

February 18, 2010

**RE: ECONOMIC DEVELOPMENT SERVICES
REQUEST FOR PROPOSALS**

Dear Proposers:

The City of Rancho Santa Margarita invites qualified firms to submit proposals to provide Economic Development services.

To be considered responsive, Proposers must bid in accordance with the requirements, specifications, conditions, and provisions as described and set forth herein. Proposals must embrace a concept that the successful Proposer will satisfy all of the objectives and work requirements specified in the Request for Proposal Scope of Work.

PROPOSALS ARE DUE BY MARCH 11, 2010

After the proposal due date, evaluation will commence. The City may require Proposers found most responsive/responsible to interview with City staff.

Thank you for your interest and good luck.

Respectfully,

Nate Farnsworth
Planner
City of Rancho Santa Margarita

**CITY OF RANCHO SANTA MARGARITA
REQUEST FOR PROPOSAL
NO. DS-10-003
ECONOMIC DEVELOPMENT SERVICES**

SECTION I

Introduction and Instructions to Proposers

A: Introduction

The City of Rancho Santa Margarita (City) invites qualified firms to submit proposals for Economic Development services. The successful Proposer will enter into a contract with the City of Rancho Santa Margarita and provide services relating to Economic Development.

The City is considering a three (3) year contract, consistent with existing professional services practices.

B: Proposed Time Schedule

RFP Mailing:	February 18, 2010
Submittal Deadline:	March 11, 2010
Tentative First Interview:	April 1, 2010
Tentative Final Selection:	April 14, 2010
Tentative Contract Effective date:	July 1, 2010

C: Instructions to Proposers and Procedures for Submittal

One original (marked original) and nine (9) copies (marked copy) of the proposal must be submitted in a sealed envelope or box bearing the name of the Proposer, marked **RFP # DS-10-003** and submitted to the following address:

**City of Rancho Santa Margarita
Attn: Nate Farnsworth
22112 El Paseo
Rancho Santa Margarita CA 92688**

Proposers are solely responsible for ensuring their proposal is received by the City in accordance with the solicitation requirements, before Submittal Deadline, and at the place specified. Postmarks will not be accepted in lieu of actual delivery. No oral,

telegraphic, electronic, facsimile, or telephonic proposals or modifications will be considered unless specified. The City shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Delivery of proposals shall be made at the office specified in this Request for Proposals. Deliveries made before the Submittal Deadline but to the wrong City office will be considered non-responsive unless re-delivery is made to the office specified before the Submittal Deadline. All proposals shall become the property of the City.

Late proposals will not be accepted and will be returned to the Proposer unopened.

D: General Conditions

ADDITIONAL INFORMATION, RIGHT TO REQUEST. The City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from proposers,

ADDITIONAL SERVICES. The Scope of Work describes the minimum work to be accomplished. Upon final selection of the firm, the Scope of Work may be modified and refined during negotiations with the City.

AUTHORIZED SIGNATURES. Every proposal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the work. Upon request of the City, any agent submitting a proposal on behalf of a Proposer shall provide a current power of attorney certifying the agent's authority to bind the Proposer. If an individual makes the proposal, his or her name, signature, and post office address must be shown. If a firm or partnership makes the proposal, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be shown. If a corporation makes the proposal, the proposal shall show the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation and the title of the person signing on behalf of the corporation. Upon request of the City, the corporation shall provide a certified copy of the bylaws or resolution of the board of directors showing the authority of the officer signing the proposal to execute contracts on behalf of the corporation.

AWARD OF PROPOSAL. Award will be made to the Proposer offering the most advantageous proposal after consideration of all Evaluation Criteria set forth in Section III. The criteria are not listed in any order of preferences. An Evaluation Committee will be established by the City. The Committee will evaluate all proposals received in accordance with the Evaluation Criteria. The City reserves the right to establish weight factors that will be applied to the criteria depending upon order of importance. Weight factors and evaluation scores will not be released until after award of proposal. The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City after all factors have been evaluated.

Discussions may, at the City's option, be conducted with responsible Proposers who submit proposals determined to be reasonably susceptible of being selected for an award. Discussions may be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and written revision of proposals. In conducting discussions, the City will not disclose information derived from proposals submitted by competing Proposers.

COMPLIANCE WITH LAWS. All proposals shall comply with current federal, state, and other laws relative thereto.

CANCELLATION OF SOLICITATION. The City may cancel this solicitation at any time.

CONFLICT OF INTEREST. By signing the Agreement, the successful proposer declares and warrants that no elected or appointed official, officer or employee of the City has been or shall be compensated, directly or indirectly, in connection with the award of the Agreement or any work for the proposed project. For the term of the Agreement, no elected or appointed official, officer or employee of the City, during the term of his/her service with the City shall have any direct interest in the Agreement, or obtain any present, anticipated or future material benefit arising therefrom.

CONTRACT DOCUMENTS, EXAMINATION OF. It is the responsibility of the Proposer to carefully thoroughly examine and be familiar with these RFP documents, general conditions, all forms, specifications, drawings, plans, and addenda (if any), referred to as Contract Documents. Proposer shall satisfy himself as to the character, quantity, and quality of work to be performed and materials, labor, supervision, necessary to perform the work as specified by the Contract Documents. The failure or neglect of the Proposer to examine the Contract Documents shall in no way relieve him from any obligations with respect to the solicitation or contract. The submission of a proposal shall constitute an acknowledgment upon which the City may rely that the Proposer has thoroughly examined and is familiar with the contract documents. The failure or neglect of a Proposer to receive or examine any of the contract documents shall in no way relieve him from any obligations with respect to the Proposal. No claim will be allowed for additional compensation that is based upon a lack of knowledge of any solicitation document.

COSTS. The City is not liable for any costs incurred by Proposers before entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the Proposer in responding to the RFP, are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by the City. No reimbursable cost may be incurred in anticipation of award.

DISQUALIFICATION OF PROPOSER. If there is reason to believe that collusion exists among the Proposers, the City may refuse to consider proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make,

file, or be interested in more than one proposal for the same work unless alternate proposals are called for. Reasonable grounds for believing that any Proposer is interested in more than one Proposal for the same work will cause the rejection of all Proposals for the work in which a Proposer is interested. If there is reason to believe that collusion exists among the Proposers, the City may refuse to consider Proposals from participants in such collusion. Proposers shall submit as part of their Proposal documents the completed Non-Collusion Affidavit provided herein on page 16.

INTERPRETATION OF CONTRACT DOCUMENTS. City reserves the right to make corrections or clarifications of the information provided in this RFP. If any person is in doubt as to the true meaning of any part of the specifications or other contract documents, or finds discrepancies or omissions in the specifications, he may submit to the City a written request for an interpretation or correction.

Oral statement(s) interpretations or clarifications concerning meaning or intent of the contents of this RFP by any person are unauthorized and invalid. Modifications to the RFP, including, but not limited to the scope of work, can be made only by written addendum issued by the City.

Requests for interpretations shall be made in writing and delivered to Nate Farnsworth, Planner, City of Rancho Santa Margarita, 22112 El Paseo Rancho Santa Margarita CA 92688 at least ten (10) days before the Submittal Deadline.

The requesting party is responsible for prompt delivery of any requests. When the City considers interpretations necessary, interpretations will be in the form of an addendum to the contract documents, and when issued, will be sent as promptly as is practical to all parties recorded by the City as having received contract documents. All such addenda shall become a part of the contract. It is the responsibility of each Proposer to ensure the City has their correct business name and address on file. Any prospective Proposer who obtained a set of contract documents is responsible for advising the City that they have a set of contract documents and wish to receive subsequent Addenda.

IRREGULARITIES. City reserves the right to waive non-material irregularities if such would be in the best interest of the City as determined by the City Manager.

NON-EXCLUSIVE CONTRACT. The successful Proposer will enter into a NON-EXCLUSIVE contract and the City reserves the right to enter into agreements with other firms for Economic Development services.

OFFERS OF MORE THAN ONE PRICE. Proposers are NOT allowed to submit more than one proposal.

OWNERSHIP: All data, documents and other products used or developed during the project will remain the property of the City upon completion of the project.

NO OBLIGATION: The release of this RFP does not obligate or compel the City to enter into a contract or agreement.

PAYMENT TERMS. Discounts for payments made within 20 days or more from receipt of invoice will be considered in award of proposal. Payment discounts must be clearly shown in the proposal. The City will make payments no more than once monthly on approved invoices, with payment terms of net 30 days upon receipt of invoice. Payment for additional work, if any, will be negotiated as required. Final payment will be made after approval and acceptance of the work.

PROPOSAL, REJECTION OF. The City reserves the right to reject any or all proposals or any part of a Proposal. The City reserves the right to reject the proposal of any Proposer who previously failed to perform adequately for the City or any other governmental agency. The City expressly reserves the right to reject the Proposal of any Proposer who is in default on the payment of taxes, licenses or other monies due the City.

PROPRIETARY INFORMATION. Proposals must **NOT** be marked as confidential or proprietary. City may refuse to consider a proposal so marked. Information in proposals shall become public information and is subject to disclosure laws.

PUBLIC OPENING. There will be no public opening of proposals. Prices and other proposal information shall not be made public until the proposal is awarded. At that time the submitted proposal information and executed contract will become public information.

PUBLIC RECORD.

All proposals submitted in response to this RFP will become the property of the City upon submittal and a matter of public record pursuant to applicable law.

RFP PART OF AGREEMENT. This Request for Proposal and Scope of Services and all conditions will become part of the agreement between the City of Rancho Santa Margarita and the successful proposer.

SEVERABILITY. If any provisions or portion of any provision, of this contract are held invalid, illegal or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.

SUBCONTRACTOR INFORMATION. If the proposal includes the use of subcontractors, Proposer must identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor would perform services.

SUBCONTRACTOR REFERENCES. For all subcontractors that will be used on this project, Proposers must provide a minimum of two references from similar projects

performed for any local government clients within the last three years. Information provided shall include:

- a. Client name;
- b. Project description;
- c. Dates (starting and ending);
- d. Technical environment;
- e. Staff assigned to reference engagement that will be designated for work per this RFP;
- f. Client project manager's name and telephone number.

TERMS OF THE OFFER. The City reserves the right to negotiate final contract terms with the Proposer selected. The contract between the parties will consist of the City Professional Services Agreement, the RFP together with any modifications thereto, the awarded Proposer's proposal, and all modifications and clarifications that are submitted at the request of the City during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded Proposer's proposal, and the awarded Proposer's proposal. Specific exceptions to this general rule may be noted in the final executed contract. Proposer understands and acknowledges that the representations above are material and important, and will be relied on by the City in evaluation of the proposal. Proposer misrepresentation shall be treated as fraudulent concealment from the City of the facts relating to the proposal.

VALIDITY. Proposal must be valid for a period of 90 days from the due date.

WITHDRAWAL OF PROPOSAL. Proposers' authorized representative may withdraw Proposals only by written request received by the Human Resources Administrator before the Proposal Submittal Deadline.

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SECTION II

PROPOSAL RESPONSE REQUIREMENTS

Proposers shall submit one (1) original proposal marked "ORIGINAL" and nine (9) copies on or before the Submittal Deadline. If discrepancies are found between the copies, or between the original and copy or copies, the "ORIGINAL" will provide the basis for resolving such discrepancies. If one document is not clearly marked "ORIGINAL", the City reserves the right to use any of the proposals as the Original. If no document can be identified as an original bearing original signatures, Proposer's proposal may be rejected at the discretion of the City.

It is imperative that all Contractors responding to the RFP comply exactly and completely with the instructions set forth herein. Proposals must be concise but with sufficient detail to allow accurate evaluation and comparative analysis. Proposals should be straightforward and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer.

All proposals shall be submitted on standard 8.5" by 11" paper in hard-covered binders. All pages should be numbered and identified sequentially by section. Response items must be indexed in the following order with individual tabs:

A. Cover Letter:

Proposal must be accompanied by a cover letter, signed by an individual authorized to bind the proposing entity. An unsigned proposal is grounds for rejection. The cover letter should include an introduction of the firm and statement of professional qualifications.

B. Company Data:

Please submit the following information:

1. Official name and address.
2. Name, address, and telephone number of the Proposer's point of contact.
3. Indicate what type of entity (corporation, company, joint venture etc). Please enclose a copy of the Joint Venture Agreement if entity is a joint venture.
4. Federal Employer I.D. Number.

5. The address, telephone numbers and fax numbers of each of your firm's locations.
6. A detailed statement indicating whether Proposer is totally or partially owned by another business organization or individual.
7. Number of years Proposer has been in business under the present business name.
8. Number of years of experience the Proposer has had in providing required, equivalent, or related services.
9. All comparable contracts entered into during the last five (5) years, completed or not. Please indicate:
Year
Type of Contract
Contracting Agency
10. Any failures or refusals to complete a contract and explanation.
11. Financial interests in other lines of business.

C. Resumes and Qualifications of Personnel:

The Proposer shall furnish a personnel staffing plan with sufficient information for judging the quality and competence of the personnel dedicated to the account. In its assessment of the proposal, City will place considerable emphasis on the commitment by the Proposer to provide qualified personnel for the execution of the contract. The Proposer shall furnish resumes in outline form for the key personnel committed to this account. Proposer shall also include the number and type of additional support personnel who will be assigned to the project. The substitution or addition of individuals shall be allowed only with prior written approval of the City.

Resume Format:

Name

Position

Education

Show degrees earned and certifications, school and year of completion. Exclude company courses or information that is not relevant to the person's functional job duties.

Summary of Experience

In chronological order, most recent date first, summarize experience as it relates to Economic Development.

Professional Memberships/Registrations

D: Organizational Chart:

Proposer shall include an organizational chart that reflects titles of key staff and management contacts of each individual assigned to provide services under this contract.

E: References:

Proposer to provide three (3) references for whom Proposer has provided similar project services performed in California of the nature and scope as set forth in the RFP within the last five (5) years. Include name of business, name of contact person, telephone number of contact person, description of services provided.

F: Overview and Approach:

- **Understanding:** Proposer must include in this section its understanding of Economic Development services in a municipal setting.
- **Approach:** Proposer must include in this section its approach to providing efficient and effective Economic Development services. Include proposed administrative procedures, areas of responsibility and a discussion of service delivery such as method of contact and assignments, ability to work with the business community, etc.
- Proposer must reference all duties as listed in the **SCOPE OF WORK**. Proposer must note any services NOT provided by their firm.
- Proposer shall also list any resources, City assistance or other items expected to be provided by City (computer, office, etc).
- Proposer may additionally itemize those services which are further required in the servicing of the account but are not noted in the aforementioned paragraphs as requirements. Proposer will entitle this section as ADDITIONAL SERVICES.

G: Transition Plan:

Proposer must describe how they will integrate their staff and implement their services into City operations.

H: Reports:

Proposer is required to submit samples of standard monthly reports and samples of specialized reports available to CITY. Please specify which reports are "Standard Monthly Reports" to be included at no additional cost, and which reports are

“Specialized” and the cost for each report. If reports are available on disk, please list the formats available, and any additional costs.

I: Compensation/Payment Schedule:

Proposer is required to submit their cost proposal in the format as outlined in Section V.

Proposer must state if the proposed rate is guaranteed for the term of the contract or if it is subject to adjustments. If subject to adjustments, Proposer must state the frequency of adjustments and how adjustments are determined.

J: Certificate of Insurance:

Proposer shall demonstrate the willingness and ability to submit proof of the required insurance coverage as set forth in the *Sample Professional Services Agreement (attached at end of this document)* prior to execution of the contract.

K: Certification of Proposal:

Proposer is required to sign and submit the Certification

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SECTION III

PROPOSAL EVALUATION AND SELECTION

An Evaluation Committee may be established by the City. The Committee may be comprised of City staff or other personnel as determine by the City and will evaluate all proposals received in accordance with the Evaluation Criteria. The City reserves the right to establish weight factors that will be applied to the criteria depending upon order of importance. Weight factors and evaluation scores will not be released until after award of proposal. The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City after all factors have been evaluated.

Selection of qualified Proposers will be based on the following criteria as set forth herein. Criteria are listed in random sequence and are not considered in any rank or order or importance. Interviews will be held with the most qualified respondents. The recommended proposal will be submitted to the City Council for contract approval.

The proposal will be evaluated on the basis of the response to all questions and requirements of this RFP. The City shall use some or all of the following criteria in its evaluation:

1. Experience of the firm, particularly of staff assigned to supervise and administer this contract
2. Education and experience of staff members assigned to account
3. Demonstrated knowledge of public agencies, particularly municipalities
4. Understanding of the needs and requirements of CITY
5. Proposer's ability to perform the work within the timelines specified
6. Location of firm and availability of staff assigned to CITY
7. Quality of references
8. Proposed costs
9. Content, quality, completeness and form of submitted proposal
10. Interviews.

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SECTION IV

SCOPE OF SERVICES

Background. The City of Rancho Santa Margarita (City) invites qualified firms to submit proposals for Economic Development services. The successful Proposer will enter into a contract with the City of Rancho Santa Margarita and provide Economic Development services.

Rancho Santa Margarita is located in southern Orange County approximately 20 miles from Santa Ana and 45 miles south of Los Angeles. Rancho Santa Margarita incorporated on January 1, 2000 and has a current population of 49,718. The City is a general law city and operates under the council-manager form of government. The City has 21 full time staff and various part time staff.

Rancho Santa Margarita is a contract city. The City has five (5) departments: City Council, City Manager (includes City Clerk), Administrative Services (includes Finance, Human Resources, Community Services & Risk Management), Public Works, Development Services (includes Planning, Building Safety & Code Enforcement). Police services are provided through contract with the Orange County Sheriff. Fire Protection services are provided through the Orange County Fire Authority. The City also contracts for Animal Control Services, City Attorney, Economic Development and Public Relations. The City further contracts with companies for specific tasks such as permit processing, plan check, NPDES, street and facility maintenance. Rancho Santa Margarita owns no parks as they are owned and maintained by homeowner associations.

For more information about the City, please visit the City website at www.cityofrsm.org

Organizational Structure. The City Manager is hired by the City Council and oversees all day to day operations.

TERM: The City is considering a three (3) year contract, consistent with existing professional services practices.

Services to be provided by the selected Proposer:

The purpose of the Rancho Santa Margarita EDC is to enhance the quality of life in Rancho Santa Margarita by encouraging business development and retention through ongoing communication and outreach to businesses. The EDC 2009/2010 Strategic Plan Goals/Objectives approved by the City Council is provided as an Attachment to this document. The three (3) Working Group descriptions and responsibilities are provided as three additional Attachments to this document. The City utilizes consultant services to implement the City's Economic Development Program, including the EDC Strategic Plan. The consultant services desired are described as follows:

1. Consultant services – Provide personnel to act independently in accomplishing work for the City and the Economic Development Committee (EDC). The City currently utilizes approximately 8 hours of services per week for economic development consultant services under the direction of the Director of the Development Services Department. Specific responsibilities include, but are not limited to:
2. Manage Quarterly Economic Development Committee (EDC) meetings and activities associated, which are scheduled on the first Thursday of every calendar quarter from 7:30 am to 9:00 am. Responsibilities include developing/finalizing the Meeting Agenda, finalizing the minutes from the previous meeting (minutes drafted by Administrative Professional), writing staff reports as necessary, preparing updates for ongoing projects and receiving/compiling information from three Working Group Chairpersons and finalizing their updates for the EDC Meeting Agenda packet. EDC Meeting Agenda Packet must be posted and distributed 72 hours before the meeting. Development Services Department staff is available to post the Meeting Agenda as required and upload the Agenda and/or reports to the City's Website and may be available to provide electronic distribution of the Agenda Packet to EDC members and interested parties.
3. Attend the Quarterly EDC meetings and make public presentations of Agenda Items.
4. Prepare and present City Council Regular Agenda and Study Session Agenda Items.
5. Work closely with three (3) EDC Working Group Chairpersons of Business Attraction, Business Growth & Retention and Program Strategic Planning to ensure compatibility among all Working Group activities and provide assistance with their actions as needed. Communicate with Working Group Chairpersons to request and receive Working Group Agenda items prior to their meetings, create & distribute Agendas to Working Group Members 72 hours before their meetings.
6. Attend the Working Group meetings of Business Attraction and Business Growth & Retention that meet twice a month for 1.5 hours each time on the 2nd and 4th Wednesdays of each month. Record the action items for the Working Groups,

provide City assistance and guidance and maintain the Working Group progress report.

7. Attend the Working Group meeting for the Program Strategic Planning that meets once or twice per Quarter to oversee the actions of the other two Working Groups. Report their actions as appropriate.
8. Facilitate team briefings, prepare information for distribution and participate in Business Attraction meetings with existing center owners and prospective business tenants. Create tracking model to track outreach activities and report results.
9. Facilitate team briefings, prepare information for distribution and participate in Business Growth & Retention meetings with existing businesses. Create tracking model to track outreach activities and report results.
10. Respond to phone calls & emails regarding the City's business regulations and assistance programs including but not limited to business license standards, Certificates of Use and Occupancies and contact information for local retail and commercial center owner/manager and broker information.
11. Manage and administer contracts for services required in the execution of Economic Development services such as printers, graphic artists and vendors of items used at special events (food, table linens, room reservations). Monitor consultant expenditures so as to ensure conformance with the City's Budget.
12. Monitor City Sales Tax and Tenant Vacancy information as appropriate with special focus on Leakage Analysis & Demographic Information.
13. Responsible for coordinating EDC community events as may be planned by the EDC.
14. Provide guidance and insight to the City to help maintain a healthy-economic base for long-term fiscal viability.
15. Represent the City's Economic Development Program and interface on the City's behalf with local Business Organizations (e.g., Score, SBC) and other public and private agencies to assist the City in achieving its' economic goals.
16. Report monthly for the City Update on the progress of Economic Development Projects
17. Write a weekly Economic Development item for the weekly City Council Status Report on an item of economic interest within the City.
18. Participate in the implementation of the City's Business Registration System.
19. Coordinate with Code Enforcement Officers in cases involving high priority businesses within the City.
20. Other duties as may be assigned or requested.

The ideal proposal would include an Economic Development Coordinator who is available to be at the City part-time, has previous Economic Development experience, is customer-service oriented and has experience with managing multiple tasks, assignments and responsibilities. The Economic Development Coordinator should be available at the City on an as needed basis for questions and quality control of work.

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SECTION V

COMPENSATION

The City will be flexible in considering methods of compensation. Consultants must provide specific details as to the proposed methods of compensation with examples as appropriate to clearly demonstrate compensation methods. If hourly rates are proposed, adequate information must be presented to match hourly rates to specific consultant staff, if applicable. It shall be specified as to whether lump sum retainers, hourly rates, or other methods of compensation include all overhead, reimbursable and out-of-pocket expenses. Consultants shall identify those expenses or support costs for which the City would be responsible. The consultant shall specify City facility requirements necessary to provide services outlined in the consultant's proposal.

**PLEASE NOTE, THIS IS THE SAMPLE FORMAT, NOT A COMPENSATION
WORKSHEET. PLEASE LIST ALL CHARGES YOU ARE PROPOSING.**



NON-COLLUSION AFFIDAVIT.

I certify that this proposal is made without prior understanding, arrangement, agreement, or connection with any corporation, firm or person submitting a proposal for the same services, materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I certify that I have not entered into any arrangement or agreement with any City of Rancho Santa Margarita public officer. I understand collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid and certify that I am authorized to sign this proposal for the proposer.

Signature of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

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SAMPLE PROFESSIONAL SERVICES AGREEMENT ATTACHED AS APPENDIX 3

APPENDIX 1



CITY OF RANCHO SANTA MARGARITA

CONSULTANT'S ACKNOWLEDGEMENT OF COMPLIANCE WITH INSURANCE REQUIREMENTS FOR AGREEMENT FOR PROFESSIONAL SERVICES

Consultant agrees, acknowledges and is fully aware of the insurance requirements as specified in **Section 8. Insurance Requirements** of the Agreement for Professional Services and accepts all conditions and requirements as contained therein.

Consultant: _____
Name (Please Print or Type)

By: _____
Consultant's Signature

Date: _____

This executed form must be submitted with Scope of Work proposal.

APPENDIX 2

CERTIFICATION OF PROPOSAL TO THE CITY OF RANCHO SANTA MARGARITA

- 1) The undersigned hereby submits its proposal and agrees to be bound by the terms and conditions of the Request for Proposal (RFP) **NO. DS-10-003**. By submitting the response to this request, proposer agrees, if selected to furnish services to the City in accordance with this RFP.
- 2) Proposer has carefully reviewed its proposal and understands and agrees that the City is not responsible for any errors or omissions on the part of the proposer and that the proposer is responsible for them.
- 3) It is understood and agreed that the City reserves the right to accept or reject any or all proposals and to waive any informality or irregularity in any proposal received by the City.
- 4) The proposal response includes all of the commentary, figures and data required by the Request for Proposal, dated February 18, 2010
- 5) The proposal shall be valid for 90 days from March 11, 2010

Name of Proposer: _____

By: _____
(Authorized Signature)

Type Name: _____

Title: _____

Date: _____

APPENDIX 3

SAMPLE PROFESSIONAL SERVICES AGREEMENT

(Insert name of firm, project name, or description of work)

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective this [REDACTED] day of [REDACTED] 20[REDACTED], by and between the CITY OF RANCHO SANTA MARGARITA, a municipal corporation organized and existing under the laws of the State of California, (hereinafter referred to as "City") and [REDACTED] a [REDACTED], (hereinafter referred to as "Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties."

RECITALS

A. City has determined that there is a need to retain the professional services of a licensed [REDACTED] for [REDACTED] (the "Project").

B. Consultant has submitted to City a proposal to provide professional [REDACTED] services to City for the Project pursuant to the terms of this Agreement.

C. Consultant is qualified by virtue of its experience, training, education, reputation, and expertise to provide these services and has agreed to provide such services as provided herein.

D. City desires to retain Consultant to provide such professional services.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant agrees to perform the professional services set forth in the Proposal/Scope of Work, dated [REDACTED], described in Exhibit "A," which is attached hereto, and is incorporated herein by reference (hereinafter referred to as the "Services" or "Work"). As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and professional services and that Consultant is experienced in performing the Work and Services contemplated herein

and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the Work and Services required hereunder. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized as high quality among well-qualified and experienced professionals performing similar work under similar circumstances.

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; and, (2) the Consultant's signed, original [REDACTED], 20[REDACTED] proposal submitted to the City ("Consultant's Proposal"), which shall all be referred to collectively hereinafter as the "Contract Documents." The Consultant's Proposal, attached hereto as **Exhibit "A,"** is hereby incorporated by reference and is made a part of this Agreement. All provisions of the Contract Documents shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the terms of this Agreement; and, (2nd) the provisions of the Consultant's Proposal.

1.3 Compliance with Law. Consultant warrants that all Services rendered hereunder shall be performed in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

1.4 Licenses, Permits, Fees, and Assessments. Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Consultant to perform the Work and Services under this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the Work and Services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes penalties, or interest levied, assessed, or imposed against City hereunder.

1.5 Familiarity with Work. By executing this Agreement, Consultant warrants that Consultant (a) has thoroughly investigated and considered the Scope of Work or Services to be performed, (b) has carefully considered how the Services should be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services hereunder. Should the Consultant discover any latent or unknown conditions that will materially affect the performance of the Services hereunder, Consultant 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.

1.6 Care of Work. Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers,

documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by the City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. It is expressly understood by Consultant that the provisions of this section shall not apply to the services specifically set forth in the Scope of Work or reasonably contemplated therein, regardless of whether the time or materials required to complete any work or service identified in the Scope of Work exceeds any time or material amounts or estimates provided therein.

2. COMPENSATION

2.1 Maximum Contract Amount. For the Services rendered pursuant to this Agreement, Consultant shall be compensated by City in accordance with the **Schedule of Compensation/Fees**, which is attached hereto as **Exhibit "A"** and is incorporated herein by reference, but not exceeding the maximum contract amount of _____ dollars (\$_____) (hereinafter referred to as the "Maximum Contract Amount"), except as may be provided pursuant to Section 1.8 above. The method of compensation shall be as set forth in **Exhibit "A."** Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the Contract Officer designated pursuant to Section 4.2 and will only be approved if such expenses are also specified in the Schedule of Compensation/Fees. The Maximum Contract Amount shall include the attendance of Consultant at all Project meetings reasonably deemed necessary by the City. Consultant shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Consultant hereby acknowledges that it accepts the risk that the services identified in the Scope of Work may be more costly and/or time-consuming than Consultant anticipates, that Consultant shall not be entitled to additional compensation therefore, and that the provisions of Section 1.8 shall not be applicable to the services identified in the Scope of Work. The maximum amount of City's payment obligation under this section is the amount specified herein. If the City's maximum payment obligation is reached before the Consultant's Services under this Agreement are completed, consultant shall nevertheless complete the Work without liability on the City's part for further payment beyond the Maximum Contract Amount.

2.2. Method of Payment. Unless some other method of payment is specified in the **Schedule of Compensation/Fees (Exhibit "A")**, in any month in which Consultant wishes to receive payment, no later than the tenth (10) working day of such month, Consultant shall submit to the City, in a form approved by the finance manager, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Consultant and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Consultant within forty-five (45) days after receipt of the invoice or a soon thereafter as is reasonably practical.

2.3 Changes in Scope. In the event any change or changes in the Scope of Services is requested by the City, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional professional fees. An amendment may be entered into: (a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

2.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Rancho Santa Margarita City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the City.

3. SCHEDULE OF PERFORMANCE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the Work of this Agreement according to the agreed upon **Schedule of Performance (Exhibit "A")**.

3.2 Schedule of Performance. Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in the **Schedule of Performance**, which is attached hereto as **Exhibit "A"** and is incorporated herein by reference. When requested by Consultant, extensions to the time period(s) specified in the **Schedule of Performance** may be approved in writing by the Contract Officer, but such extensions shall not exceed one hundred eighty (180) days cumulatively; however, the City shall not be obligated to grant such an extension.

3.3 Force Majeure. The time period(s) specified in the **Schedule of Performance** for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency,

including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

3.4 Term. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall commence upon the effective date of this Agreement and shall continue in full force and effect until completion of the Services but not exceeding three (3) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "A") and pursuant to Section 3.2 above, unless extended by mutual written agreement of the Parties.

4. COORDINATION OF WORK

4.1 Representative of Consultant. The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the Services to be performed under this Agreement and make all decisions in connection therewith: _____ (name), _____ (title). It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services performed hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager of City, and is subject to change by the City Manager. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignments. The experience, knowledge, capability, expertise, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City. Consultant shall not contract with any other entity to perform the Services required without prior written consent of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement

shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written consent of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Consultant or any surety of Consultant from any liability hereunder without the express written consent of City.

4.4 Independent Contractor.

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for professional fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing Services hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 2 and Subsection 1.8 herein, of any nature relating to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

5. INSURANCE

5.1 Types of Insurance. Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, the insurance described herein for the duration of this Agreement, including any extension thereof, or as otherwise specified herein, against claims which may arise from or in connection with the performance of the Work hereunder by Consultant, its agents, representatives, or employees. Insurance required herein shall be provided by an authorized insurance company and admitted in the State of California and having a minimum A.M. Best's Guide Rating of A-, Class VII or better, unless such requirements are waived in writing by the City Manager or his designee due to unique circumstances. In the event the City Manager determines that the Work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager or his designee. Consultant shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein. Except as otherwise authorized below for professional liability (errors and omissions) insurance, all insurance provided pursuant to this Agreement shall be on an occurrence basis. The minimum amount of insurance required hereunder shall be as follows:

A. Errors and Omissions Insurance. Consultant shall obtain and maintain in full force and effect throughout the term of this Agreement, standard industry form professional liability (errors and omissions) insurance coverage in an amount of not less than two million dollars (\$2,000,000.00) per claim or occurrence, in accordance with the provisions of this section.

(1) Consultant shall either: (a) certify in writing to the City that Consultant is unaware of any professional liability claims made against Consultant and is unaware of any facts which may lead to such a claim against Consultant; or (b) if Consultant does not provide the certification pursuant to (a), Consultant shall procure from the professional liability insurer an endorsement providing that the required limits of the policy shall apply separately to claims arising from errors and omissions in the rendition of services pursuant to this Agreement.

(2) If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City Manager.

(3) In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event

of termination of the policy during this period, new coverage shall immediately be obtained to ensure coverage during the entire course of performing the Services under the terms of this Agreement.

B. Workers' Compensation Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, workers' compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Consultant agrees to waive and obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

C. Commercial General Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of comprehensive general liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) in the general aggregate, and one million dollars (\$1,000,000.00) for products and completed operations.

(1) The commercial general liability policy shall name the City of Rancho Santa Margarita as an additional insured in accordance with standard ISO additional insured endorsement form CG2010(1185) or equivalent language.

(2) Consultant shall either: (a) certify in writing to the City that Consultant is unaware of any liability claims made against Consultant, and is unaware of any facts which may lead to such a claim against Consultant; or (b) if Consultant does not provide the certification pursuant to (a), Consultant shall procure from the commercial general liability insurer an endorsement providing that the required limits of the policy shall apply separately to occurrences during the rendition of services pursuant to this Agreement.

D. Business Automobile Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of one million dollars (\$1,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased, and hired cars.

E. Employer Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of employer liability insurance written on a per occurrence basis with a policy limit of at least one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

5.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager prior to commencing any work or services under this Agreement. Consultant guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured retentions in excess of \$10,000, and the City Manager may require evidence of pending claims and claims

history as well as evidence of Consultant's ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of \$10,000.

5.3 Other Insurance Requirements. The following provisions shall apply to the insurance policies required of Consultant pursuant to this Agreement:

- 5.3.1. The required commercial general, business automobile, and employer liability policies shall be endorsed to state that City and its officers, council members, officials, employees, agents, and volunteers shall be covered as additional insureds with respect to liability arising out of all work or services performed by Consultant pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to additional insureds. Additional insured endorsements are not required for the professional liability and workers' compensation policies.
- 5.3.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects City and its officers, council members, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, council members, officials, employees, agents, and volunteers, and their respective insurers.
- 5.3.3 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.
- 5.3.4 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or modified by either Party, or reduced in coverage or in limits, except after thirty (30) days prior written notice by First Class U.S. Mail, postage-prepaid, has been provided to the City. Notwithstanding the foregoing in this subsection, if coverage is to be suspended, voided, or cancelled because of Consultant's failure to pay the insurance premium, the notice provided to City shall be by ten (10) days prior written notice.
- 5.3.5 All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.
- 5.3.6 None of the insurance coverages required herein will be in compliance with these requirements if they include any limiting endorsement which substantially impairs

the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Manager and approved in writing.

- 5.3.7 Consultant agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.
- 5.3.8 Consultant agrees to ensure that subcontractors, if any, and any other parties involved with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage required of Consultant. 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. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.
- 5.3.9 Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights hereunder in this or any other regard.
- 5.3.10 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Agreement applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.
- 5.3.11 Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- 5.3.12 The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.
- 5.3.13 Consultant agrees to provide immediate notice to City of any claim or loss against

Consultant arising out of the Work performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.

- 5.3.14 Consultant agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages resulting from the Consultant's activities or the activities of any person or person for which the Consultant is otherwise responsible.

5.4 Verification of Coverage. Consultant shall furnish City original certificates of insurance and endorsements, including additional insured endorsements, in a form acceptable to the City, affecting all of the coverages required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Consultant shall provide to City all certificates and endorsements required by this section before commencing any work on the Project.

6. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its officers, council members, officials, employees, agents and volunteers and all other public agencies whose approval of the Project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders, and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims, including alleged Claims, arise out of, pertain to, or are related to the negligent acts or omissions, recklessness, or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless, or willful performance of or failure to perform any term, provision, covenant, or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the willful misconduct or gross negligence of the City, its officers, council members, officials, or employees.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs, and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant shall defend with legal counsel reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim "may arise out of, pertain to, or relate to Indemnified Claims" shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the Parties. In the event a final judgment, arbitration award, order, settlement, or

other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness, or willful misconduct of Consultant to any extent, then City shall reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs, and expenses that were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

7. REPORTS AND RECORDS

7.1 Accounting Records. Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of the Work and Services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Work or Services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of such fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and the City shall indemnify the Consultant for all damages resulting therefrom. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts

embodied therein. Consultant shall ensure that all its subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization.

7.5 Audit and Inspection of Records. After receipt of reasonable notice and during the regular business hours of City, Consultant shall provide City, or other agents of City, such access to Consultant's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Consultant's performance under this Agreement. Consultant shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law and Venue. This Agreement shall be construed and interpreted both as to validity and as to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such County, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

8.3 Termination. City may terminate this Agreement for its convenience at any time, without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Upon such notice, City shall pay Consultant for Services performed through the date of termination. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Thereafter, Consultant shall have no further claims against the City under this Agreement. Upon termination of the Agreement pursuant to this section, Consultant shall submit to the City an invoice for work and services performed prior

to the date of termination. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days written notice to the City, except that where termination is due to material default by the City, the period of notice may be such shorter time as the Consultant may determine.

8.4 Default of Consultant.

A. Consultant's failure to comply with any provision of this Agreement shall constitute a default.

B. If the City Manager, or his designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, he shall notify Consultant in writing of such default. Consultant shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.3.

C. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.4.B, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the Maximum Contract Amount (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Consultant shall not limit Consultant's liability for completion of the Services as provided herein.

8.5 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

8.6 Rights and Remedies Cumulative. 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.

8.7 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

8.8 Attorney Fees. In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

9.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the 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 the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership, or association in which he is, directly or indirectly, interested in violation of any state statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

9.3 Covenant Against Discrimination. In connection with its performance under this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, or national origin. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10. MISCELLANEOUS PROVISIONS

10.1 Patent and Copyright Infringement.

A. To the fullest extent permissible under law, and in lieu of any other

warranty by City or Consultant against patent or copyright infringement, statutory or otherwise, it is agreed that Consultant shall defend at its expense any claim or suit against City on account of any allegation that any item furnished under this Agreement, or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and Consultant shall pay all costs and damages finally awarded in any such suit or claim, provided that Consultant is promptly notified in writing of the suit or claim and given authority, information and assistance at Consultant's expense for the defense of same, and provided such suit or claim arises out of, pertains to, or is related to the negligence, recklessness or willful misconduct of Consultant. However, Consultant will not indemnify City if the suit or claim results from: (1) City's alteration of a deliverable, such that City's alteration of such deliverable created the infringement upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by Consultant when it is such use in combination which infringes upon an existing U.S. letters patent or copyright.

B. Consultant shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof, Consultant shall not be obligated to indemnify City under any settlement made without Consultant's consent or in the event City fails to cooperate in the defense of any suit or claim, provided, however, that such defense shall be at Consultant's expense. If the use or sale of such item is enjoined as a result of the suit or claim, Consultant, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

10.2 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

To City: City of Rancho Santa Margarita
Attention: City Manager
22112 El Paseo
Rancho Santa Margarita, California 92688
Telephone: (949) 635-1800
Facsimile: (949) 635-1667

To Consultant: (Company Name)
(Name/Title)
(Address)
Telephone: (714) 641-1300
Facsimile: (714) 641-1323

10.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

10.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

10.5 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

10.6 Third Party Beneficiary. Except as may be expressly provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

10.7 Recitals. The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

10.8. Corporate Authority. Each of the undersigned represents and warrants that (i) the Party for which he is executing this Agreement is duly authorized and existing, (ii) he is duly authorized to execute and deliver this Agreement on behalf of the Party for which he is signing, (iii) by so executing this Agreement, the Party for which he is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he is signing is bound.

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[SIGNATURES ON NEXT PAGE]

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IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the date first written above.

“CITY”
CITY OF RANCHO SANTA
MARGARITA,
a California municipal corporation

Mayor

ATTEST:

(SEAL)
MOLLY MCLAUGHLIN,
City Clerk

APPROVED AS TO FORM:

GREGORY E. SIMONIAN,
City Attorney

“CONSULTANT”

(Insert Company Name)

By: _____
_____, President

** For Consultants/Contractors/Vendors that are a corporation, signature requirements are as follows:*

1) One signature by the Chairman of the Board, the President, of the Vice President,

And

2) One signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer.

** For Consultants/Contractors/Vendors that are not a corporation, signature requirements are as follows: the person who has authority to bind the consultant/contractor/vendor must sign on one of the lines above.*

EXHIBIT “A”

, 20 PROPOSAL/ SCOPE OF WORK

INCLUDING,

SCHEDULE OF PERFORMANCE

AND

SCHEDULE OF COMPENSATION/ FEES