

**CITY OF RANCHO MIRAGE**

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

**REQUEST FOR PROPOSALS  
FOR  
DESIGN AND ADVERTISING SERVICES**

**Issued:  
MARCH 23, 2016**

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**CITY OF RANCHO MIRAGE**  
**REQUEST FOR PROPOSALS**  
**FOR**  
**DESIGN AND ADVERTISING SERVICES**

**ANNOUNCEMENT:**

The City of Rancho Mirage ("City") invites proposals from qualified, competent, knowledgeable, and experienced companies that will provide full-service design and advertising 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 design and advertising services.

**PROPOSALS/OFFER SUBMITTAL:**

Proposals will be accepted until **5:00 p.m. on APRIL 6, 2016**, and each must be submitted in a sealed envelope plainly marked on the outside "**SEALED BID FOR DESIGN AND ADVERTISING 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 design and advertising agency to be contracted on retainer for its collateral, print, banner, television and web ad production as well as power-point presentations. The City will require a seasoned and experienced agency partner with significant experience with regional municipal agencies and special event clients and a demonstrated understanding of brand and destination management. Expectation of an agency partner will be on the highest level as evidenced by the City's record of successful campaigns and outstanding collateral. In addition, the agency will need to positively interface with other City contractors that assist the City with its website and marketing strategy, social media advertising and content development. In alignment with Rancho Mirage's luxury brand and legacy history, as well as the expectations of Council Members, residents and business leaders, the City demands consummate skill in all aspects of advertising communication

and brand management. The contractor that is selected to be the City's agency of record will be awarded a multi-year contract.

**REQUIREMENTS AND SUBSTANTIATION OF REQUIREMENTS:**

- Proof that the service provider's core competencies are associated with municipal agencies, special event and destination brand management.
  - Provide two examples of campaigns for each of the three categories listed above.
- A sustained record of providing advertising and design services for municipal agencies and special event clients.
  - Provide a written dated inventory of municipal agencies and special event clients.
- 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, event or service.
  - Provide examples of two campaigns that addressed use of differentials to attract consumer attention to a call-to-action. Provide a written analysis of how your company addressed client directives in regards to differentials in the competitive set.
- Verification that the service provider has an acute knowledge of and proven successful experience with the travel industry.
  - Provide a written description of your company's experience in providing design services for a travel industry related company and some example of campaign materials designed by your firm for the travel segment.
- Particular experience in developing advertising campaigns that target the Southern California drive-market consumer.
  - Provide examples of campaigns that your firm designed for use in the Southern California drive market to attract visitors to the Coachella Valley.
  - In writing, outline the success of a Southern California drive market campaign that your firm designed for a Coachella Valley client.
- Confirmation that the service provider has long-term experience and success in targeting a high end demographic.

- Demonstrate, in writing, your company's knowledge of and experience with targeting the high end consumer demographic.
  - Provide a list of campaigns produced by your firm that targeted the high end consumer demographic.
  - Provide an example of a high end demographic targeted campaign produced by your firm.
- A proven track record of developing advertising campaigns for luxury service providers and event producers in the Coachella Valley and in particular Rancho Mirage.
  - Share two examples of campaigns produced by your firm for luxury service providers and event producers in the Coachella Valley. Evidence of such campaigns for Rancho Mirage service or events will be especially appreciated.
- A professional staff comprised of account managers, art directors, production managers and digital imaging managers that can be available to meet with City staff throughout the duration of the contract.
  - Provide bios and a list of your firm's account management and creative team.
  - Provide a statement that confirms your firm's willingness to meet and work with the City's marketing team.
- Appropriate support staff to deliver the stated scope of work in the required time.
  - Provide an organizational chart that shows your firm's support staff.
- Refined and astute group planning and presentation capabilities.
  - Outline, in writing, your firm's record of helping clients plan and execute advertising campaigns.
  - Provide a list of presentations presented by your firm on behalf of clients.

**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:

The selected firm, under a monthly retainer, will provide ongoing design services for a wide variety of ads (print, television and new media), brochures, posters, banners and signage.

Creative direction will be provided by the City of Rancho Mirage's marketing department staff.

Service provider will be responsible for planning a production and distribution schedule that will include sharing comps within five working days of receiving an assignment and sharing changes within 24 hours of staff directives.

Service provider will maintain an asset bank of City photography, past work for the City and rejected comps.

An example of one year's design service production for the City is attached hereto as **Exhibit "A."**

**Fees and Revenue Share:**

City of Rancho Mirage will pay service provider an agreed upon monthly retainer for services described. Please provide a monthly hour allotment for the account, a monthly retainer fee and an hourly cost for services beyond the retainer.

**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), APRIL 6, 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 APRIL 6, 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 DESIGN AND ADVERTISING 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 30, 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.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 "B."**

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 Sections 18 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 "C,"** 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 appropriate, professional format.

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

This section shall establish the ability of the proposer to satisfy all aspects of the required work with current or recently completed design and advertising services work, similar to the work required in this RFP.

1. 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.
2. 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.
3. Certify that the firm is not debarred, suspended or otherwise declared ineligible to contract with any other federal, state or local public agency.
4. Provide a list of business clients to which your firm is currently providing, or has recently provided, design and advertising 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. Current municipal contracts with any other Coachella Valley city will be deemed a conflict of interest.
5. List any special capabilities that your agency performs internally that would benefit the account.
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. Designate an administrator who would serve as a day-to-day contact for the City.

2. 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

1. 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.

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 in no particular order of importance.

1. Quality and appropriateness of work

2. Cost and price
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.

**EXHIBIT "A"**

**EXAMPLE OF DESIGN SERVICE PRODUCTION**

**SEE ATTACHED**

Attachment  
Example of 1 year production

FY 2014/2015	
Due Date	Description
6/30/2015	PET ID CARDS
6/30/2015	LANDSCAPE NOISE BROCHURE
5/29/2015	GOOD NEIGHBOR BROCHURE
6/30/2015	UPDATE ANIMAL CONTROL BROCHURE
6/30/2015	LANDSCAPE NOISE BROCHURE
6/30/2015	CODE COMPLIANCE BROCHURE
6/30/2015	ANIMAL CONTROL BROCHURE
5/29/2015	PRGM AD - UNITED WAY GALA
5/29/2015	CONSULT SVCS-2015 ART AFFAIRE
5/22/2015	CITY LOGO PRODUCTS - ANA
5/1/2015	STATE OF THE CITY PGM
4/10/2015	ART WORK-RACE 2B READY BROCHURES
4/10/2015	MEDIA BUY-STATE OF CTY4/9
4/10/2015	TV MEDIA BUY-ANA INSPRTN
5/22/2015	ANA LIGHT POLE BANNERS
3/20/2015	AFFORDABLE HOUSING BROCHURE
3/27/2015	ADS-ANA INSPIRATION
3/20/2015	CTY GIVEAWAYS-ANA INSPRTN
3/20/2015	CTY GIVEAWAYS-ANA INSPRTN
3/20/2015	MEDIA PROMO-RM DINING
6/5/2015	CVI PRGM FULL PAGE AD
3/13/2015	1PG AD-ANA INSPIRATION
5/22/2015	DESIGN VACATION RENTAL RENEWAL FORM
3/13/2015	POSTERS/AD-EMERGENCY PREPAREDNESS
2/27/2015	DEPOSIT-ANA INSPIRATION BANNERS
2/6/2015	RAMMY AD
12/19/2014	WEBSITE-RM RESTARNT ASSOC
3/13/2015	ADVERTISEMENT-2014 ART AFFAIRE
12/12/2014	WESTIN GOLF MEMBR POSTCRD
12/12/2014	2015 SPEAKER SERIES PRINTS
5/22/2015	DINE RM CARDS, DECALS
11/7/2014	BANNER BIKE RACK-2014 ART AFFAIRE
11/7/2014	STAGE BANNER-2014 ART AFFAIRE
11/21/2014	BANNERS-2014 ART AFFAIRE
11/14/2014	REIMB-WESTIN CLUB PSTCRD
5/22/2015	GOOD NEIGHBOR BROCHURE
12/5/2014	RM RESTAURANT ASSOC SHIRT
11/21/2014	BANNER/RACK CARDS-2014 ART AFFAIRE
10/17/2014	WEB DESIGN/FLYER-SPEAKER SERIES
10/3/2014	2014 ART AFFAIRE BRAND DESIGN

10/10/2014	2015 SPEAKER SERIES BRAND
10/3/2014	MONUMENT SIGN CONCEPT
9/26/2014	DESIGN-RESTAURANT ASSOC LOGO
9/19/2014	VACATION RENTAL PDF UPDATES
9/19/2014	VACATION RENTAL PDF UPDATES
9/12/2014	WEB DESIGN-14 ART AFFAIRE
9/12/2014	INSIDER AD-14 ART AFFAIRE
9/12/2014	DEP-2014 ART AFFAIRE BRAND DESIGN
9/12/2014	STREET POLE BNRS-2014 ART AFFAIRE
12/12/2014	STREET BANNERS
9/5/2014	DEPOSIT-LIGHT POLE BANNER
12/5/2014	NAME CARDS-TOURISM COMMITEE
	TOTAL

**EXHIBIT "B"**

**AGREEMENT FORM**

**SEE ATTACHED**

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

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This Professional Services Agreement (hereinafter, this "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Rancho Mirage, a municipal corporation in the County of Riverside, State of California, hereinafter referred to as the "City," and \_\_\_\_\_, \_\_\_\_\_, hereinafter referred to as "Consultant."

**RECITALS:**

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

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

**WHEREAS**, the City Council approved this Agreement during its meeting of \_\_\_\_\_, 2016.

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

**Section 1.                    RECITALS**

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

**Section 2.                    SCOPE OF SERVICES**

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

**Section 3.                  COMPLETION DATE**

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

**Section 4.                  COMPENSATION**

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

**Section 5.                  METHOD OF PAYMENT**

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

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

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

**Section 6.                  EXTRA WORK**

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

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

**Section 7.                    TERMINATION**

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

**Section 8.                    OWNERSHIP OF DOCUMENTS**

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

**Section 9.                    CONFIDENTIALITY**

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

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

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

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

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

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

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

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

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

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

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

a. Consultant represents and acknowledges the following:

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

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

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

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

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

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

b. The City represents and acknowledges the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Initials

**Section 14. CONFLICTS OF INTEREST**

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

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

(1) Does not make or participate in:

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

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

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

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

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

b. By executing this Agreement, Consultant warrants that:

- (1) it has thoroughly investigated and considered the work to be performed;

- (2) it has investigated the issues, regarding the scope of services to be provided;
- (3) it has carefully considered how the work should be performed; and
- (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

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

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

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

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

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

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

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

c. Notwithstanding the provisions of subsections a. and b. of this section, Consultant shall not be responsible for damages or be in default or deemed to be in default by reason of delay caused by strikes, lockouts, accidents, or acts of God, or the failure of

the City to furnish timely information or to approve or disapprove Consultant's work promptly, or by reason of delay or faulty performance by the City, construction contractors, or governmental agencies, or by reason of any other delays beyond Consultant's control, or for which Consultant is without fault.

## **Section 18. INSURANCE REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. Imposition of Insurance Requirements. Provided the City gives its written consent for any persons other than Consultant to perform any part of the Services, Consultant agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Consultant enters into contracts or whom

Consultant hires or retains pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required herein, at minimum, and name as additional insureds the parties to this Agreement. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.

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

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

**Section 19.            NOTICES**

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

To the City:

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

To Consultant:

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

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

**Section 20. ENTIRE AGREEMENT**

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

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

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

**Section 21. MODIFICATIONS AND AMENDMENTS**

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

**Section 22. ASSIGNMENT AND SUBCONTRACTING**

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

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

**Section 23. WAIVER**

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

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

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

**Section 24. SEVERABILITY**

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

**Section 25. VENUE**

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

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

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

**Section 27. EXECUTION IN COUNTERPARTS**

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

**Section 28. PROHIBITED INTERESTS**

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it

agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**Section 29.                    EQUAL OPPORTUNITY EMPLOYMENT**

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

**Section 30.                    TIME OF THE ESSENCE**

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

**Section 31.                    PRINCIPAL REPRESENTATIVES**

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

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

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

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

**Section 33. INTERPRETATION**

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

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

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

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

**Section 35. CAPTIONS AND HEADINGS**

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

**Section 36. GOVERNING LAW**

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

**Section 37. CUMULATIVE REMEDIES**

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

**Section 38. NO THIRD PARTY BENEFICIARIES**

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

**Section 39. COUNTERPARTS**

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

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

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

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

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

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

**CITY OF RANCHO MIRAGE**

\_\_\_\_\_

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

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

**APPROVED AS TO CONTENT:**

\_\_\_\_\_

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**EXHIBIT "A"**

**SCOPE OF SERVICES**

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

**EXHIBIT “C”**

**ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS**

In recognition of \_\_\_\_\_ (“Company”) having submitted a proposal to the City of Rancho Mirage Request for Proposals for Design and Advertising Services, dated March 23, 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 18 (“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