

**CITY OF RANCHO MIRAGE**

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

**REQUEST FOR PROPOSALS  
FOR  
CITY MAGAZINE & NEWSLETTER  
PUBLISHING SERVICES**

**Issued:  
MARCH 15, 2016**

## TABLE OF CONTENTS

ANNOUNCEMENT.....	1
PROPOSALS/OFFER SUBMITTAL.....	1
INTENT .....	1
REQUIREMENTS.....	2
SCOPE OF SERVICES AND OTHER REQUIREMENTS.....	2
GENERAL INSTRUCTIONS FOR SUBMITTAL.....	7
PROPOSAL FORMAT AND CONTENT.....	9
PROPOSAL EVALUATION AND CONTRACT AWARD .....	11
EXHIBIT "A" (AGREEMENT FORM).....	13
EXHIBIT "B" (ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS)....	28

**CITY OF RANCHO MIRAGE**  
**REQUEST FOR PROPOSALS**  
**FOR**  
**CITY MAGAZINE & NEWSLETTER**  
**PUBLISHING SERVICES**

**ANNOUNCEMENT:**

The City of Rancho Mirage ("City") invites proposals from qualified, competent, knowledgeable, and experienced companies that will provide full-service city magazine & newsletter publishing 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 city magazine & newsletter publishing services.

**PROPOSALS/OFFER SUBMITTAL:**

Proposals will be accepted until **5:00 p.m. on MARCH 31, 2016**, and each must be submitted in a sealed envelope plainly marked on the outside "**SEALED BID FOR CITY MAGAZINE & NEWSLETTER PUBLISHING SERVICES - DO NOT OPEN WITH REGULAR MAIL**" to:

The City of Rancho Mirage  
Attn: Robert Barrett, Director of Marketing & Public Relations  
69825 Highway 111  
Rancho Mirage, California 92270

**INTENT:**

The City of Rancho Mirage is requesting proposals for a publisher for its annual R/M magazine and R/M INSIDER, the City's newsletter which is published three times a year. The City will require a sophisticated and experienced print and digital publishing partner. Expectations of the publishing partner will be on the highest level as evidenced by the last three years of outstanding City publications. In line with Rancho Mirage's luxury brand and legacy history, as well as the expectations of residents and businesses, the City demands consummate skill in all aspects of advertising sales, publishing and leadership from its publishing partner.

## **REQUIREMENTS:**

- Proof that the service provider's core competencies are associated with luxury publications.
- An established record of publishing sophisticated destination publications.
- Evidence that the service provider understands brand differentials and how to maximize their use to drive residential and visitor calls-to-action for a given destination, product or service.
- Verification that the service provider has an acute knowledge of and proven successful experience with the travel industry.
- Particular experience in publishing for the Southern California drive feeder-market consumer.
- Confirmation that the service provider has long-term experience and success in custom publishing targeting the luxury market.
- Substantial luxury subscription publishing experience and success.
- Substantiation that the service provider has a deep knowledge of the Coachella Valley and in particular the high-end demographic of the regional market.
- A proven track record of advertising sales with luxury goods and services providers in the Coachella Valley and in particular Rancho Mirage.
- A professional staff comprised of a publisher, seasoned editors, art directors, production managers and digital imaging managers that can be available to meet with City staff throughout the production schedule for both the magazine and the newsletters.
- Proven record of utilizing top freelance photographers that specialize in fashion, architecture and life style as well as writers and art directors residing in Southern California and that are ahead of the curve in regards to food, fashion, and lifestyle trends and that might be assigned to our publications.
- Proven digital publishing successes.
- A substantial record that demonstrates profound knowledge of Rancho Mirage's unique and legendary history.
- No record of controversial political or social stands that could draw attention away from the pleasurable focus of the publications and the reputation of the City.
- Substantial event planning capabilities that correspond with the City's luxury lifestyle requirements.
- Appropriate support staff to deliver the stated scope of work in the required time.

## **SCOPE OF SERVICES AND OTHER REQUIREMENTS:**

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:

Service provider will publish one (1) R/M magazine and three (3) R/M newsletters annually over five (5) years.

Service provider will be responsible for planning a production and distribution schedule, researching, writing, photography, publishing, mailing and distribution of said magazine.

Content of the magazine and newsletter is under the direction of the City of Rancho Mirage.

R/M magazine will be mailed to all Rancho Mirage residents, businesses and delivered to all Rancho Mirage resorts. In addition, 1000 extra copies of R/M magazine will be delivered to the City.

All newsletter copy and photography will be supplied by the City of Rancho Mirage.

Service provider will be responsible for planning a production and distribution schedule, publishing, mailing and distribution of said newsletter.

The newsletter will be mailed to all Rancho Mirage residents and businesses. In addition, 1000 extra copies of the newsletter will be delivered to the City.

Digital versions of all City publications will be created and hosted. An active hotlink to the digital versions will be provided to the City one week after publication and maintained until the next R/M magazine and / or R/M INSIDER is issued.

### **Specifications and scope of work for R/M magazine**

R/M magazine:

Size: 9" x 10-7/8"

Pages: 100 (minimum)

Paper: cover -120lb gloss; text 70lb gloss book

Color: 4/4

Bind: perfect

Quantity: 20,000

Digital: digital edition with active hot links

Delivery: Fee includes delivery to City Hall, all major hotels in the City and direct mailed (bulk) to all residences, households and businesses within the City of Rancho Mirage

Timeline:	July 1	Editorial plan finalized and approved by the City
	January 7 – 15	Magazine received by residents

### **Newsletter:**

Size: 8-1/2" x 10-7/8"

Pages: 12

Quantity: 14,500

Paper: 80lb; CFS#3

Color: 4/4

Bind: saddle stitch

Digital: digital edition with active hot links

Delivery: City Hall and direct mail (bulk) to all residences, households and businesses in the City of Rancho Mirage.

**Timelines:    October Issue**

August 1 - Editorial plan finalized and approved by City

September 30 – Newsletter mailed

**January Issue**

October 15 - Editorial plan finalized and approved by City

January 2 - Newsletter mailed

**April Issue**

February 1 - Editorial plan finalized and approved by City

March 30 - Newsletter mailed

**Fees and Revenue Share:**

City of Rancho Mirage will pay service provider an agreed upon fee for services described. Please provide a detailed breakdown of the costs related to the publications described in the scope of work.

The service provider will be required to sell advertising in the form of advertorial and traditional advertisement into R/M magazine. Only three traditional advertising positions will be permitted – back cover, insider back cover and inside cover. All advertisers must be Rancho Mirage businesses and approved by the City. For every net (after agency, sales and ad sales, production expense) dollar sold, the City of Rancho Mirage will receive 50% credit against the stated fee of said net advertising revenues to help off-set costs. In year one of the Agreement, the City will expect a \$30,000 credit against the fee.

**Substantiation of Requirements**

**Proof that the service provider’s core competencies are associated with luxury publications.**

- Provide three recent examples of magazine publications produced by your firm that represent three different luxury destinations.
- Provide a list of luxury destinations that your firm has produced magazines for and the dates of the services

**Provide an established record of publishing sophisticated destination publications.**

- Provide an inventory and written accounting of your firm's work in the field of sophisticated destination publications

**Provide evidence that the service provider understands brand differentials and how to maximize their use to drive residential and visitor calls-to-action for a given destination, product or service.**

- Explain the term "brand differentials" in regards to destination publishing and how you have evidenced differences in publications produced for destination clients.
- Share examples of client requests in regards to calls-to-action for products and services embedded in editorial and some resulting successes of such efforts.

**Verification that the service provider has an acute knowledge of and proven successful experience with the travel industry.**

- Give two examples of working for Destination Management Organizations (DMO) and how you addressed their stated objectives in publications that you produced for them.
- What are the top ten domestic feeder markets for the Coachella Valley?
- Describe your understanding of the importance of the Southern California Drive Market for the Rancho Mirage resort set.

**Provide particular experience in publishing for the Southern California drive feeder-market consumer.**

- Give two examples of publications produced for the Southern California Drive Market and how they were used to drive bookings and spending in a particular destination.

**Confirmation that the service provider has long-term experience and success in custom publishing targeting the luxury market.**

- Provide two examples of luxury market publications continuously produced by your firm over period of three years or more.
- Share, in writing, how a long-term publishing relationship with a luxury destination enhanced the quality of the publication and the goals and objectives of the luxury market managers that commissioned the publication.

**Provide proof of substantial luxury subscription publishing experience and success.**

- Provide two examples of subscription publications produced by your firm.
- Explain the difference between a subscription publication and a free publication in terms of advertiser's interest and consumer interest.

**Substantiation that the service provider has a deep knowledge of the Coachella Valley and in particular the high-end demographic of the regional market.**

- Provide a written description (charts and graphs are welcomed) of the Coachella Valley's high-end demographic.
- Describe any recent shift in high-end consumer trends in the Coachella Valley.
- Outline what a magazine must do to appeal to this demographic in order to maintain reader interest.

**A proven track record of advertising sales with luxury goods and services providers in the Coachella Valley and in particular Rancho Mirage.**

- Provide a list of your firm's top ten luxury goods and service providers that consistently purchase advertising in your publications.
- Provide a list of Rancho Mirage luxury goods and service providers that consistently advertise in your publications.

**A professional staff comprised of a publisher, seasoned editors, art directors, production managers and digital imaging managers that can be available to meet with City staff throughout the production schedule for both the magazine and the newsletters.**

- Provide bios for your production team that will be assigned to work on the Rancho Mirage publication.
- Provide a statement that will enable us to know how City staff will be able to interface with your team throughout production.

**Proven digital publishing successes.**

- Share three links to examples of digitalized publications produced by your firm and explain why you encourage clients to develop a digitized version of their publications.

**A substantial record that demonstrates profound knowledge of Rancho Mirage's unique and legendary history.**

- Share five illustrated articles about Rancho Mirage's history.

**No record of controversial political or social stands that could draw attention away from the pleasurable focus of the publications and the reputation of the City.**

- Share your editorial policy regarding controversial topics.

**Substantial event planning capabilities that correspond with the City's luxury lifestyle requirements.**

- Explain how special events produced by a publishing firm can enhance the experience for advertisers as well as the readers of your publications.
- Share examples of your firm's special events.

**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), MARCH 31, 2016, to:**

The City of Rancho Mirage  
Attn: Robert Barrett, Director of Marketing & Public Relations  
69825 Highway 111  
Rancho Mirage, California 92270

**B. Due Date and Time:**

Proposals submitted after **5:00 p.m. on MARCH 31, 2016**, 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 CITY MAGAZINE & NEWSLETTER PUBLISHING 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

Written comments from proposers must be received no later than **5:00 p.m. on March 24, 2016** ("Addenda Due Date"), and must be submitted via the following approved written methods addressed to Robert Barrett, Director of Marketing & Public Relations:

1. At [robertb@RanchoMirageCA.gov](mailto:robertb@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.

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 prior to 5:00 p.m. on 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 to this RFP. 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>, 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 27 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. Magazine examples can exceed 8 ½" x 11".

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 publishing 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, publishing services similar to those required in this RFP. 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, and anticipated hours to be worked per week. Include a brief description of their qualifications and experience in performing the type of work being assigned.
3. Provide bios and examples of work for top Southern California freelance talent that you might assign to our publications.

4. Share articles and layouts from your publications that demonstrate your use of these contractors.
5. Provide a list of names and brief description of job duties of your firm's support staff that will likely work on the City's publications.
6. Designate an administrator who would serve as a day-to-day contact for the City.
7. 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.
3. Provide a summary of the firm's proposed services, with a focus on any technologies, innovations, and processes that the firm will offer to help the City meet its objectives.

F. Cost and Price

This section shall disclose all charges to be assessed the City for the required services and declare the proposer's preferences for method and timing of payment.

1. Quote a total price for completing all services; include all costs associated with the operating budget, including all publishing service fees.
2. Share in detail your profit sharing proposals for ad sale revenues.

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. Quality of work
2. Cost and price
3. Work plan
4. Qualification and experience of proposer
5. Staffing and organization
6. Conformance with this RFP
7. 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
8. 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.

**EXHIBIT "A"**  
**AGREEMENT FORM**

**ADVERTISING AGREEMENT**  
**By and Between**  
**CITY OF RANCHO MIRAGE**  
**And**

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THIS ADVERTISING AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Rancho Mirage, a municipal corporation located in the County of Riverside, State of California (the "City") and \_\_\_\_\_, a \_\_\_\_\_ ("Consultant"), with the City and \_\_\_\_\_ sometimes collectively referred to herein as the "Parties," and alternatively referenced singularly as a "Party" with respect to the following:

**RECITALS**

**WHEREAS**, \_\_\_\_\_ publishes advertising materials; and

**WHEREAS**, the City desires to produce and publish a magazine and newsletter as more particularly described in the "Scope of Services" attached hereto and incorporated herein by this reference as Exhibit "A"; and

**WHEREAS**, the City Council approved this Agreement during its meeting of \_\_\_\_\_, 20\_\_\_\_.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

**SECTION 1. INCORPORATION OF RECITALS**

The foregoing recitals are hereby expressly made a part of this Agreement.

**SECTION 2. SCOPE OF SERVICES AND TERM OF AGREEMENT**

\_\_\_\_\_ agrees to produce and publish advertising materials ("Services") as prescribed in the Scope of Services. The term of this Agreement shall expire upon completion of the work required in the Scope of Services unless sooner terminated in accordance with this Agreement.

**SECTION 3. COMPENSATION**

The City agrees to pay to \_\_\_\_\_, \_\_\_\_\_ Dollars and \_\_\_\_ Cents (\$\_\_\_\_\_.\_\_\_\_) for the services described in this Agreement upon receipt of an invoice with proof of publication of the subject advertisements and proof of other services due and rendered, in accordance with the Scope of Services.

## **SECTION 4. INTEGRATION, MODIFICATION**

**4.1 No Reliance.** The Parties acknowledge that this Agreement is signed and executed without reliance upon any actual or implied promises, warranties or representations made by any of the Parties or by any representative of any of the Parties, other than those which are expressly contained within this Agreement.

**4.2 Entire Agreement.** The Parties intend that this Agreement, including the true and correct Recitals above, incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Agreement, and any exhibits attached hereto constitute a complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving this Agreement. Each of the Parties acknowledges that no other party has made any promise, representation or warranty whatsoever, expressed or implied, written or oral, not contained herein concerning the subject matter hereof, to induce the execution of this Agreement, and each of the Parties acknowledges that it has not executed this Agreement in reliance on any promise, representation or warranty not contained herein.

**4.3 Supersedes Prior and Contemporaneous Agreements.** This Agreement supersedes all prior and contemporaneous agreements, understandings, terms, conditions, and representations, written or oral, made by the Parties hereto or their attorneys concerning the matters covered by this Agreement.

**4.4 No Oral Modifications.** Neither this Agreement, nor any term or provision thereof, may be waived, modified, or amended except by written agreement signed by all Parties.

## **SECTION 5. GOVERNING LAW AND VENUE**

This Agreement shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of California. This Agreement is made and entered into in the County of Riverside, State of California, and any legal actions or proceedings arising from or related to this Agreement shall be brought in the County of Riverside, State of California.

## **SECTION 6. NO THIRD PARTY BENEFICIARIES**

It is expressly agreed that this Agreement is not for the benefit of any person or entity not a Party hereto. This Agreement is not intended to constitute a third party beneficiary contract.

## **SECTION 7. SEVERABILITY**

If any portion, provision, or part of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts

of this Agreement, and shall not affect the validity or enforceability of any remaining portions, provisions, or parts.

## **SECTION 8. COUNTERPARTS**

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

## **SECTION 9. HEADINGS AND FORMATTING**

The headings and formatting in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

## **SECTION 10. TIME IS OF THE ESSENCE**

Time is of the essence with respect to any act or performance under this Agreement.

## **SECTION 11. BREACH AND REMEDIES**

**11.1 Default.** Unless otherwise provided in this Agreement, failure or delay by either Party to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided, however, that if the Party allegedly in default commences to cure, correct or remedy the alleged default, within ten (10) calendar days after receipt of written notice specifying such default, and shall diligently complete such cure, correction or remedy, that Party shall not be deemed in default hereunder.

**11.2 Notice of Default.** Unless otherwise provided in this Agreement, in the event of an alleged default by either Party, the non-defaulting Party shall give written notice of default to the allegedly defaulting Party by mailing or delivering said notice to the person specified in Section 12 of this Agreement. Said notice shall specify the alleged default. The non-defaulting Party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice as specified herein.

**11.3 Not a Waiver.** Any failure or delay by either Party in asserting any of their respective rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default, nor shall it change the time of default. The exercise by either Party of one or more 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 a Party.

**11.4 Breach.** In the event that a default remains uncured for more than ten (10) calendar days following receipt of written notice of default, as provided above, a “breach” shall be deemed to have occurred.

**11.5** Code of Civil Procedure section 664.6. Any Party alleging default may bring a motion to enforce this Agreement under section 664.6 of the Code of Civil Procedure. In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by a Party alleging a default against an allegedly defaulting Party for an alleged breach of this Agreement may be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement in addition to any other remedy available at law or in equity.

**11.6** Cumulative Remedies. In addition to the remedies provided by this Agreement, the Parties shall have all remedies available to them at law and in equity.

**SECTION 12. NOTICE**

**12.1** 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: Robert Barrett, Director of Marketing & Public Relations  
City of Rancho Mirage  
69-825 Highway 111  
Rancho Mirage, California 92270  
Telephone: (760) 324-4511  
Facsimile: (760) 202-4792  
Email: robertb@ranchomirageca.gov

To \_\_\_\_\_:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**12.2** 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 13. ADDITIONAL DOCUMENTS**

To the extent that it is necessary or appropriate to prepare and execute any additional documents in order to effectuate this Agreement, the Parties agree to do so in a timely manner.

**SECTION 14. BINDING ON SUCCESSORS**

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective partners, heirs, legal representatives, successors, administrators, personal representatives, agents, members, and assigns.

**SECTION 15. AUTHORITY**

Any Party signing this Agreement on behalf of an entity or other than themselves, hereby represents and warrants that such party has authority to sign on behalf of the indicated entity and that the entity has followed all appropriate procedures for entering into this Agreement.

**SECTION 16. FURTHER COOPERATION**

Each of the Parties agrees to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the terms and conditions of this Agreement.

**SECTION 17. 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 18. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

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

**SECTION 19. REVIEW BY ATTORNEYS**

The Parties have had their attorneys review this Agreement and all related documents, and have consulted with their attorneys and negotiated the terms of this Agreement based on such consultation.

**SECTION 20. LABOR LAWS**

**20.1** All work or services performed within the State of California pursuant to this Agreement by \_\_\_\_\_, \_\_\_\_\_ employees and independent contractors, or \_\_\_\_\_ 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.

**20.2** 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 Agreement are being provided in compliance with this Section.

## **SECTION 21. BOOKS AND RECORDS**

**21.1** \_\_\_\_\_ 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 \_\_\_\_\_ pursuant to this Agreement.

**21.2** 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, the City's 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 \_\_\_\_\_ address indicated for receipt of notices in this Agreement.

## **SECTION 22. COMPLIANCE WITH LAWS; LICENSING AND PERMIT REQUIREMENTS**

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

## **SECTION 23. INDEPENDENT CONTRACTOR'S STATUS**

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

**SECTION 24. CIVIL CODE SECTION 1542 WAIVER**

\_\_\_\_\_ 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.”

Except as otherwise provided herein, 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, that are only afforded to employees and not independent contractors, including, without limitation, claims of entitlements under the California Public Employees’ Retirement System (CalPERS). \_\_\_\_\_ 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 25. REPRESENTATIONS AND ACKNOWLEDGMENTS REGARDING INDEPENDENT CONTRACTOR’S STATUS OF \_\_\_\_\_**

**25.1** \_\_\_\_\_ represents and acknowledges the following:

**25.1.1** The City is not required to provide any training or legal counsel to \_\_\_\_\_ or its employees in order for \_\_\_\_\_ to perform the services described in this Agreement.

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

**25.1.3** Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with \_\_\_\_\_ on a continuing basis after termination of this Agreement.

**25.1.4** 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 \_\_\_\_\_ to perform the services described in this Agreement.

**25.1.5** \_\_\_\_\_ 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.

**25.2** The City represents and acknowledges the following:

**25.2.1** \_\_\_\_\_ is not required to comply with daily instructions from City staff with respect to when, where or how \_\_\_\_\_ must perform the services set forth in this Agreement.

**25.2.2** \_\_\_\_\_ is solely responsible for determining who, under the supervision or direction of \_\_\_\_\_, will perform the services set forth in this Agreement.

**25.2.3** The City will not hire, supervise or pay any assistants working for \_\_\_\_\_ pursuant to this Agreement.

**25.2.4** Nothing in this Agreement shall be interpreted to imply that \_\_\_\_\_ must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

**25.2.5** It is the sole responsibility of \_\_\_\_\_ to set the hours in which \_\_\_\_\_ performs or plans to perform the services set forth in this Agreement.

**25.2.6** \_\_\_\_\_ 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.

**25.2.7** \_\_\_\_\_ is not required to perform the services set forth in this Agreement on City-owned property.

**25.2.8** Nothing in this Agreement shall be interpreted to preclude \_\_\_\_\_ from working for other persons or firms, provided that such work does not create a conflict of interest.

**SECTION 26. 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 gross 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.

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.

## **SECTION 27. 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 insureds 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 28. CONFIDENTIALITY**

**28.1** All ideas, memoranda, specifications, plans, procedures, drawings, photographs, videos, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to \_\_\_\_\_ in connection with the performance of this Agreement shall be held confidential by \_\_\_\_\_. Such materials shall not, without prior written consent of the City, be used by \_\_\_\_\_ 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 \_\_\_\_\_ which is otherwise known to \_\_\_\_\_ or is generally known, or has become known, to the related industry shall be deemed confidential.

**28.2** Except as may be expressly provided in Section 2 of this Agreement, \_\_\_\_\_ and its officers, employees, volunteers, agents and subcontractors shall not use the City's insignias, logos, trademarks, service marks, videos or photographs relating to the project for which \_\_\_\_\_ services are rendered, for any publicity advertising, promotional, marketing or political purposes in

any correspondence, email, newsletter, pamphlet, brochure, mailer, internet website, social network site, magazine, trade paper, newspaper, television or radio production or any other similar medium without the prior written consent of the City.

**SECTION 29. FORCE MAJEURE**

Neither Party shall be responsible for any liability, loss or damage to the other Party due to any failure of performance or delay in performance by reason of any event of force majeure, including but not limited to strikes, acts of God, natural disasters, weather, riots, incendiaries, power interruption, interference by civil or military authorities, compliance with governmental laws, rules, regulations or other authority, or any causes beyond either Party's control.

**SECTION 30. 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) calendar days written notice of such termination or suspension and provided that, upon termination, the City shall promptly pay \_\_\_\_\_ for all services performed prior to termination.

b. This Agreement may be terminated or suspended by either Party at any time upon a material breach of this Agreement by the other Party; provided that the respective Party provides the other party prompt written notice of such breach and fifteen (15) business days' to cure such breach; provided further that, upon termination, the City shall promptly pay \_\_\_\_\_ for all services performed prior to termination.

c. In the event of a termination of this Agreement under this Section, \_\_\_\_\_ 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 31. PRIOR AGREEMENTS SUPERSEDED**

This Agreement along with the terms and conditions contained herein constitutes the sole and only agreement between the Parties and shall supersede any and all prior contracts, understandings, terms and conditions, written or oral, that may previously exist between the Parties with respect to the matters set forth herein, including but not limited to, those matters described in the Scope of Services. Any such previous contracts, understandings, terms and conditions shall be of no further force or effect.

**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: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Robert Barrett, Director of Marketing &  
Public Relations

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert J. Lee, Assistant City Attorney

**EXHIBIT "A"**

**SCOPE OF SERVICES**

N:\RNCH\0001-10 General Matters\DOC\6080 – Agreement Template for RFP City Magazine and Newsletter Publication (Redline 03.14.16).docx

**EXHIBIT "B"**

**ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS**

In recognition of \_\_\_\_\_ ("Company") having submitted a proposal to the City of Rancho Mirage Request for Proposals for City Magazine & Newsletter publishing Services, dated March 15, 2016 ("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 27 ("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