

**CITY OF RANCHO MIRAGE**

**69825 HIGHWAY 111  
RANCHO MIRAGE, CA 92270  
(760) 324-4511**

**REQUEST FOR PROPOSALS  
FOR  
PROFESSIONAL AUDITING AND TAX SERVICES**

**Issued:  
June 16, 2014**

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**CITY OF RANCHO MIRAGE**  
**REQUEST FOR PROPOSALS**  
**FOR**  
**PROFESSIONAL AUDITING AND TAX SERVICES**

**ANNOUNCEMENT:**

The City of Rancho Mirage ("City") invites proposals from qualified, competent, knowledgeable, and experienced companies, firms, or certified public accountants that will provide the preparation of both financial and compliance audit report services covering the City and its related operations as set forth in this Request for Proposals ("RFP"), in compliance with all applicable laws, regulations, policies and procedures. Firms submitting proposals must be prepared to immediately enter into a contract ("Agreement") for the services and duties as set forth in this RFP.

The work to be accomplished includes all aspects of the services described in the scope of services section set forth below.

**PROPOSALS/OFFER SUBMITTAL:**

Proposals will be accepted until **5 p.m. on July 11, 2014**, and each must be submitted to:

The City of Rancho Mirage  
Attn: Isaiah Hagerman, Finance Director  
69825 Highway 111  
Rancho Mirage, California 92270

**SCOPE OF SERVICES:**

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

1. The selected bidder shall perform an audit of all funds of the City of Rancho Mirage. The audit will be conducted in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*, issued by the Comptroller of the United States. **The City's Comprehensive Annual Financial Report (CAFR) will be prepared and word processed by the selected bidder.** The CAFR will be in full compliance with all applicable GASB standards. The selected bidder will render their auditors' report on the basic financial statements which will include both Government-Wide Financial Statements and Fund Financial Statements and notes to the financial statements. The selected bidder will also apply limited audit

procedures to the required supplementary information including the Management's Discussion and Analysis (MD&A), the other post-employment benefits (OPEB) schedule of funding progress, and the budgetary comparison schedules. The selected bidder will provide an in relation to opinion for the supplementary information including the major capital projects fund budgetary comparison schedules, and the combining and individual non-major fund financial statements and schedules. The City will submit the CAFR to the GFOA (Government Finance Officers Association) for review in their Certificate of Achievement for Excellence in Financial Reporting Program.

2. The selected bidder shall render the appropriate report on Internal Control over Financial Reporting based upon the audit of the City's financial statements in accordance with *Government Auditing Standards*
3. The selected bidder will perform a single audit on the expenditures of federal grants in accordance with OMB Circular A-133 and render the appropriate reports on compliance with Requirements Applicable to each Major Program, Internal Control over Compliance and on the Schedule of Expenditures of Federal Awards in Accordance with compliance with Requirements Applicable to each Major Program, Internal Control over Compliance and on the Schedule of Expenditures of Federal Awards in Accordance with OMB Circular A-133. The single audit report will include appropriate schedule of expenditures of federal awards, footnotes, findings and questioned costs, including reportable conditions and material weaknesses, follow-up on prior audit findings where required.
4. The selected bidder shall perform agreed-upon auditing procedures pertaining to the City's GANN Limit (Appropriations Limit) and render a letter annually to the City regarding compliance.
5. The selected bidder shall issue a separate "management letter" that includes recommendations for improvements in internal control, accounting procedures and other significant observations that are considered to be non-reportable conditions, if applicable.
6. The selected bidder shall perform a standalone audit of the Rancho Mirage Public Library Foundation (a non-profit organization), which is a registered 501c3. **The Foundation's standalone financial statements will be prepared and word processed by the selected bidder.** All applicable state and federal tax return documents will also be prepared and filed with the appropriate agency by the selected bidder.
7. The selected bidder shall perform a standalone audit of the Writers Festival Foundation (a non-profit organization), which is a registered 501c3. **The Foundation's standalone financial statements will be prepared and word**

**processed by the** selected bidder. All applicable state and federal tax return documents will also be prepared and filed with the appropriate agency by the selected bidder. The year ended June 30, 2014 will be the first year financial statements are audited. More information of this newly formed foundation is set forth in the Writers Festival Foundation Information, attached hereto and incorporated herein by this reference as **Exhibit "A."**

8. The selected bidder shall perform agreed-upon auditing procedures pertaining TOT collections over four Resorts/Hotels within City Limits annually. The agreed-upon procedures are set forth in the AUP-TOT, attached hereto and incorporated herein by this reference as **Exhibit "B."**
9. The selected bidder shall provide eight (8) hours of CPE annually to City staff and guests onsite at the City of Rancho Mirage City Hall or other agreeable location.

**GENERAL INSTRUCTIONS FOR SUBMITTAL:**

**A. Proposal Submittal:**

The proposer shall submit one (1) original and three (3) copies by 5:00 p.m. (Pacific Standard Time), **July 11, 2014**, to:

The City of Rancho Mirage  
Attn: Isaiah Hagerman, Finance Director  
69825 Highway 111  
Rancho Mirage, California 92270

**B. Due Date and Time:**

Proposals submitted after 5:00 p.m. on **July 11, 2014**, may, at the sole discretion of the City, be rejected as non-responsive and returned without review. For a proposal to be considered on time, it must be date stamped by City staff upon receipt. At the discretion of the City, a "late" proposal may be considered only if a selection cannot be determined from among proposals received on time. The City shall not be responsible for, nor accept any as a valid excuse, any delay in mail service, or any other method of delivery used by the proposer. All proposals shall be firm offers subject to acceptance by the City and may not be withdrawn for a period of 180 calendar days following the last day to accept proposals. Proposals may not be amended after the due date except by consent of the City. All proposals must clearly address all of the requirements outlined in this RFP. Should the proposer have concerns about meeting any noted requirements, the proposer shall include a clearly labeled subsection with individual statements specifically identifying the concerns and exceptions.

### **C. RFP Addenda and Clarifications in Written Comments**

Written comments from proposers must be received prior to two (2) business days before the due date listed in this RFP (“Addenda Due Date”), and must be submitted via the following approved written methods addressed to Isaiah Hagerman, Finance Director.:

1. At [isaiahh@RanchoMirageCA.gov](mailto:isaiahh@RanchoMirageCA.gov), or
2. Via fax to (760) 324-8830, or
3. Via mail, as long as the correspondence is received and date stamped by the City on or prior to the Addenda Due Date.

Submittal of written comments shall not be considered by the City unless submitted in an approved method and prior to the Addenda Due Date. Written comments received via approved method and within the Addenda Due Date, if applicable, will be issued as addenda. Notwithstanding anything else herein, if it becomes necessary for the City to revise any part of this RFP, or to provide clarification or additional information after this RFP has been issued, a written addendum will be sent to each recipient of record. Recipients of record shall consist of proposers on the original “bidders” mailing list, or proposers that have requested RFPs and have provided pertinent contact information in writing to the City. Addenda will also be posted and published on the City’s website, <http://www.rancho MirageCA.gov/index.php>, as well as everywhere else the RFP was originally posted and published. Though the City shall mail out any addenda to RFP recipients of record, and in addition will post any addenda information on the City website and publish and post in accordance with the above, as soon as it becomes available, it shall be the responsibility of the proposers to maintain current, up to date contact information with the City if any addenda are to be mailed. All addenda shall become part of the RFP.

### **D. Pre-contractual Expenses:**

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

### **E. Conflicts of Interest:**

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

**F. Proposed Contract:**

The proposer selected through this RFP shall be required to enter into an Agreement with the City, in substantially the same form as the Professional Services Agreement attached hereto and incorporated herein by this reference as **Exhibit “D.”**

**PROPOSAL FORMAT AND CONTENT:**

**A. Presentation**

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

**B. Proposal Content**

1. Transmittal Letter

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

2. Table of Contents

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

**C. Qualifications, Related Experience and References**

- 1. This section shall establish the ability of the proposer to satisfy all aspects of the required work with current or recently completed audits and tax services work, similar to the work required in this RFP.
- 2. Background information of the firm, including the date of founding, legal form, number and location of offices, number of employees, days and hours of operation and any other pertinent information.
- 3. Disclose any conditions (e.g., bankruptcy, pending litigation, planned office closures, mergers) and organizational conflicts of interest that may affect the ability of the proposer to perform the required duties.

4. Certify that the firm is not debarred, suspended or otherwise declared ineligible to contract with any other federal, state or local public agency.
5. Provide a list of governmental clients to which your firm is currently providing, or has recently provided, professional auditing services. Include Agency names, beginning/end dates of contracts, and names, titles and telephone numbers the City can contact as references for your firm.
6. Furnish the report on its most recent external quality/peer review, any findings discovered as part of that review and actions taken to correct those findings.

**D. Proposed Staffing and Project Organization**

1. Discuss the levels staffing of the proposing firm who would be assigned to work on the City's project.
2. Identify the key personnel that would be assigned to the project. Include a brief description of their qualifications and experience in performing the type of work being assigned.

**E. Work Plan / Technical Approach**

1. Establish the proposer's understanding of the City's objectives and requirements, demonstrate the proper ability to meet those objectives and requirements, and clearly identify the method (plan) of accomplishing the described work.
2. Describe the firms approach, staffing levels and timing to each phase of the audit and testing of internal controls. Also describe how engagement staff manage documentation requests or City staff assistance in order to complete the work described.
3. Describe how the requested tax services will be managed.

**F. Cost and Price**

1. This section shall disclose all charges to be assessed the City for the required services.
2. Provide the hourly rates by fiscal year for each level of staff proposed (see example in **Exhibit "C"**).
3. Provide the total estimated hours and not to exceed fee for each component of work by fiscal year (see example in **Exhibit "C"**).

4. For fiscal year 2013-14 provide by staff level total hours and costs each component of work (see example in **Exhibit "C"**).
5. Exhibit "C" is for example purposes only. Responding firms should provide whatever information they deem is appropriate for the City to properly evaluate the cost and price proposal.
6. The City is seeking quotes for up to five (5) fiscal years of services starting with Fiscal Year 2013-14. The Professional Services Agreement entered into between the selected firm and the City shall be for a term of one (1) year, and shall automatically renew each year for an additional one (1) year term, up to a maximum of five (5) total years. The Professional Services Agreement will not renew if (i) either party shall give written notice to the other party of its intention not to renew at least sixty (60) calendar days prior to the expiration of the Agreement term or any extended term thereof, or (ii) the City does not appropriate the required funds to support renewal of the Professional Services Agreement for any renewal year.

## **PROPOSAL EVALUATION AND CONTRACT AWARD:**

### **A. Evaluation Panel**

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

### **B. Evaluation Criteria**

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

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

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

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

## EXHIBIT "A"

### WRITERS FESTIVAL FOUNDATION INFORMATION

The Rancho Mirage Writers Festival Foundation ("RM Writers Festival, Inc.") has been registered as a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. It is also required to be operated exclusively for charitable purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code in order to retain its tax-exempt status, which allows it to solicit tax deductible contributions.

RM Writers Festival, Inc. has been formed for the specific charitable purpose of raising funds from the general public and other sources to organize an annual festival known as the "Writers Festival," which will be held at the Rancho Mirage Public Library or in any other appropriate venue situated within the City of Rancho Mirage. The Writers Festival will consist of an annual assembly of distinguished authors and writers who will provide lectures for members of the public who share a love of reading and who are interested in exchanging ideas and celebrating the intellectual power of the written word.

The Bylaws of RM Writers Festival, Inc. reflect the following:

1. That the Writers Festival be held on an annual basis at the Rancho Mirage Public Library or in any other appropriate venue situated within the City of Rancho Mirage;
2. That the RM Writers Festival, Inc. Board of Directors consist of six voting members;
3. That two members of the Library Board/City Council, as appointed by a majority of the Library Board/City Council, shall serve as voting members of the RM Writers Festival, Inc. Board of Directors;
4. That if the appointed Library Board Members/Council Members are removed by the RM Writers Festival Board, the vacancies shall be filled by the Library Board/City Council;
5. That in addition to the six voting members of the RM Writers Festival, Inc. Board of Directors, the Library Director shall serve as an ex officio (non-voting) member of the RM Writers Festival, Inc. Board of Directors; however, if there is tie vote, the Library Director shall be allowed to vote ; and
6. That the provisions of the RM Writers Festival, Inc. Bylaws pertaining to (a) the location of the Writers Festival, (b) the number of Directors on the Writers Festival, Inc. Board of Directors, (c) the appointment of the Library Board Members/Council Members to the Writers Festival, Inc. Board of Directors, and

(d) the ex-officio status and voting authority of the Library Director shall not be repealed, eliminated, altered or amended without the prior approval of the Library Board.

That RM Writers Festival, Inc. shall be provided with the following assistance from the City of Rancho Mirage for the purpose of organizing and conducting the Writers Festival on an annual basis at the Rancho Mirage Public Library or in any other appropriate venue situated within the City of Rancho Mirage:

1. Library assistance as deemed necessary and reasonable by the Library Director;
2. Legal assistance as deemed necessary and reasonable by the Library's General Counsel (City Attorney) on a pro bono basis;
3. Accounting, tax preparation and auditing assistance as deemed necessary and reasonable by the Library (City) Finance Director;
4. A license to use any official logos of the City of Rancho Mirage and mailing address that the Library is permitted to use; and
5. Financial assistance in the amount of TWENTY THOUSAND DOLLARS (\$20,000).

## EXHIBIT "B"

### AUP- TOT

#### INDEPENDENT ACCOUNTANT REPORT ON APPLYING AGREED-UPON PROCEDURES

Hilton Garden Inn  
Holiday Inn Express  
Motel 6  
Omni Rancho Las Palmas Resort & Spa

The Ritz-Carlton  
Starwood Vacation Rentals  
Westin Mission Hills Resort

1. **Procedure:** We reviewed the Chapter 3.24 of the City Municipal Code pertaining to the transient occupancy tax and attorney opinions related to transient occupancy tax.
2. **Procedure:** We compared total revenue from the TOT returns to the revenue records obtained from the hotel to determine that the TOT returns and payments were correctly calculated and remitted on a timely basis.
3. **Procedure:** We verified that the correct tax rate of 10% was throughout the period for which our procedures were performed.
4. **Procedure:** We examined the support for exemptions claimed to determine that they were allowable under the City's municipal code.
5. **Procedure:** We reviewed support for selected folios for the three resort hotels to determine that taxable income was properly reported in the correct category.
6. **Procedure:** We reviewed the internal control procedures of the Hotel to determine the following:
  - a. How "gross rents" and "uncollected rents" were accounted for and reported to the City.
  - b. What procedures were in place to identify transient and non-transient guests.
7. **Procedure:** We reviewed the findings that were issued in the previous TOT AUP Report to confirm the Hotels were now in compliance.

## EXHIBIT "C"

### COST SCHEDULE EXAMPLES

HOURLY RATES OF THE FIRM'S EMPLOYEES:					
	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
Partner					
Manager					
Supervisor					
Senior					
Staff					
Paraprofessional					

City of Rancho Mirage Comprehensive Cost Bid						
	Estimated	Cost For				
Description of Services	Hours	Fiscal Year 2013-2014	Fiscal Year 2014-2015	Fiscal Year 2015-2016	Fiscal Year 2016-2017	Fiscal Year 2017-2018
City CAFR Audit and Related Reports						
Single Audit and Related Reports						
Gann Limit AUP						
Library Foundation Audit and Tax Services						
Writers Festival Foundation Audit and Tax Services						
TOT AUP						
CPE for City Staff						
Total						

City CAFR Audit and Related Report			
	Estimated	Hourly	Proposed
Staff Level	Hours	Rate	Fee
Partner			
Manager			
Supervisor			
Senior			
Staff			
Paraprofessional			
Subtotal			
Other Costs			
Not to Exceed Price			

**EXHIBIT "D"**

**PROFESSIONAL SERVICES AGREEMENT**

**SEE ATTACHED**

**PROFESSIONAL SERVICES AGREEMENT  
BY AND BETWEEN  
THE CITY OF RANCHO MIRAGE  
AND**

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This Professional Services Agreement (hereinafter, this "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2014, by and between the City of Rancho Mirage, a municipal corporation in the County of Riverside, State of California, hereinafter referred to as the "City," and \_\_\_\_\_, \_\_\_\_\_, hereinafter referred to as "Consultant."

**RECITALS:**

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

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

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

**Section 1.                    RECITALS**

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

**Section 2.                    SCOPE OF SERVICES**

Consultant shall provide to the City those services as set forth in the Scope of Services, at the time, place, and in the manner specified therein, in a manner satisfactory to the City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. In the event any conflict exists between the Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

**Section 3.                    COMPLETION DATE**

Consultant shall perform those services set forth in the Scope of Services during the term of this Agreement, which shall commence as of \_\_\_\_\_, 2014, and shall continue for a term of one (1) year. The Agreement term shall automatically renew for an

additional one (1) year term, up to a maximum of five (5) total years, unless (i) either party shall give written notice to the other party of its intention not to renew at least sixty (60) calendar days prior to the expiration of the Agreement term or any extended term thereof, or (ii) the City does not appropriate the required funds to support renewal of this Agreement.

**Section 4.                    COMPENSATION**

The City agrees to pay Consultant for and in consideration of the faithful performance of the consulting services and duties set forth in this Agreement, and Consultant agrees to accept from the City, as and for compensation for the faithful performance of said services and duties, an amount not to exceed a total compensation of \_\_\_\_\_ Dollars and \_\_\_\_ Cents (\$\_\_\_\_\_.\_\_\_\_) during the term of this Agreement.

**Section 5.                    METHOD OF PAYMENT**

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

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

\_\_\_\_\_, \_\_\_\_\_  
City of Rancho Mirage  
69825 Highway 111  
Rancho Mirage, CA 92270  
Telephone: (760) \_\_\_\_\_  
Facsimile: (760) \_\_\_\_\_  
Email: \_\_\_\_\_

**Section 6.                    EXTRA WORK**

At any time during the term of this Agreement, the City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the Services, but which the parties did

not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform Extra Work without written authorization from the City.

**Section 7.                    TERMINATION**

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

**Section 8.                    OWNERSHIP OF DOCUMENTS**

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

**Section 9.                    CONFIDENTIALITY**

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

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

**Section 10.                    CONSULTANT'S BOOKS AND RECORDS**

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City for a minimum

period of three years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement.

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

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

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

**Section 11. INDEPENDENT CONTRACTOR'S STATUS: NOT AGENT OF THE CITY**

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

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

a. Consultant represents and acknowledges the following:

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

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

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

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

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

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

b. The City represents and acknowledges the following:

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

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

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

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

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

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

(7) Consultant is not required to perform the services set forth in this Agreement at City-owned property.

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

(9) Consultant is not required to perform the Services set forth in the Agreement in any particular order or sequence.

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

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

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

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

\_\_\_\_\_  
Initials

**Section 14. CONFLICTS OF INTEREST**

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

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

- (1) Does not make or participate in:
  - (i) the making or any governmental decisions regarding approval of a rate, rule, or regulation, the adoption or enforcement of laws;

- (ii) the issuance, denial, suspension or revocation of permits, licenses, applications, certificates, approvals, orders, or similar authorization or entitlement;
- (iii) authorizing the City to enter into, modify, or renew a contract;
- (iv) granting the City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
- (v) granting the City approval to a plan, design, report, study, or similar item; or
- (vi) adopting, or granting City approval of, policies, standards, or guidelines for the City or for any subdivision thereof.

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

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

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

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

b. By executing this Agreement, Consultant warrants that:

- (1) it has thoroughly investigated and considered the work to be performed;
- (2) it has investigated the issues, regarding the scope of services to be provided;
- (3) it has carefully considered how the work should be performed; and

(4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

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

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

#### **Section 16. COMPLIANCE WITH LAWS**

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

#### **Section 17. INDEMNIFICATION**

a. Consultant shall defend, indemnify and hold harmless the City, its officers, officials, agents, employees and volunteers (collectively, "Indemnified Parties") from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect, including any and all costs and expenses in connection therewith (collectively, "Claims") arising out of the negligence, recklessness, willful misconduct, or other wrongful conduct of Consultant, its employees, agents, subcontractors or independent contractors ("Consultant Parties"), in the performance of this Agreement; provided, however, that such duty to defend, indemnify and hold the Indemnified Parties harmless shall only exist to the extent that any Claims may arise from or is in any way in connection with the negligence, recklessness, or willful misconduct of any of the Consultant Parties.

b. The City does not, and shall not, waive any rights that it may have against Consultant under this Section because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless, indemnification and duty to defend provisions of this Section shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, action, damage, liability, loss, cost or expense described herein.

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

## **Section 18.**

## **INSURANCE REQUIREMENTS**

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

(1) **Worker's Compensation Coverage.** Consultant shall maintain Worker's Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Worker's Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. If any class of employees employed by Consultant pursuant to this Agreement is not protected by the California State Worker's Compensation Law, Consultant shall provide adequate insurance for the protection of such employees to the satisfaction of the City. Consultant agrees to waive its statutory immunity under any worker's compensation or similar statute, as respecting the City, and to require any and all subcontractors and any other person or entity involved in the Services to do the same.

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

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

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

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

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

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

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

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

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

(6) The insurance provided by this policy shall not be canceled except after thirty (30) days written notice has been mailed to the City and ten (10) days notice if cancellation is for nonpayment of premium.

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

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

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

all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.

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

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

**Section 19.                   NOTICES**

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

To the City:

\_\_\_\_\_, \_\_\_\_\_  
City of Rancho Mirage  
69825 Highway 111  
Rancho Mirage, CA 92270  
Telephone: (760) \_\_\_\_\_  
Facsimile: (760) \_\_\_\_\_  
Email: \_\_\_\_\_

To Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
Telephone: (\_\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_

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

**Section 20. ENTIRE AGREEMENT**

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

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

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

**Section 21. MODIFICATIONS AND AMENDMENTS**

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

**Section 22. ASSIGNMENT AND SUBCONTRACTING**

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

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

**Section 23. WAIVER**

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

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

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

**Section 24. SEVERABILITY**

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

**Section 25. VENUE**

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

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

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

**Section 27. EXECUTION IN COUNTERPARTS**

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

**Section 28. PROHIBITED INTERESTS**

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without

liability. For the term of this Agreement, no member, officer, or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**Section 29.                    EQUAL OPPORTUNITY EMPLOYMENT**

Consultant represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant (“person”) for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Unless otherwise permitted under the law, Consultant shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

**Section 30.                    TIME OF THE ESSENCE**

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

**Section 31.                    PRINCIPAL REPRESENTATIVES**

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

b. \_\_\_\_\_, \_\_\_\_\_, shall be the Principal Representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

**Section 32.                    NON-LIABILITY OF CITY’S OFFICERS AND EMPLOYEES**

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

**Section 33. INTERPRETATION**

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

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

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

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

**Section 35. CAPTIONS AND HEADINGS**

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

**Section 36. GOVERNING LAW**

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

**Section 37. CUMULATIVE REMEDIES**

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

**Section 38. NO THIRD PARTY BENEFICIARIES**

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

**Section 39. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

**Section 40. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT**

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

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

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

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

**CITY OF RANCHO MIRAGE**

\_\_\_\_\_

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

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

**APPROVED AS TO CONTENT:**

\_\_\_\_\_

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**EXHIBIT "A"**

**SCOPE OF SERVICES**

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