall be considered as included in the prices paid for the contract items or work involved in compliance with said provisions and no additional compensation will be allowed therefore unless specified as part of a contract item for implementation of a Storm Water Pollution Prevention Plan (SWPPP).

**Final Cleanup**

 Final cleanup shall conform to the requirements of “Cleanup” of the Specifications and full compensation therefor will be considered as included in the prices paid for the various contract items of work and no separate payment will be made therefor.

**Final Inspection**

 When the work covered by the Project is substantially completed, the Contractor shall notify the Agency and the Landscape Architect in writing that the work will be ready for final inspection on a definite date which shall be stated in such notice. The notice shall be given at least five (5) working days prior to the stated date for final inspection. If the Landscape Architect determines that the status of the work is as represented, then she will make the arrangements necessary to have final inspection commenced on the date stated in such notice, or as soon thereafter as is practicable.

**Ongoing Maintenance**

 G. Provide all labor and materials for the ongoing maintenance to ensure that all landscape lights and irrigation equipment are in a working fully for the duration of the negotiated contract. Repairs shall include, but may not be limited to repair or replacement of light fixtures and bulbs, damaged wiring, transformers, and programmable controllers.

 H. Respond within twenty-four (24) hours of contact for damaged equipment; and for actual repairs, such repairs shall be completed within ten (10) working days or less.

**Administrative Elements**

 Proposals shall be prepared and submitted at the respondent's sole expense. All proposals will become the property of the Sleepy Hollow Fire Protection District and will not be returned. There will be no public bid opening. The Agency reserves the right to negotiate mutually acceptable Project-related conditions.

 The Proposer shall assign a responsible representative and an alternate to perform the assigned tasks. Both Proposer staff members shall be identified in the proposal. The Proposer's representative will be responsible for all duties from contract negotiations through Project completion. If the primary representative is unable to continue with the Project, then the alternate representative will become the primary representative. The Agency must approve any other changes in responsible representatives in advance. The Agency reserves the right to reject other proposed changes in personnel and may consider any other changes in responsible personnel a breach of contract.

 The Proposer shall be able to provide technical assistance and know-how on best practices related to installation and maintenance, following the industry’s best practices. The Proposer shall provide all necessary labor, instruments, equipment, and materials to perform the described work and ongoing services.

**Subcontracting**

 The Proposer may utilize the services of specialty subcontractors/subconsultants on those parts of the work that, under normal contracting practices, are performed by specialty subcontractors. Unless the Proposer lists a specific subcontractor, the Proposer is representing to the Agency that the Proposer has all appropriate licenses, certifications, and registrations to perform the work hereunder.

 After submission of the proposal, the Proposer shall not award work to any unlisted subcontractor(s) without prior written approval of the Agency. The Proposer shall be fully responsible to the Agency for the performance of his/her subcontractors, and of persons either directly or indirectly employed by them. Nothing contained herein shall create any contractual relation between any subcontractor and the Agency.

**Insurance**

 The following insurance coverages and amounts will be required by the Agency:

 1. Workers’ Compensation Insurance in accordance with State of California laws.

 2. Commercial General Liability Insurance of $1,000,000.

 3. Automobile Liability Insurance of $300,000.

 4. Professional Liability Insurance of $1,000,000.

 5. The Agency will be requesting to be named an additional insured on a primary and noncontributory basis on all liability policies (GL, AL, & PL).

**SAMPLE AGREEMENT**

**(short form)**

 THIS AGREEMENT (the “Contract”) is made this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_ \_\_, 2022, by and between the **SLEEPY HOLLOW FIRE PROTECTION DISTRICT**, a political subdivision of the State of California (“District") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ "Contractor")

 District and Contractor, for the considerations stated herein, agree as follows:

**ARTICLE I**

**Scope of Work**

 Contractor shall perform everything required to be performed and shall provide and furnish all the labor, materials, necessary tools, equipment, and services required to complete all the work, in accordance with requirements contained in the contract documents therefor entitled, “FIRESMART PUBLIC DEMONSTRATION GARDEN PROJECT AT THE SLEEPY HOLLOW COMMUNITY CENTER”. All work to be performed in strict compliance with the Project plans, specifications, and contract documents, which are hereinafter enumerated. It is agreed that all labor, materials, tools, equipment, and services shall be furnished by Contractor and the work shall be performed and completed under the direction and supervision and subject to the approval of the District or its authorized representatives.

**ARTICLE II**

**Contract Price**

District shall pay to Contractor as full consideration for the faithful performance of this Contract and subject to any additions or deductions as provided in the Contract documents, and in accordance with the schedule of payments contained in the Contract documents, the full Contract price in accordance with the unit prices set forth in Contractor's accepted proposal.

**ARTICLE III**

**Component Parts of this Contract**

This Contract consists of all of the following Contract documents, all of which are as fully a part thereof as if herein set out in full and if not attached hereto, the same as attached hereto:

1. Notice to Contractors;
2. Specifications entitled: NOTICE TO CONTRACTORS, PROPOSALS & SPECIAL PROVISIONS, AND CONTRACT DOCUMENTS FOR “FIRESMART PUBLIC DEMONSTRATION GARDEN PROJECT AT THE SLEEPY HOLLOW COMMUNITY CENTER”;
3. The accepted proposal of Contractor;
4. Plans entitled: “FIRESMART PUBLIC DEMONSTRATION GARDEN PROJECT AT THE SLEEPY HOLLOW COMMUNITY CENTER” ;
5. This Agreement;
6. Performance, Labor, and Materials Bonds
7. General Liability, Automobile Liability and Workers' Compensation Insurance; all as required pursuant to Specifications.

 IN WITNESS WHEREOF, three identical counterparts of this Contract, each of which shall for all purposes be deemed and original thereof, have been duly executed by the parties named above on the day and year first above written.

**SLEEPY HOLLOW FIRE PROTECTION DISTRICT**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Richard C. Shortall, Jr., Director/President

**CONTRACTOR**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[entity name]

[authorized signer’s name and title]

**SAMPLE AGREEMENT**

**(standard form)**

LANDSCAPE CONSTRUCTION AGREEMENT

 This Landscape Construction Agreement ("Agreement") is entered into between the SLEEPY HOLLOW FIRE PROTECTION DISTRICT (“Owner”) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) and is executed and effective as of \_\_, 2022. The parties hereby agree as follows:

1. Work. Contractor, whose business address is located at , shall furnish all services, including labor, equipment, and materials to perform the work of the project entitled “FIRESMART PUBLIC DEMONSTRATION GARDEN PROJECT AT THE SLEEPY HOLLOW COMMUNITY CENTER”. Contractor shall perform the Work in compliance with applicable federal, State, county, or other laws, ordinances, or regulations including without limitation the American with Disabilities Act. Contractor's primary contact with respect to the performance of the Work is Ann Baker Landscape Architecture ("Landscape Architect"). Contractor shall direct all questions and requests concerning the Work to Landscape Architect for response.
2. Price. The price for the work and the supply of all services and goods (collectively, the “Work”) shall not exceed \_\_\_\_\_\_\_\_\_\_\_\_\_ including all applicable taxes (the “Contract Price”). Owner will pay Contractor monthly for Work done to date as indicated by invoices submitted to Landscape Architect and Owner, holding ten percent (10%) in reserve toward completion. Owner shall have fifteen (15) days from receipt of an invoice to make payment. After final inspection and Landscape Architect's and Owner’s approval of the Work, Owner shall make the final payment to Contractor, which payment shall include the amounts previously held in reserve.
3. Performance. The work under this Agreement will commence \_\_, 2022 and must be completed by \_\_, 2022. If the Work is not properly completed by that date because of circumstances beyond Contractor's control rendering completion objectively impossible, then the Work will be completed as soon thereafter as is reasonably possible. Obstructive circumstances include, but are not limited to, natural elements (including inclement weather), strikes, fire, and acts or omissions of other persons (including other contractors or customers).
4. Subsequent Changes. Any changes from or additions to the Work covered in this Agreement (other than as a result of delay or destruction) shall be set forth in a writing signed by both parties before the changed or additional work is required to be performed. In the absence of a written change-order contract, Owner will have no cause of action against Contractor for failure to deviate from the terms of this Agreement on the basis of an alleged oral contract; and Contractor will have no cause of action against Owner for failure to compensate Contractor for work deviating from the terms of this Agreement on the basis of an alleged oral contract. If the parties execute a written change-order contract, its terms will govern over those of any prior contract in this transaction. Otherwise, it will be automatically incorporated along with all prior change-order contracts into this initial Agreement.
5. Completion of Job. On or before the date set for completion of the Work, Contractor will notify Landscape Architect and Owner that the Work is finished and ready for inspection, at which time, or as soon as reasonably possible, Landscape Architect and Owner will inspect the Work to ascertain whether or not it is in accordance with this Agreement. On demonstration that the completed Work is not acceptable under this Agreement, Contractor will remedy any defective Work as soon as reasonably possible and in keeping with the date for completion, or, if impossible, then as soon as reasonably possible after that date and without reference to any cause for damages which Owner might have for Work unfinished by the date for completion.
6. Relationship of the Parties. Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Landscape Architect and Owner and exercise the Contractor's best skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in a skilled, professional, and efficient manner consistent with the Owner's interests and the Landscape Architect's intent.
7. Safety. Contractor will take all necessary and customary precautions in introducing and maintaining safety measures against all hazards connected with the Work under this Agreement. Contractor will make protective arrangements so as to prevent work operations from damaging the premises, or other work or operations.
8. Storage. Contractor will keep all materials, equipment, or goods involved in Contractor's services stored in appropriate containers or at adequately marked and secured stations, for which Owner will provide sufficient space on the premises with reasonable access to Contractor's work areas.
9. Cleanup. Contractor will perform all work as tidily as is consistent with correct performance in Contractor's and will keep the premises clean from all work-related trash, rubble, clutter, and refuse on a daily basis. Contractor will promptly remove all equipment and materials on completion of the Work and payment, and will leave the premises free from all refuse in a manner consistent with correct completion of the Contractor's operation.
10. Permits. If required, Owner will obtain a Permit from the County of Marin for all or any portion of the Work to be performed under this Agreement. Contractor will furnish to Owner, at Owner's request, copies of any certificates or other documents evidencing compliance with applicable laws, ordinances, or other regulations of the various agencies or departments involved. Contractor will complete the WELO related documents as set forth on Exhibit B.
11. License. Contractor represents and warrants to Owner it presently holds a valid California contractor's license.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

1. Project Free From Liens. Except in cases where Owner withholds payment on any payment request in violation of this Agreement, Contractor shall pay when due, all claims asserted by and debts in favor of persons who furnish labor, material, services, fixtures, or equipment applied to or utilized in the performance of the Work. Contractor shall exert commercially reasonable efforts to prevent the recordation of any claim of lien upon Owner's property, the imposition of any stop notice or bonded stop notice on funds held by a lender which are intended to be paid pursuant to an agreement to finance completion of the Work, and the garnishment or attachment of funds held by Owner or others by promptly satisfying all claims and debts which are or may be asserted against the Project, Contractor or Contractor's subcontractors by such persons. In addition, except in cases where Owner withholds payment of the Contract Price in violation of this Agreement, Contractor shall cause, with respect to the Work, (i) Owner's property to be released from all claims of lien, (ii) all funds withheld on account of stop notices or bonded stop notices to be released from the effect of such notices, and (iii) all suits against Owner to be dismissed, where such claims of lien, stop notices, bonded stop notices, or suits have been recorded or served, or have arisen, as a result of the performance of the Work by Contractor, within thirty (30) business days after each such (1) claim of lien has been recorded against Owner's property, (2) stop notice or bonded stop notice has been served upon a lender which had been obligated to make payments in connection with the Work, and (3) suit is brought against the Owner including, without limitation, the recordation of bonds in the County Recorder’s Office pursuant to Section 3143 of the Civil Code, and the filing of a bond with each lender whose funds are being withheld pursuant to Section 3171 of the Civil Code.
2. Assignment. Contractor has been selected to perform the Work covered by this Agreement on the basis of Contractor's personal service and may not delegate any duties or responsibilities imposed by this Agreement. However, if Contractor, for any reason, becomes incapable of continuing performance under this Agreement, Contractor may, with Owner's written consent, assign Contractor's rights and obligations under this Agreement to another contractor of at least equivalent reputation for performance. By consenting to an assignment, Owner will not waive any cause of action against Contractor.
3. Insurance. Contractor Insurance: The Contractor shall purchase, maintain and provide proof of insurance limits (upon start of Work) specified below and from a carrier reasonably acceptable to Owner as follows:
4. Worker’s Compensation/Employer’s Liability: Statutory Limits
5. General Liability: Occurrence Form in lieu of Claims Made
6. Each Occurrence: $1,000,000
7. General Aggregate: $2,000,000
8. Sleepy Hollow Fire Protection District is listed as Additional Insured
9. Auto Liability:
10. Symbol 1 ‘Any Auto’
11. Combined Single Limit: $1,000,000
12. Hired/Non-Owned Liability: $1,000,000
13. Minimum AM Best Rating: A-
14. Cancellation Clause: Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail thirty (30) days written notice to the certificate holder, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.
15. Additional Requirement(s): All policies except workers’ compensation must be shown as Primary and Non-Contributory. Waiver of subrogation must be given in favor of Owner on all policies.
16. Indemnification. To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions, fault or misconduct of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable after adjudication of the claim. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section. Nothing in this provision shall be construed to provide indemnification to the Owner for claims, damages, losses, and expenses to the extent caused by or arising out of the Owner's negligent acts or omissions, fault or misconduct.

In claims against any person or entity indemnified under this Section by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

1. Warranties and Guarantees. Upon completion of the Work, Contractor will provide Owner with all appropriate and standard warranties and guarantees including without limitation the warranties and guarantees specified in the documents in Exhibit A and Exhibit B.
2. Remedies of Contractor. If Owner fails to compensate Contractor according to the terms of this Agreement for a period of thirty (30) days after compensation is due and notice thereof has been given to Owner by Contractor, then Contractor, in addition to any other legal remedies or processes available, may terminate the Agreement.
3. Remedies of Owner. If Contractor becomes incapable of continuing performance under this Agreement, whether due to circumstances within or outside of Contractor's control, or voluntarily delays that performance for an unreasonable period of time when another contractor engaged in the same specialty work might be available and capable of continuing the Work, then Owner may terminate the Agreement and arrange to have the Work continued within a reasonable amount of time.
4. General Provisions.

19.1 Entire Agreement. This Agreement contains the entire agreement between the parties, and supersedes all prior negotiations, drafts, and other understandings which the parties may have had concerning the subject matter hereof.

19.2 Amendments and Waiver. This Agreement can be amended only by the written agreement of the parties. No waiver of any of the provisions of this Agreement will be deemed a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

19.3 Severability. Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law. If any provision of this Agreement is held to be prohibited by, or invalid under, applicable law, the remainder of this Agreement and any other application of such provision shall not be affected thereby.

19.4 Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

19.5 Notice. Any notice, demand, request, consent or other communication which either party desires or is required to give to any other party shall be in writing and shall be deemed to have been given when: (a) delivered in person or by facsimile transfer; (b) emailed with a confirmed received receipt from the recipient; or (c) sent by overnight courier or first-class registered or certified mail, postage pre-paid, return receipt requested, addressed to such party at the address set forth below.

 **If to Owner: If to Contractor:**

 **With Copy to Landscape Architect:**

Copies of all notices provided under this Section 19.5 shall also be delivered by email in addition to, and not in lieu of, the transmittals described above. Any party may change its address for purposes of this Section 19.5 by giving the other party written notice of the new address in the manner provided above, except that such notices will be effective only upon receipt by the other party.

19.6 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of California, without giving effect to principles of conflict of laws.

19.7 Disputes. Owner and Contractor shall first make an effort to discuss any disputed issues in an effort to resolve them. As a part of this effort, Owner and Contractor agree to engage in non-binding mediation using an experienced mediator who is a retired judge or attorney with at least 10 years of experience in the construction industry and who is mutually agreed upon by the parties. A mediation session shall be scheduled within thirty (30) days after the failure of informal discussions to resolve the dispute, or as soon after said 30-day period as the selected mediator's schedule will allow. The requirement of good faith shall be satisfied by each party preparing a brief written statement of that party's position to be submitted in advance to the mediator and to the other party and by attending at least one mediation session of at least six (6) hours' duration. Costs of the mediation shall be borne equally by the parties. The parties may be represented by counsel at both the informal discussions and the mediation session. If any party commences a court action based on a dispute to which this Section 19.7 applies without first attempting to resolve the matter through informal discussions and mediation, that party shall not be entitled to recover attorneys' fees, even if attorneys' fees would otherwise have been available to that party.

19.8 Attorneys’ Fees. If legal proceedings are initiated to enforce or interpret any provision of this contract, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs in addition to any other available relief or remedy.

19.9 Section Headings, Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction of interpretation. All words used in this Agreement will be construed to be of such gender and number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. This Agreement shall not be interpreted or construed against any party to this Agreement because that party or any attorney or representative of that party drafted this Agreement or a portion thereof or participated in the drafting of this Agreement.

19.10 Invalidity. If any provision of the Agreement is determined to be invalid or unenforceable, this Agreement will be deemed to be modified to exclude any such provision, and the remainder of the Agreement will continue in effect. This Agreement will also be deemed modified to the extent necessary to comply with any state and federal laws, rules, regulations or other actions by any state or federal regulatory authority, and any valid marketing order or agreement issued under the authority of any state or federal law.

19.11 Further Assurances. Each party agrees to execute such documents and perform such acts, as may be necessary or desirable to effectuate the purposes of this Agreement.

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

OWNER CONTRACTOR

By: By: