

**CITY OF RANCHO MIRAGE**

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

**REQUEST FOR PROPOSALS  
FOR  
FUEL DELIVERY SERVICES**

**Issued:  
July 30, 2015**

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**CITY OF RANCHO MIRAGE  
REQUEST FOR PROPOSALS  
FOR  
FUEL DELIVERY SERVICES**

**ANNOUNCEMENT:**

The City of Rancho Mirage ("City") invites proposals from qualified, competent, knowledgeable, and experienced fuel delivery service companies that will provide full-service fuel delivery services and administer the duties and responsibilities set forth in this Request for Proposals ("RFP"), in compliance with all applicable laws, regulations, policies and procedures. Firms submitting proposals must be prepared to immediately enter into a contract ("Agreement") for the services and duties as set forth in this RFP.

The work to be accomplished includes, in general terms, all aspects of fuel delivery services.

**PROPOSALS/OFFER SUBMITTAL:**

Proposals will be accepted until **2:00 P.M.** on **Monday, August 31, 2015**, and each must be submitted in a sealed envelope plainly marked on the outside "**SEALED BID FOR FUEL DELIVERY SERVICES - DO NOT OPEN WITH REGULAR MAIL**" to:

City of Rancho Mirage  
Attn: Mark W. Sambito P.E., Director of Public Works  
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. Standing order to deliver fuel on Tuesdays to City Yard
2. City Yard fuel tank sizes:
  - a. Unleaded – 500 gallons
  - b. Clear Diesel – 500 gallons
3. Fuel Types:
  - a. Gasoline, 87 Octane w/10% Ethanol
  - b. CARB ULS #2 Diesel, Clear
4. As requested by City staff, fuel deliveries as needed for red diesel for emergency generators at:
  - a. City Yard – Max 500 gallons
  - b. City Library – Max 700 gallons
  - c. City Hall – Max 1000 gallons
  - d. Fire Station 50 – max 250 gallons
  - e. Fire Station 69 – max 100 gallons
5. Vendor shall provide delivery tickets for all fuel deliveries that include fuel type and amount delivered.

6. Vendor shall dip the tanks and record the inches of fuel in the tanks before and after each delivery.
7. Vendor shall invoice the City after delivery, which shall include quantity of fuel delivered, net gallon cost, and all state and federal taxes and fees.
  - a. Unleaded and diesel will be invoiced separately.
8. Cost of fuel: Terminal price plus agreed mark-up per gallon.
9. Vendor shall clean up any fuel spill occurring during delivery and will be responsible for any repairs to asphalt.
10. Vendor shall provide emergency fuel delivery during declared disasters within four (4) hours of notification.

**GENERAL INSTRUCTIONS FOR SUBMITTAL:**

A. Proposal Submittal:

The proposer shall submit one (1) original and three (3) copies by **2:00 P.M.** (Pacific Standard Time), **Monday, August 31, 2015**, to:

City of Rancho Mirage  
Attn: Mark W. Sambito P.E., Director of Public Works  
69825 Highway 111  
Rancho Mirage, California 92270

B. Due Date and Time:

Proposals submitted after **2:00 P.M.** on **Monday, August 31, 2015**, 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 enclosed in a sealed envelope with the words clearly written on the front, "**SEALED BID FOR FUEL DELIVERY SERVICES - DO NOT OPEN WITH REGULAR MAIL.**" Failure of the proposer to properly identify the sealed envelope proposal as described may result in the proposal being considered non-responsive. All proposals shall be firm offers subject to acceptance by the 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. Each proposal shall be limited to twenty (20) pages and must include a minimum of three (3) references, which include the address, telephone number, and email address of each reference. Resumes and brochures may be added to the proposal, provided they are located in an appendix at the back of the proposal. Should the proposer have concerns about meeting any noted requirements, the proposer shall include a clearly labeled subsection with individual statements specifically identifying the concerns and exceptions.

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

All comments or questions from proposers to the City must be submitted in writing and received by no later than 5:00 pm on August 24, 2015 (“Addenda Due Date”), and must be submitted via the following approved written methods addressed to Mark W. Sambito P.E., Director of Public Works:

1. At [valleriew@RanchoMirageCA.gov](mailto:valleriew@RanchoMirageCA.gov), or
2. Via fax to (760) 770-3261, 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.

Any questions raised verbally shall not be addressed by the City. Submittal of written comments or questions shall not be considered by the City unless submitted in an approved method and prior to the Addenda Due Date. Written comments or questions received via approved method and within the time prescribed herein will be addressed by the City’s issuance of an addendum. 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.ranchoirageca.gov>, 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 the Agreement with the City, a form of which is attached hereto as **Exhibit “A.”**

## G. Insurance and Acknowledgement

Each proposal shall include a breakdown of all costs associated with issuance of the insurance endorsements described in and pertaining to Section 19 of the Agreement (“Insurance Provisions”). Each proposal shall also include signed acknowledgement(s) in substantially the same form as the form attached hereto as **Exhibit “B,”** through which each insurance carrier that will issue any policy required in the Insurance Provisions, shall acknowledge, warrant and represent that it possesses the ability to and shall furnish all the insurance endorsements prescribed in the Insurance Provisions within thirty (30) days after the date of contract award.

### **PROPOSAL FORMAT AND CONTENT:**

#### A. Presentation

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

#### B. Proposal Content

##### 1. Transmittal Letter

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

##### 2. Table of Contents

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

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

1. This section shall establish the ability of the proposer to satisfy all aspects of the required work with current or recently completed fuel delivery services work, similar to the work required in this RFP.
2. Background information of the firm, including the date of founding, legal form, number and location of offices, number of employees, days and hours of operation and any other pertinent information.
3. Disclose any conditions (e.g., bankruptcy, pending litigation, planned office closures, mergers) and organizational conflicts of interest that may affect the ability of the proposer to perform the required duties.
4. Certify that the firm is not debarred, suspended or otherwise declared ineligible to contract with any other federal, state or local public agency.
5. Provide a list of business clients to which your firm is currently providing, or has recently provided fuel delivery services. Include company names, beginning/end dates of contracts, and names, titles and telephone numbers the City can contact as references for your firm.

6. Furnish as an appendix, your firm's financial information (last year's Income Statement and Balance Sheet) that accurately describes the financial stability of your firm (financial statements will remain confidential and will be revealed only to individuals involved in the evaluation process and award of contract).

D. Proposed Staffing and Project Organization

1. Discuss the staffing of the proposing firm who would be assigned to work on the City's project.
2. Identify the key personnel that would be assigned to the project, in hours per week. Include a brief description of their qualifications and experience in performing the type of work being assigned.
3. Designate an administrator who would serve as a day-to-day contact for the City.
4. Provide any necessary organizational chart of the firm as it relates to this RFP.

E. Work Plan/Technical Approach

1. Establish the proposer's understanding of the 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 what information, documentation or staff assistance from the City your firm would request from the City in order to complete the work described.

F. Cost and Price

1. This section shall disclose all charges to be assessed to the City for the required services and declare the proposer's preferences for method and timing of payment.
2. Quote a total price for completing all services; include all costs associated with the operating budget, including all fuel delivery service fees.
3. For all staff declared in the organizational chart, provide a schedule of hourly labor rates.

G. Appendices

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

**PROPOSAL EVALUATION AND CONTRACT AWARD:**

A. Evaluation Panel

An evaluation panel consisting of 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.

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**EXHIBIT "A"  
AGREEMENT**

**SERVICE PROVIDER AGREEMENT  
BY AND BETWEEN  
THE CITY OF RANCHO MIRAGE  
AND**

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THIS SERVICE PROVIDER AGREEMENT (hereinafter, the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Rancho Mirage, a municipal corporation located in the County of Riverside, State of California, hereinafter referred to as the "City," and \_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to as "Service Provider."

**RECITALS:**

**WHEREAS**, the City desires to enter into an agreement for services pertaining to \_\_\_\_\_ (hereinafter, the "Services"); and

**WHEREAS**, the City desires to retain the services of a qualified service provider to provide the Services on an independent contractor's basis.

**NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, 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, EXTRA WORK**

a.     Service Provider shall perform the Services specifically described in the Scope of Services, attached hereto and incorporated herein by this reference as Exhibit "A." In the event any conflict exists between this Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

b.     At any time during the term of this Agreement, the City may request that Service Provider 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. Service Provider shall not perform, nor be compensated for, Extra Work without written authorization from the City.

**Section 3.                    TERM**

Service Provider shall perform those services set forth in the Scope of Services during the term of this Agreement, which shall commence as of \_\_\_\_\_, 20\_\_ and continue until \_\_\_\_\_, 20\_\_\_\_.

**Section 4.                    COMPENSATION**

Service Provider shall be paid compensation not to exceed \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_.\_\_\_\_) for the services rendered by Service Provider pursuant to this Agreement.

**Section 5.                    METHOD OF PAYMENT**

a.     Service Provider shall invoice the City for the performance of the services under this Agreement in the amount agreed upon by the parties herein.

b.     Service Provider shall be paid the amount specified in the invoice within 30 days of receipt by the City, 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.

**Section 6.                    INDEPENDENT CONTRACTOR'S STATUS**

Service Provider shall at all times during the term of this Agreement perform the services described in this Agreement as an independent contractor, and hereby waives any claims for any compensation or benefits afforded to City employees and not to independent contractors.

**Section 7.                    CIVIL CODE SECTION 1542 WAIVER**

Service Provider 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. Service Provider 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 8.**

**REPRESENTATIONS AND ACKNOWLEDGMENTS  
REGARDING INDEPENDENT CONTRACTOR'S STATUS  
OF SERVICE PROVIDER**

a. Service Provider represents and acknowledges the following:

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

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

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

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

(4) Service Provider 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.

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

(6) Service Provider is not required to perform the services set forth in this Agreement in any particular order or sequence.

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

**Section 9. NOT AGENT OF THE CITY**

a. Nothing contained in this Agreement shall be deemed, construed or represented by the City or Service Provider or by any third person to create the relationship of principal and agent.

b. Service Provider shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Service Provider have any authority, express or implied, to bind the City to any obligation whatsoever.

**Section 10. WARRANTY**

Service Provider 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.

**Section 11. FAMILIARITY WITH WORK**

a. By executing this Agreement, Service Provider 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.

b. Should Service Provider 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 Service Provider's risk until written instructions are received from the City Manager or his or her designee.

**Section 12. EQUAL OPPORTUNITY EMPLOYMENT**

Service Provider 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, Service Provider 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 13. CONFLICTS OF INTEREST**

Service Provider covenants that it does not have any interest, nor shall it acquire an interest, directly or indirectly, which would conflict in any manner with the performance of Service Provider's services under this Agreement. In the event the City officially determines that Service Provider must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Service Provider shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk.

**Section 14.          COMPLIANCE WITH LAWS; LICENSING AND PERMIT REQUIREMENTS**

a. Service Provider shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of Service Provider and/or its employees, officers, or board members.

b. Service Provider 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 business license.

**Section 15.          INSURANCE REQUIREMENTS**

a. Service Provider shall procure and maintain at its own expense, during the term of this Agreement, comprehensive general liability insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss or damage resulting from the wrongful or negligent acts by the Service Provider or its officers, employees, servants, volunteers and agents and independent contractors. Service Provider shall provide insurance on an occurrence, not claims-made basis. Service Provider acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess insurance, 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.

b. Service Provider shall further procure and maintain at its own expense, until completion of performance and acceptance by the City, commercial vehicle liability insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, covering any vehicle utilized by Service Provider or its officers, employees, servants, volunteers and agents and independent contractors in performing the services required by this Agreement.

c. Service Provider agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Service Provider enters into contracts or whom Service Provider 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. Service Provider 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.

d. In the event this Agreement is terminated for any reason prior to the completion of all obligations and requirements of this Agreement, Service Provider 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.

e. Service Provider 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 Services, Service Provider 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 16. WORKERS' COMPENSATION INSURANCE**

a. Service Provider shall procure and maintain at its own expense, during the term of this Agreement, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law.

b. If any class of employees employed by the Service Provider pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Service Provider shall provide adequate insurance for the protection of such employees to the satisfaction of the City. This provision shall not apply if Service Provider has no employees performing work under this Agreement. If the Service Provider has no employees for the purposes of this Agreement, Service Provider shall sign the Certificate of Exemption from Worker's Compensation Insurance, attached hereto and incorporated herein by this reference as Exhibit "B." Service Provider 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 with the Services to do the same.

**Section 17. ADDITIONAL NAMED INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers and agents and independent contractors, including without limitation, the City Manager and City Attorney, are named as additional insureds. Additional insureds shall be entitled to the full benefit of all insurance policies in the same manner and to the same extent as any other insureds and there shall be no limitation to the benefits conferred upon them other than policy limits to coverages.

**Section 18. WAIVER OF SUBROGATION RIGHTS**

Service Provider shall require the carriers of all required insurance policies to waive all rights of subrogation against the City and its officers, volunteers, employees, contractors and subcontractors.

**Section 19. INSURANCE DOCUMENTATION**

a. Service Provider shall secure from a good and responsible company or companies authorized to do insurance business in the State of California the policies of insurance required by this Agreement and furnish to the City certificates of said insurance with original endorsements on or before the commencement of the term of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

b. Each policy required herein must be endorsed to provide that the policy shall not be cancelled or reduced in coverage by either party (except by paid claims) unless the insurer has provided the City with 30 days prior written notice of cancellation or reduction in coverage.

c. All insurance policies required to be provided by Service Provider or any other party must be endorsed to provide that the policies shall apply on a primary and noncontributing basis in relation to any insurance or self-insurance, primary or excess, maintained or available to the City, and its officers, employees, servants, volunteers, agents and independent contractors.

**Section 20.                    TERMINATION OR SUSPENSION**

a. This Agreement may be terminated or suspended without cause by either party at any time provided that the respective party provides the other party at least thirty (30) business days written notice of such termination or suspension.

b. This Agreement may be terminated or suspended with cause by either party at any time provided that the respective party provides the other party at least ten (10) business days' written notice of such termination or suspension.

c. In the event of a termination of this Agreement under this section, Service Provider shall provide all documents, reports, data or other work product developed in performance of the Scope of Services of this Agreement to the City, within ten (10) calendar days of such termination and without additional charge to the City.

**Section 21.                    TIME OF THE ESSENCE**

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

**Section 22.                    INDEMNIFICATION**

a. Service Provider shall defend, indemnify and hold harmless the City, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect, (including any and all costs and expenses in connection therewith), arising out of the performance of this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, agents, employees or volunteers.

b. The City does not, and shall not; waive any rights that it may have against Service Provider 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, Service Provider 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 Service Provider'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 Service Provider's control, or for which Service Provider is without fault.

**Section 23. BOOKS AND RECORDS**

a. Service Provider 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 Service Provider pursuant to this Agreement.

b. Service Provider 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 City Hall, when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Service Provider'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 Service Provider'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 City Hall. Access to such records and documents shall be granted to any party authorized by Service Provider, Service Provider's representatives, or Service Provider's successor-in-interest.

**Section 24. OWNERSHIP OF DOCUMENTS**

All plans, studies, documents and other writings prepared by and for Service Provider, 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 Service Provider for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Service Provider or to any other party. Service Provider shall, at their expense, provide such reports, plans, studies, documents and other writings to the City upon written request.

**Section 25.                   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 Service Provider in connection with the performance of this Agreement shall be held confidential by Service Provider. Such materials shall not, without prior written consent of the City, be used by Service Provider 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 Service Provider which is otherwise known to Service Provider or is generally known, or has become known, to the related industry shall be deemed confidential.

b. Service Provider shall not use the City's insignia or photographs relating to the project for which Service Provider's services are rendered, or any publicity pertaining to the Service Provider'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 26.                   MODIFICATIONS AND AMENDMENTS**

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

**Section 27.                   BACKGROUND CHECKS**

At any time during the term of this Agreement, the City reserves the right to make an independent investigation into the background of Service Provider's personnel who perform work required in the Scope of Services, including but not limited to their references, character, address history, past employment, education, social security number validation, and criminal or police records, for the purpose of confirming that such personnel are lawfully employed, qualified to provide the subject service or pose a risk to the safety of persons or property in and around the vicinity of where the Services will be rendered or City Hall. If the City makes a reasonable determination that any of Service Provider's prospective or then current personnel is deemed objectionable, then the City may notify Service Provider of the same. Service Provider shall not use that personnel to perform work required in the Scope of Services, and if necessary, shall replace him or her with another suitable worker.

**Section 28.                   ENTIRE AGREEMENT**

a. This Agreement supersedes any and all other agreements, either oral or written, between the City and Service Provider 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 29.            AMBIGUITIES**

This Agreement is in all respects intended by each party hereto to be deemed and construed to have been jointly prepared by the parties and the parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

**Section 30.            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  
69-825 Highway 111  
Rancho Mirage, CA 92270  
Telephone: (760) 324-4511  
Facsimile: (760) \_\_\_\_\_  
Email: \_\_\_\_\_@ranchomirageca.gov

To Service Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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 31.            NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to Service Provider, 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 Service Provider or to its successor, or for any breach of any obligation of the terms of this Agreement.

**Section 32.            REVIEW BY ATTORNEYS**

Each party hereto has had its attorneys review this Agreement and all related documents. Each party hereto has consulted with its attorneys and has negotiated the terms of this Agreement based on such consultation.

**Section 33. 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 34. ASSIGNMENT AND SUBCONTRACTING**

- a. The experience, knowledge, capability and reputation of Service Provider, 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 Service Provider under this Agreement will be permitted only with the written consent of the City.
- b. Service Provider 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, Service Provider 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 35. CARE OF WORK**

The performance of services by Service Provider shall not relieve Service Provider 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 negligence of Service Provider.

**Section 36. 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 37. SUCCESSORS, HEIRS AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the parties.

**Section 38. 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 39. 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 40. DEFAULT**

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default of any party to this Agreement may remain uncured for more than fifteen (15) calendar days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

**Section 41. 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 42. 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 43. LITIGATION EXPENSES AND ATTORNEY'S 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 44. EFFECTIVENESS OF AGREEMENT**

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Service Provider, and approved as to form by the City Attorney, and executed by the City Manager or his or her designee.

**Section 45. 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 46. LABOR LAWS**

a. All work or services performed within the State of California pursuant to this Agreement by Service Provider, Service Provider's employees and independent contractors, or contractor's subcontractors and its subcontractors' employees and independent contractors shall be performed by individuals lawfully permitted to perform such work or services in the State of California and/or the United States of America pursuant to all applicable State and/or Federal labor laws, rules and regulations including, but not limited to, any State or Federal law, rule or regulation prohibiting the employment of undocumented workers or any other person not lawfully permitted to perform said work or services in the State of California or the United States of America.

b. Documentation must be promptly submitted to the City at any time, at the request of the City, for the purpose of determining whether or not the work or services provided pursuant to this contract are being provided in compliance with this section.

**Section 47. 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.

**Section 48. COUNTERPARTS**

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

**[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

\_\_\_\_\_  
**Its:**  
**(Title)**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Name, Director of \_\_\_\_\_

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**EXHIBIT "A"**

**SCOPE OF SERVICES**

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

**EXHIBIT "B"**

**CERTIFICATE OF EXEMPTION  
FROM WORKERS' COMPENSATION INSURANCE**

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

\_\_\_\_\_  
Name & Signature

Date: \_\_\_\_\_, 2015

**EXHIBIT "B"**

**ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS**

In recognition of \_\_\_\_\_ ("Company") having submitted a proposal to the City of Rancho Mirage Request for Proposals for Fuel Delivery Services, dated July 30, 2015 ("RFP"), issued by the City of Rancho Mirage ("City"), and in further recognition that the City requires Company to comply with certain insurance requirements as set forth in Section 19 ("Insurance Provisions") of the Agreement (which Agreement is defined in and made part of the RFP), I represent that I am authorized to sign on behalf of the insurance company listed below ("Insurer"), and by signing below, I acknowledge, warrant and represent that Insurer possesses the ability to, and if requested by Company, shall furnish all the insurance endorsements prescribed in the Insurance Provisions within thirty (30) days of contract award, as respecting  worker's compensation and/or  commercial general liability and/or  commercial vehicle liability insurance and/or  professional liability [PLEASE CHECK ALL THAT APPLY].

Name of Insurer [Print]

\_\_\_\_\_  
Name, Title [Print]

\_\_\_\_\_  
Signature