

**CITY OF RANCHO MIRAGE
69825 HIGHWAY 111
RANCHO MIRAGE, CA 92270
(760) 770-3224**

**REQUEST FOR PROPOSALS
FOR ENGINEERING AND TRAFFIC SURVEY**

**Issued:
JUNE 8, 2016**

TABLE OF CONTENTS

ANNOUNCEMENT.....	1
PROPOSALS/OFFER SUBMITTAL.....	1
SCOPE OF PROJECTS AND SERVICES NEEDED	1
GENERAL INSTRUCTIONS FOR SUBMITTAL.....	4
PROPOSAL FORMAT AND CONTENT.....	6
PROPOSAL EVALUATION AND CONTRACT AWARD	7
EXHIBIT "A" (AGREEMENT FORM).....	9
EXHIBIT "B" (ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS)....	25

**CITY OF RANCHO MIRAGE
REQUEST FOR PROPOSALS
FOR ENGINEERING AND TRAFFIC SURVEY**

ANNOUNCEMENT:

The City of Rancho Mirage ("City") invites proposals from qualified, competent, knowledgeable, and experienced firms to provide an "Engineering and Traffic Survey," as set forth in this Request for Proposals ("RFP"). Firms submitting proposals must be prepared to immediately enter into a contract or contracts ("Agreement") for the services described in this RFP.

PROPOSALS/OFFER SUBMITTAL:

Proposals will be accepted until **5:00 P.M. on Thursday, June 30, 2016**, and each must be submitted in a sealed envelope plainly marked on the outside "**SEALED BID FOR ENGINEERING AND TRAFFIC SURVEY - DO NOT OPEN WITH REGULAR MAIL**" to:

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

SCOPE OF PROJECTS AND SERVICES NEEDED:

Project Background/Description

"Engineering and Traffic Surveys" are required by the State of California to establish intermediate speed limits on local streets and to allow enforcement of those limits using radar, laser, or other speed measuring devices. These surveys must be updated every 5 years to ensure the speeds reflect current conditions as dictated by the California Vehicle Code (CVC). The surveys can be extended to 7 years provided the City police have completed the required 24-hour radar operator course [CVC 40802(c)(2)(B)(i)(1)]. The CVC also requires that the surveys be conducted based on the methodology required by the California Manual on Uniform Traffic Control Devices (CA-MUTCD) dated January 2014, Rev 1, or the most current CA-MUTCD at the time of the study. The last such "Engineering and Traffic Survey" for Rancho Mirage was done in May of 2008 by VA Consulting. The City is now requesting proposals to produce an updated replacement to said study. The previous study included 61 road segments. The update shall cover the 66 road segments as listed in Services Needed below.

Services Needed

In accordance with the CVC Section 627 definition of "Engineering and Traffic Surveys" this study shall include:

- 1.) Measurement of prevailing speed;
- 2.) Accident history; and
- 3.) Roadway characteristics not readily apparent to the driver.

Additionally, for purposes of comparison with past “Engineering and Traffic Surveys,” the following methodology and analysis items shall be required:

- A.) Speed surveys shall be performed during off-peak hours on weekdays.
- B.) Speed surveys shall be done using properly calibrated hand held radar or laser vehicle speed measuring devices.
- C.) The locations of the speed measuring device and operator shall be chosen where they are out of sight of vehicular traffic as much as possible, yet with clear line of sight for the device, and away from traffic signals, stop signs, curves, dips, or other roadway features that might skew the speed measurements.
- D.) Speed surveys shall be done on days with clear and dry weather.
- E.) Statistical analysis of the speed survey data shall be performed to generate:
 - i) 85th percentile speed (prevailing speed)
 - ii) Pace speed – The ten mile per hour range of speed at which the highest number of vehicles travel
 - iii) Mean speed – 50th percentile speed
 - iv) Number of vehicles observed and recorded for the study
 - v) Summation of speed related traffic collision data obtained from the City of Rancho Mirage.
 - vi) All data to be provided to City in tabular format for presentation to the Traffic Safety Commission.
- F.) The study shall compare existing posted speed limits with the measured 85th percentile speeds and make recommendations regarding whether the posted speeds need to be changed or not, using the criteria of the current CA-MUTCD. If analysis indicates speed recommendations not the same in both directions on a given road segment, the speeds shall be adjusted under City direction to make both directions speed postings match.
- G.) The consultant shall attend two (2) meetings (minimum) with staff and one (1) meeting/presentation to the Traffic Safety Commission.
- H.) The study shall cover the following road segments, in both directions (an asterisk * indicates a segment that is added or defined differently than before):
 - 1.) Highway 111 – Rancho Rd. to Bob Hope Dr.
 - 2.) Highway 111 – Bob Hope Dr. to Indian Trail
 - 3.) Highway 111 – Indian Trail to Mirage Rd.
 - 4.) Highway 111 – Mirage Rd. to Thunderbird Rd.
 - 5.) Highway 111 – Thunderbird Rd. to Country Club Dr.
 - 6.) Highway 111 – Country Club Dr. to Mirage Cove
 - 7.) Highway 111 – Mirage Cove to Frank Sinatra Dr.

- 8.) Highway 111 – Frank Sinatra Dr. to One Mirage Place
- 9.) Bob Hope Dr. – Highway 111 to Clancy Ln.
- 10.) Bob Hope Dr. – Clancy Ln. to Country Club Dr.
- 11.) Bob Hope Dr. – Country Club Dr. to Frank Sinatra Dr.
- 12.) Bob Hope Dr. – Frank Sinatra Dr. to Gerald Ford Dr.
- 13.) Bob Hope Dr. – Gerald Ford Dr. to Dinah Shore Dr.
- 14.) Bob Hope Dr. - Dinah Shore Dr. to Ramon Rd.
- 15.) *Bob Hope Dr. – Ramon Rd. to Interstate 10
- 16.) Cholla Ln. – Verbenia Rd. to Country Club Dr.
- 17.) Country Club Dr. – Highway 111 to Morningside Dr.
- 18.) Country Club Dr. – Morningside Dr. to Bob Hope Dr.
- 19.) Country Club Dr. – Bob Hope Dr. to Monterey Ave.
- 20.) Cypress Ln. – Palm View Rd. to Los Alamos Dr.
- 21.) Cypress Ln. – Los Alamos Dr. to East end
- 22.) Da Vall Dr. – Frank Sinatra Dr. to Gerald Ford Dr.
- 23.) Da Vall Dr. – Gerald Ford Dr. to Dinah Shore Dr.
- 24.) Da Vall Dr. – Dinah Shore Dr. to Ramon Rd.
- 25.) *Da Vall Dr. – Ramon Rd. to Century Park
- 26.) Dinah Shore Dr. – Plumley Rd. to Mission Hills Dr.
- 27.) Dinah Shore Dr. – Mission Hills Dr. to Bob Hope Dr.
- 28.) Dinah Shore Dr. – Bob Hope Dr. to Monterey Ave.
- 29.) Dunes View Rd. – Highway 111 to Gardess Rd.
- 30.) *Frank Sinatra Dr. – Ritz Carlton hotel to Highway 111
- 31.) Frank Sinatra Dr. – Highway 111 to Morningside Dr.
- 32.) Frank Sinatra Dr. – Morningside Dr. to Bob Hope Dr.
- 33.) Frank Sinatra Dr. – Bob Hope Dr. to Monterey Ave.
- 34.) Gerald Ford Dr. – Plumley Rd. to Da Vall Dr.
- 35.) Gerald Ford Dr. – Da Vall Dr. to Bob Hope Dr.
- 36.) Gerald Ford Dr. – Bob Hope Dr. to Monterey Ave.
- 37.) Ginger Rogers Rd. – Victoria Falls gate to Bob Hope Dr.
- 38.) *Ginger Rogers Rd. – Bob Hope Dr. to Via Josefina
- 39.) Indian Trail – Highway 111 to Halgar Rd.
- 40.) La Paz Rd. – Thompson Rd. to Los Reyes Dr.
- 41.) Los Alamos Rd. (S) – Tamarisk Ln. to Gerald Ford Dr.
- 42.) Los Alamos Rd. (N) – Dinah Shore Dr. to Ramon Rd.

- 43.) Los Reyes Dr. – La Paz Rd. to Sunny Ln.
- 44.) *Magnesia Falls Dr. – Highway 111 to Joshua Rd.
- 45.) Magnesia Falls Dr. – Highway 111 to Gardess Rd
- 46.) Mirage Rd. – Highway 111 to Indian Trail
- 47.) Monterey Ave. – South City limit to Clancy Ln.
- 48.) Monterey Ave. – Clancy Ln. to Country Club Dr.
- 49.) Monterey Ave. – Country Club Dr. to Frank Sinatra Dr.
- 50.) Monterey Ave. – Frank Sinatra Dr. to Gerald Ford Dr.
- 51.) Monterey Ave. – Gerald Ford Dr. to Dinah Shore Dr.
- 52.) Morningside Dr. – Country Club Dr. to Frank Sinatra Dr.
- 53.) Ocotillo Dr. – Highway 111 to Halgar Rd.
- 54.) Plumley Rd. – Gerald Ford Dr. to Dinah Shore Dr.
- 55.) Ramon Rd. – Da Vall Dr. to Los Alamos Rd.
- 56.) *Ramon Rd. - Los Alamos Rd. to Bob Hope Dr.
- 57.) *Ramon Rd. – Bob Hope Dr. to Interstate 10
- 58.) Sahara Rd. – Mirage Rd. to Magnesia Falls Dr.
- 59.) *San Jacinto Dr. – Rancho Las Palmas to RM Community Park
- 60.) *San Jacinto Dr. – RM Community Park to Highway 111
- 61.) Sunny Ln. – Da Vall Dr. to Palm View Rd.
- 62.) Sunny Ln. – Palm View Rd. to Los Reyes Dr.
- 63.) Thompson Rd. – Frank Sinatra Dr. to La Paz Rd.
- 64.) Tamarisk Ln. – Palm View Rd. to Los Reyes Dr.
- 65.) Verbenia Rd. – Cholla Ln. to Monterey Ave.
- 66.) Vista Dunes Rd. – Frank Sinatra Dr. to South cul-de-sac

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), **on Thursday, June 30, 2016**, to:

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

B. Due Date and Time:

Proposals submitted after **5:00 p.m.** on **Thursday, June 30, 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 ENGINEERING AND TRAFFIC SURVEY - DO NOT OPEN WITH REGULAR MAIL.”** Failure of the proposer to properly identify the sealed envelope proposal as described may result in the proposal being considered non-responsive. All proposals shall be firm offers subject to acceptance by the City and may not be withdrawn for a period of 180 calendar days following the last day to accept proposals. Proposals may not be amended after the due date except by consent of the City. All proposals must clearly address all of the requirements outlined in this RFP. Each proposal shall be limited to **twenty (20) pages** and must include a minimum of three (3) references, which include the address, telephone number, and email address of each reference. Resumes and brochures may be added to the proposal, provided they are located in an appendix at the back of the proposal. Should the proposer have concerns about meeting any noted requirements, the proposer shall include a clearly labeled subsection with individual statements specifically identifying the concerns and exceptions.

C. RFP Addenda and Clarifications in Written Comments

All comments and questions from proposers must be submitted in writing and received by no later than **5:00 P.M. on Thursday, June 23, 2016** (“Addenda Due Date”), and must be submitted via the following approved written methods addressed to William Enos, City Engineer:

1. At BillE@RanchoMirageCA.gov, or
2. Via fax to (760) 770-3261, or
3. Via mail, as long as the correspondence is received and date stamped by the City on or prior to the Addenda Due Date.

Any questions raised verbally shall not be addressed by the City. Submittal of written comments or questions shall not be considered by the City unless submitted in an approved method on or before the Addenda Due Date. Written comments or questions received via approved method 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, www.ranchoMirageca.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. Insurance and Acknowledgement:

Each proposal shall include a breakdown of all costs associated with issuance of the insurance endorsements described in 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.

G. 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."**

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 professional consulting work, similar to the work required in this RFP.

2. Background information of the firm, including the date of founding, legal form, number and location of offices, number of employees, days and hours of operation and any other pertinent information.
 3. Disclose any conditions (e.g., bankruptcy, pending litigation, planned office closures, mergers) and organizational conflicts of interest that may affect the ability of the proposer to perform the required duties.
 4. Certify that the firm is not debarred, suspended or otherwise declared ineligible to contract with any other federal, state or local public agency.
 5. Provide a list of business clients to which your firm is currently providing, or has recently provided, professional consulting 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.
- 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. 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.
 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 to the City for the required services and declare the proposer's preferences for method and timing of payment.
 2. For all types of service proposed, provide a schedule of hourly labor rates and reimbursables.
- G. Appendices
- Furnish as appendices, supporting documentation as requested, such as staff resumes.

PROPOSAL EVALUATION AND CONTRACT AWARD:

A. Evaluation Panel

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

B. Evaluation Criteria

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

1. Work plan
2. Qualification and experience of proposer
3. Staffing and organization
4. Conformance with this RFP
5. 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
6. Cost and price
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"
PROFESSIONAL SERVICES 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 _____, 20____, 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 _____, 20____.

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

b. The City does not, and shall not, waive any rights that it may have against 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. 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: _____

APPROVED AS TO CONTENT:

(Title)

ATTEST:

Cynthia Scott, City Clerk

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney

EXHIBIT "B"

ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS

In recognition of _____ ("Company") having submitted a proposal to the City of Rancho Mirage Request for Proposals for Engineering and Traffic Survey, dated June 8, 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 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

Date: _____