

CITY OF RANCHO MIRAGE

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

**REQUEST FOR PROPOSALS
FOR
GENERAL PLAN UPDATE
PROFESSIONAL CONSULTING SERVICES**

**Issued:
MARCH 7, 2016**

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CITY OF RANCHO MIRAGE
REQUEST FOR PROPOSALS
FOR
GENERAL PLAN UPDATE PROFESSIONAL
CONSULTING SERVICES

ANNOUNCEMENT:

The City of Rancho Mirage ("City") invites proposals from qualified, competent, knowledgeable, and experienced companies that will provide full-service General Plan update professional consulting 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 General Plan update consulting services.

PROPOSALS/OFFER SUBMITTAL:

Proposals will be accepted until **5:00 p.m. on APRIL 4, 2016**, and each must be submitted in a sealed envelope plainly marked on the outside "**SEALED BID FOR GENERAL PLAN UPDATE PROFESSIONAL CONSULTING SERVICES - DO NOT OPEN WITH REGULAR MAIL**" to:

The City of Rancho Mirage
Attn: Jeremy Gleim, Planner
69825 Highway 111
Rancho Mirage, California 92270

INTRODUCTION AND BACKGROUND:

The City of Rancho Mirage, California, incorporated August 3, 1973; at that time, the City was comprised of approximately 15.6 square miles of land. Over time the City has grown to encompass approximately 27 square miles of land, and is home to 17,456 permanent residents. Rancho Mirage is well-known as a resort and residential community.

The City of Rancho Mirage became a Charter City in 1997. The City's Charter status allows it to exercise broader powers over land use regulations than do general law cities, which in turn, affords the City greater control over its future development and administration. The City employs a Council-Manager form of government. The City

Council consists of five citizens elected to four-year terms, with the position of Mayor rotating annually among Council members.

Throughout its history, the City of Rancho Mirage has become refined through its attention to detail; evidence of this philosophy can readily be seen in the form of meticulously manicured parkways and medians, destination parks and public facilities, and through the high quality of architecture that embodies both residential and commercial developments. Both the City Council and City staff work very hard to preserve the City's identity, which is of utmost importance to the residents of Rancho Mirage.

The current General Plan was comprehensively updated and adopted by the Rancho Mirage City Council on November 16, 2005. Housing Elements require updating more frequently per State law, and as such, the current version was last updated and adopted by the City Council on December 5, 2013, and was subsequently certified by the State Department of Housing and Community Development on January 21, 2014; the current cycle is valid through 2021. There have been some changes to the Land Use map since the current General Plan was adopted, mostly due to annexations, which in turn have affected various elements of the General Plan; all of these changes will be reflected with the current update.

Over the last ten years the City of Rancho Mirage has annexed 221 acres into the City boundary, and de-annexed approximately 4,300 acres from its Sphere of Influence. The majority of land which was annexed into the City (186 acres) lies in the Regional Interstate Commercial (R-I-C) zone, a new land use zone that was established specifically for said annexation; the remainder lies in the Mixed Use (M-U) zone. The City, within its current boundary lines, is approximately 82% built out, with maximum population figures at build out estimated at 32,000 residents.

This General Plan update is not envisioned as a comprehensive rewrite of each element, it is seen more as a "technical" update. The goal of this endeavor is to update the 2005 General Plan EIR in an effort to ensure compliance with recently adopted State laws, and to modernize the look, organization and user friendliness of the General Plan itself. Much of the background information which accompanies each element of the current General Plan is still valid; however, we will use this opportunity to update the language where needed. That being said, staff has already begun reviewing and updating much of the background information which is associated with each element, and will continue to update said information until such a time as it can be delivered to the consultant for formatting. In addition, staff will update the goals, policies and programs to coincide with the City Council's vision for the future of the City. All of the maps, and many of the exhibits, will need to be updated to reflect the current makeup of the City; the consultant will be responsible for these tasks. No new elements are being introduced with this update, and no land use changes are anticipated.

It is expected that an EIR Addendum will be adequate for this project, given that no land use changes are being proposed, and the City's Sphere of Influence diminished by

approximately 4,300 acres. Furthermore, the vast majority of public infrastructure is already in place, and the environment has not changed substantially since the 2005 General Plan EIR was prepared. A new traffic model, using the RivTAM tool, will be required as part of this update and the consultant will be responsible for updating the Circulation Element.

SCOPE OF SERVICES:

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

In brief, the scope of work shall include: 1) an update of the 2005 City of Rancho Mirage General Plan EIR; 2) an update of the Circulation Element based on the new traffic model; and 3) a modernization of the language, appearance, organization and usability, of the 2005 City of Rancho Mirage General Plan.

Staff will update the background information associated with each element, and will deliver the updated text to the consultant for inclusion in the General Plan. The consultant will be responsible for updating all of the maps which are included in the current General Plan; in addition, there are ±40 exhibits, not including maps and tables, most of which are included in the Community Design Element, which the consultant will also be responsible for modernizing. Staff will aid in obtaining new photographs where needed.

Community Participation: due to the nature of this update, being more technical than comprehensive, the City of Rancho Mirage does not intend to use a General Plan Advisory Committee. For this reason, the consultant's work will be guided by a working group of staff members, who will receive direction from a General Plan Update Subcommittee of the City Council. Community participation will be solicited through three public workshops, and in public hearings conducted by the Planning Commission and City Council.

Services to be provided by the selected consultant include the following:

1. Establish one individual who will serve as consultant's project manager and point of contact for all services performed under contract.
2. Work as an extension of City staff. Maintain an open dialogue with staff and work closely with the City.
3. Meet in person with staff members as needed to gather technical input and track progress of work.
4. Prepare agendas and exhibits, and conduct meetings and workshops with staff, the General Plan Update Subcommittee, and the public, to gather, review and

present data.

5. Prepare the appropriate environmental document needed to comply with the requirements of the California Environmental Quality Act (CEQA); this should include any special studies needed to support said environmental document.
6. Provide a traffic model, using the RivTAM tool, which reflects current traffic conditions throughout the City. Any subconsultants shall be preapproved by the County of Riverside to manipulate the RivTAM tool.
7. Provide consistency with the State Office of Planning and Research General Plan Guideline update for 2016 (or draft Guideline if the final guideline is not issued prior to the Notice to Proceed date for this contract work).
8. Compile related documents (Adopted 2013 Housing Element, 2013 Greenhouse Gas Inventory, 2013 Sustainability Plan and 2013 Energy Action Plan) into a singular General Plan document. Eliminate redundancy between elements to the greatest extent possible.
9. Use modern techniques in formatting and editing to create an attractive, contemporary and user-friendly document that will help the City to achieve its goals.
10. Submit eight hard copies and one electronic copy of the draft General Plan and draft environmental document to the City for review.
11. Incorporate staff comments and revisions and prepare a revised draft General Plan. Conduct a minimum of two public meetings to present the draft General Plan to interested members of the community.
12. Submit 20 hard copies and one electronic copy of the Final General Plan and environmental document, along with one copy-ready unbound set, which shall include responses to any comments received at public workshops, in preparation for presentations to the Planning Commission and City Council.

AVAILABLE DOCUMENTS:

The following documents are available in digital form, upon request, for consultants responding to the Request of Proposals (RFP).

1. 2005 General Plan
2. 2005 General Plan EIR
3. 2013 Sustainability Plan, Energy Action Plan and Greenhouse Gas Inventory
4. Adopted 2013 Housing Element

SCHEDULE:

A proposed schedule has been presented in the table below.. If the consultant foresees issues or difficulties with the proposed delivery schedule, they should so indicate in their response to the RFP; in addition, alternative schedule(s) should be proposed.

SCHEDULE	
Issue Request for Proposals	March 7, 2016
Proposals Due to City	5:00 pm, April 4, 2016
Consultant Interviews	April 18-20, 2016
Award of Contract by City Council	May 5, 2016
Submittal of First Draft to City	February 2017
Adoption of Plan by City Council	June 29, 2017

BUDGET:

The City of Rancho Mirage has appropriated \$450,000 for this update, and fully expects to accomplish the project within this budget. The consultant shall address the project’s budgetary parameters within the proposal. Creative approaches which can utilize existing resources and limit technical studies to those identified as “critical” are encouraged. Consultants are also encouraged to propose alternative approaches or tasks which could efficiently and cost effectively be used to achieve the same goals.

GENERAL INSTRUCTIONS FOR SUBMITTAL:

A. Proposal Submittal:

The proposer shall submit one (1) original and eight (8) copies **by 5:00 p.m. (Pacific Standard Time), APRIL 4, 2016, to:**

The City of Rancho Mirage
Attn: Jeremy Gleim, Planner
69825 Highway 111
Rancho Mirage, California 92270

B. Due Date and Time:

Proposals submitted after **5:00 p.m. on APRIL 4, 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 GENERAL PLAN UPDATE PROFESSIONAL CONSULTING 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 one hundred (100) 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 **by no later than 5:00 p.m. on March 17, 2016** ("Addenda Due Date"), and must be submitted via the following approved written methods addressed to **Jeremy Gleim, Planner**:

1. At jeremyg@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 on or prior to the Addenda Due Date. Written comments or questions received via approved method and within the time prescribed herein will be addressed by the City's issuance of an addendum 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 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 "B,"** through which each insurance carrier that will issue any policy required in the Insurance Provisions, shall acknowledge, warrant and represent that it possesses the ability to and shall furnish all the insurance endorsements prescribed in the Insurance Provisions within thirty (30) days after the date of contract award.

PROPOSAL FORMAT AND CONTENT:

A. Presentation

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

B. Proposal Content

1. Transmittal Letter

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

2. Table of Contents

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

C. Qualifications, Related Experience and References

1. This section shall establish the ability of the proposer to satisfy all aspects of the required work with current or recently completed General Plan Update Professional Consulting Services work, similar to the work required in this RFP.
2. A list of the five most recent similar projects that have been completed by the project team. One such project should be one in which all of the principal team members, including key sub-consultants, worked together. Do not list any projects that were performed by key team members when they were employed by other firms. In the case of a joint venture, do not list projects performed by either of the firms individually, only ones performed by both firms as a joint venture. Each description shall include:
 - a. The name of the client and a contact name, address, and telephone number.
 - b. The scope of the consultant's involvement in the project.
 - c. The month and year the projects started and the month and year they were completed.
 - d. The total value of the services provided.
 - e. The key personnel involved and the sub-consultants employed.

- f. Summary description of any litigation that the firm or joint venture has been involved in during the last seven years regarding general plans, or the adequacy of CEQA documentation prepared by the firm or proposed subcontractors; include the outcomes of said litigation.
- g. The current size of the firm/joint venture and any variations in size during the past seven years.
- h. A list of any of the firm/joint venture contracts terminated (partially or completely) by clients for convenience or default within the past seven years. Include a project description, contract value, client, contract number, and the name and telephone number of the contracting entity.

3. Project approach, including:

A brief description of the project team's proposed technical and managerial approach to the project. Include the following information:

- a. A description of the project team's organization as it relates to the timely execution of this project.
- b. The team's identification of critical project elements, along with the estimated timeframe to complete each element, during the term of the contract; Gantt charts are encouraged.
- c. The team's method to control cost, schedules, and quality. If revisions are suggested to the proposed schedule, discuss them here; task timelines are encouraged.
- d. Any assumptions or limitations with regard to technical studies or process should be detailed here (number of intersections to be studied, noise measurements taken, number of meetings to be attended, etc.).
- e. In an EIR Addendum is not being proposed for this project, please provide an alternative suggestion along with the reasons for making such a proposal.

4. Qualifications of the project team's key personnel, including:

- a. The name, position, and a detailed resume of the proposed Project Manager. If the Project Manager will not be the primary contact with the City, please identify the name, position, and a brief resume of the person who will be the primary contact with City staff.
- b. The name, position, brief resume, and proposed responsibilities for all other key personnel. Indicate areas of expertise, current workload and

availability.

- c. Provide an organization chart which details the hierarchy and individual responsibilities of all key personnel.
 - d. Describe any special resources the project team can offer in executing this project. Such resources may include: specific recent experience working on related projects, past experience with the City of Rancho Mirage, and/or recent experience with other local cities (Coachella Valley) on similar projects.
 - e. Briefly describe what makes your firm/joint venture, along with the proposed project team, the best choice for completing the work detailed in this RFP.
5. 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.
 6. 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.
 7. Certify that the firm is not debarred, suspended or otherwise declared ineligible to contract with any other federal, state or local public agency.
 8. Provide a list of business clients to which your firm is currently providing, or has recently provided, general plan update professional consulting services. Include company names, beginning/end dates of contracts, and names, titles and telephone numbers the City can contact as references for your firm.
 9. Furnish as an appendix, your firm's financial information (last year's Income Statement and Balance Sheet) that accurately describes the financial stability of your firm (financial statements will remain confidential and will be revealed only to individuals involved in the evaluation process and award of contract).

D. Proposed Staffing and Project Organization

1. Discuss the staffing of the proposing firm who would be assigned to work on the City's project.

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

E. Work Plan / Technical Approach

1. Establish the proposer's understanding of the City's objectives and requirements, demonstrate the proper ability to meet those objectives and requirements, and clearly identify the method (plan) of accomplishing the described work.
2. Describe what information, documentation or staff assistance from the City your firm would request from the City in order to complete the work described.

F. Cost and Price

- a. Estimate the number of hours that will be needed, as they relate to each job classification, in order to complete the project. Estimate the percentage of hours that will be dedicated to work performed in the Coachella Valley. Include the work of all sub consultants in this computation.
- b. A current hourly rate schedule.
- c. Expected budget for reimbursable expenses, if any.
- d. A description of assumptions made while preparing the cost proposal and any qualifications and/or supporting material for that proposal.
- e. Suggestions that the City could make to the scope of work and/or scope of services that would allow the project to be accomplished in a more timely manner and/or more cost effectively.

G. Sample Circulation Element and Land Use Element

Include a sample Circulation Element and Land Use Element that your firm has prepared within the last three years. Identify the author of the samples, and what role he/she will have on this project. Do not send the entire General Plan for which these elements were prepared.

H. Appendices

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

PROPOSAL EVALUATION AND CONTRACT AWARD:

1. Proposals will be evaluated solely upon the responses to the above referenced questions, with special attention to firm experience, project approach, cost, and qualifications of project team members.
2. The proposals will be evaluated by a committee comprised of City of Rancho Mirage staff and two members of the City Council (General Plan Update Subcommittee).
3. After an initial review of the proposals, the evaluation committee may choose to interview the top firms. If conducted, these interviews will allow the consultant team to make a presentation to the evaluation committee and answer any outstanding questions relative to their proposal.
4. The evaluation committee will identify the top-ranked firm and recommend to the Rancho Mirage City Council that a contract be awarded to that firm.
5. City staff will negotiate a contract with the top-ranked firm based upon the scope of the work and scope of services described herein, and the cost proposal submitted by the consultant, subject to such modifications in any of these as may be necessary and appropriate to deliver a General Plan and environmental document that are complete, sufficient, and in the best interests of the City of Rancho Mirage.
6. In the event that the City and the top-ranked consultant are unable to reach a mutually satisfactory agreement for any reason, the City reserves the right to terminate negotiations with the top-ranked firm and to commence negotiations with the second-ranked firm.
7. The City Council will consider the recommendation of the consultant evaluation committee and the negotiated contract, and make a decision regarding award of the contract during a regularly scheduled meeting that is open to the public.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

EXHIBIT "A"
AGREEMENT

SEE ATTACHED

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

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 "B"

ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS

In recognition of _____ ("Company") having submitted a proposal to the City of Rancho Mirage Request for Proposals for General Plan Update Professional Consulting Services, dated March 7, 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