

REQUEST FOR PROPOSALS (RFP) NO. DS 18-002
HAZARD MITIGATION PLAN UPDATE CONSULTANT



CITY OF RANCHO SANTA MARGARITA
22112 El Paseo
Rancho Santa Margarita, CA 92688
(949) 635-1800

Tentative RFP Dates

Request for Proposal Posting/Mailing:	September 6, 2018
Written Question Deadline:	September 18, 2018
Submittal Deadline:	September 27, 2018
Tentative First Interview:	October 15, 2018
Tentative City Council Award:	October 24, 2018
Expected Contract Start Date	November 1, 2018

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September 6, 2018

**RE: HAZARD MITIGATION PLAN UPDATE
REQUEST FOR PROPOSALS**

Dear Proposers:

The City of Rancho Santa Margarita invites qualified firms to submit proposals to provide consulting services to update the City's Local Hazard Mitigation Plan (LHMP).

The City has received a Grant from the California Governor's Office of Emergency Services to prepare an update to the LHMP that will be adopted by the Federal Emergency Management Agency (FEMA).

To be considered responsive, qualified Proposers must submit a written proposal in accordance with the requirements, specifications, conditions, and provisions as described and set forth herein.

PROPOSALS ARE DUE BEFORE: 4:00 P.M. ON SEPTEMBER 27, 2018

After the proposal due date, evaluation will commence. If necessary, the City may require Proposers found to be the most qualified to interview with City staff. Selection of a qualified firm for the requested professional services shall be made on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, and shall not be awarded solely on the basis of cost.

Thank you for your interest and good luck.

Respectfully,

Wendy Starks, AICP
Principal Planner
City of Rancho Santa Margarita

SECTION I

INTRODUCTION AND INSTRUCTIONS TO PROPOSERS

A: Introduction

The City of Rancho Santa Margarita (City) invites qualified firms to submit written proposals to prepare the City's updated Local Hazard Mitigation Plan (LHMP) that will be adopted by the Federal Emergency Management Agency (FEMA). Should an award of contract be made, the selected Proposer will enter into a professional services agreement with the City of Rancho Santa Margarita to provide the updated LHMP.

B: Proposed Time Schedule

Request for Proposal Posting/Mailing:	September 6, 2018
Written Question Deadline:	September 18, 2018
Submittal Deadline:	September 27, 2018
Tentative First Interview:	October 15, 2018
Tentative City Council Award:	October 24, 2018
Expected Contract Start Date	November 1, 2018

C: Instructions to Proposers and Procedures for Submittal

One printed original (marked original), three printed copies (marked copy) of the proposal and one (1) electronic copy on CD or Flash Drive (will not be returned) must be submitted in a sealed envelope or box bearing the name of the Proposer, marked **RFP No. DS 18-002** and submitted only to the following address:

City of Rancho Santa Margarita
RFP No. DS 18-002
Attn: Wendy Starks, Principal Planner
22112 El Paseo
Rancho Santa Margarita CA 92688

Proposers are solely responsible for ensuring their submitted proposal is received by the City in accordance with the solicitation requirements, before the Submittal Deadline, and at the place specified. Postmarks will not be accepted in lieu of actual delivery. No oral, telegraphic, electronic mail, 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 Proposal. 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. Selection of a qualified firm for the requested professional services shall be made on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the professional services required, and shall not be awarded solely on the basis of cost.

This procurement involves the contracting for professional services to ensure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the City. In accordance with State law, the City shall consider price after the City is satisfied that the would-be person, company, corporation, contractor, consultant, or firm has demonstrated the competence and professional qualifications necessary for the satisfactory performance of the services required. Price alone shall not be the determining factor, but shall be considered along with qualifications

City reserves the right to negotiate final terms with the selected Proposer, if any. Award may 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 preference. 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, if one is made. The City shall not be obligated to accept the lowest priced proposal, but if an award is made, the City will make an award in the best interests of the City after all factors are considered, including but not limited to the demonstrated competence, experience and professional qualifications of the Proposer.

Discussions may, at the City's option, be conducted with the most qualified Proposers. 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. The federal grant funds authorized for the project are subject to federal laws and requirements.

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

CONFLICT OF INTEREST. By signing the Certification of Proposal (**Appendix 3**), the 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 this proposal or any work connected with this proposal. Should any agreement be approved in connection with this Request for Proposals, Proposer declares and warrants that 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 that agreement, or obtain any present, anticipated or future material benefit arising therefrom.

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 this 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 as **Appendix 1**.

DOCUMENTS, EXAMINATION OF. It is the responsibility of the Proposer to carefully and thoroughly examine and be familiar with these RFP documents, general conditions, all forms, specifications, drawings, plans, and addenda (if any). 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 these documents. The failure or neglect of the Proposer to examine documents shall in no way relieve him from any obligations with respect to the solicitation or and subsequent contract that may be awarded. 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 RFP documents. The failure or neglect of a Proposer to receive or examine any of the 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.

INTERPRETATION OF RFP 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 RFP 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.

Questions and/or requests for interpretations shall be made in writing and delivered to Wendy Starks, Principal Planner, City of Rancho Santa Margarita, 22112 El Paseo Rancho Santa Margarita, CA 92688, or via email at wstarks@cityofrsm.org no later than Tuesday, September 18, 2018 by 5:00 p.m.

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 RFP documents, and when issued, will be sent as promptly as is practical to all parties recorded by the City as having received RFP documents. All such addenda shall become a part of the RFP document. 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 RFP documents is responsible for advising the City that they have a set of RFP documents and wish to receive subsequent Addenda.

IRREGULARITIES. Unauthorized conditions, limitations, or provisions attached to a proposal may cause its rejection. The completed proposal shall be without interlineations, alterations or erasures. Alternative proposals will not be considered unless specifically

requested. No oral, telegraphic, or telephonic proposal, modification or withdrawal will be considered.

NON-DISCRIMINATION. Proposer represents and warrants that it does not and will not discriminate against any employee or applicant for employment because of race, religion, gender, color, national origin, sexual orientation, ancestry, material status, physical condition, pregnancy or pregnancy related conditions, political affiliation or opinion, age or medical condition.

NON-EXCLUSIVE. Should the City make an award, the successful Proposer will be expected to enter into a non-exclusive professional services agreement and the City reserves the right to enter into agreements with other firms for consulting 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 RFP process shall become the property of the City upon submission.

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

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. All bid proposals and documents submitted in response to this RFP shall become the property of the City and a matter of public record pursuant to Government Code sections 6250 et seq. Proposals should not be marked as confidential or proprietary, and City may refuse to consider a proposal so marked. All information contained within the proposals will become a matter of public record. It is the responsibility of each bidder to clearly identify any and all information contained within their bid proposal that it considers to be confidential and/or proprietary. To the extent that the City agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public. In the event that a demand for disclosure of information designated as "confidential and/or proprietary" by a bidder is made, the City will notify the bidder in writing of such demand and shall furnish a copy of the City's written response to the requestor. Bidder may then pursue, at its sole cost and expense, any and all appropriate legal action necessary to maintain the confidentiality of such information.

NO PUBLIC BID PROPOSAL OPENING/PUBLIC RECORDS ACT. Proposals shall be opened and their contents secured by City staff to prevent disclosure during the evaluative process and the process of negotiating with competing proposers. Adequate

precautions shall be taken to treat each Proposer fairly and to ensure that information gleaned from competing proposals is not disclosed to other proposers. Prices and other information concerning the proposals shall not be disclosed until a finalist is selected and a recommendation for award is made to the City Council.

REPRESENTATIONS. Proposer understands and acknowledges that the representations made in their submitted proposal 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.

RFP PART OF AGREEMENT. Should an agreement be awarded, this Request for Proposals and Scope of Services and all conditions may 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 Request for Proposals are held invalid, illegal or unenforceable, they shall be severed from the Request for Proposals 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 for providing services as part of the RFP, 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 expertise;
- e. Staff assigned to reference engagement that will be designated for work per this RFP;
- f. Client project manager's name and telephone number.

VALIDITY. Proposal must be valid for a period of 120 days from the due date and may be extended by written authorization from the Proposer.

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

SECTION II

PROPOSAL RESPONSE REQUIREMENTS

Proposers shall submit one printed original (marked original), three printed copies (marked copy) of the proposal and one (1) electronic copy on CD or Flash Drive (will not be returned) on or before the Submittal Deadline to:

**City of Rancho Santa Margarita
RFP No. DS 18-002
Attn: Wendy Starks, Principal Planner
22112 El Paseo
Rancho Santa Margarita CA 92688**

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 Proposers 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. *Do NOT include marketing brochures or other promotional material not connected with this RFP.*

All proposals shall be submitted on standard 8.5" by 11" paper, three-hole punched and secured in binder clips. 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 summary 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 primary 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 started and completed
 - Type of Contract
 - Contracting Agency/Client
 - Project Description
 - Project Manager
 - Developer of project
10. Any failures or refusals to complete a contract and explanation.
11. Individuals/Firms who own an interest of 10% or greater in the proposing firm.
12. Financial interests in other lines of business.

C. Resumes and Qualifications of Personnel:

The Proposer shall furnish a qualification plan with sufficient information for judging the quality and competence of the personnel that could be utilized to perform services under the proposed scope of work. In its assessment of the proposal, the City will place considerable emphasis on the commitment by the Proposer to provide qualified personnel for the services being considered. The Proposer will furnish resumes in outline form to illustrate key personnel that are representative of those (in terms of qualifications) that could be utilized to perform the scope of services under this proposal. The substitution or addition of individuals shall be allowed only with prior written approval of the City.

If sub-contractors are to be used as part of this proposal, qualifications of the sub-contractor and relevant experience is to be included in the same format.

Resume Format:

Name

Position

Education

Show degrees earned, certifications, and school. 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 related to hazard mitigation plan preparation.

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 Proposal. Included in the organizational chart, please list all sub-contracted work to individuals/firms.

It is the City's preference to have key personnel identified in the Organizational Chart to remain during the term of the agreement. The Proposer shall note concurrence on the restrictions to changes in key personnel. A transition plan shall be presented in this section in the event there are proposed changes in key personnel during the term of the agreement that are outside of the consulting firm's control or if the City requests such change.

E: References:

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

F: Overview and Approach:

- **Understanding:** Proposer must include in this section their understanding of the preparation of Local Hazard Mitigation Plans (LHMP) and adoption by the Federal Emergency Management Agency (FEMA) as outlined in this Request for Proposals.
- **Approach:** Proposer must include in this section its approach to preparation and adoption of a LHMP. In this section, Proposer is to include:
 - Understanding and approach for preparing and subsequent adoption of the City's LHMP as described within Section IV Scope of Services.
 - Strategy for managing invoices billed against the monies approved of in the FEMA awarded Grant.

- Proposer must reference **all** duties as listed in the SCOPE OF WORK. Proposer must note any services NOT provided by 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 title this section as ADDITIONAL SERVICES.
- **Project Controls:** Describe the firm's ability to control costs and provide accurate and timely invoices through internal control measures; to monitor and stay within budget; to monitor schedule and review times and describe the techniques used to complete projects within the proposed time frames.
- **Quality Control/Quality Assurance (QA/QC):** Describe the firm's QA/QC processes that will be adhered to during the term of the agreement. Describe the method of ensuring that the quality of work is high.

G: Integration Plan:

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

H: 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 an agreement (if awarded) or if it is subject to adjustments. If subject to adjustments, Proposer must state the frequency of adjustments and how adjustments are determined.

I: 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 as **Appendix 2**)* prior to execution of the contract.

J: Certification of Proposal:

Proposer is required to sign and submit the Certification of Proposal in **Appendix 3**.

SECTION III

PROPOSAL EVALUATION AND SELECTION

Selection of a qualified firm for the requested professional services shall be made on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the professional services required, and shall not be awarded solely on the basis of cost.

This procurement involves the contracting for professional services to ensure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the City. In accordance with State law, the City shall consider price after the City is satisfied that the would-be person, company, corporation, contractor, consultant, or firm has demonstrated the competence and professional qualifications necessary for the satisfactory performance of the services required. Price alone shall not be the determining factor, but shall be considered along with qualifications.

An Evaluation Committee will be established by the City. The Committee may be comprised of City staff or other personnel as determined 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 an award is made. The City shall not be obligated to accept the lowest priced proposal, but the City may make an award in the best interests of the City after all factors are considered, including but not limited to the demonstrated competence, experience and professional qualifications of the Proposer.

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 of importance. Interviews may 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 quality of response to all requirements of this RFP. The City shall use some or all of the following criteria in its evaluation, in no particular order:

1. Demonstrated competence in hazard mitigation planning,
2. Understanding of the scope of services as described in Section IV,
3. Experience of the firm, particularly of staff assigned to prepare the hazard mitigation plan,
4. Successful delivery and adoption of hazard mitigation plans,
5. Location of firm and availability of staff to prepare the hazard mitigation plan,
6. Quality of references,
7. Proposed costs,
8. Content, quality, completeness and form of submitted proposal, and
9. Interview, if necessary.

SECTION IV

SCOPE OF SERVICES

City Information: The City of Rancho Santa Margarita (City) invites qualified firms to submit proposals to prepare the City's Updated Local Hazard Mitigation Plan (LHMP) and to ensure adoption by the Federal Emergency Management Agency (FEMA). Should an award be made, the successful Proposer will enter into a professional services agreement with the City of Rancho Santa Margarita to prepare the LHMP.

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 as the 33rd city in Orange County 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 approximately 20 full time staff and various part time staff.

Rancho Santa Margarita is a contract city. The City Manager is hired by the City Council and oversees all day to day operations. The City has five (5) departments: City Manager (includes City Clerk, Human Resources & Risk Management), Community Services, Finance, Public Works, and Development Services (includes Planning, Building Safety & Code Enforcement). Police services are provided through contract with the Orange County Sheriff's Department. Fire Protection services are provided through the Orange County Fire Authority. The City also contracts for Animal Control and City Attorney Services, and for specific tasks such as plan check, NPDES, and street and facility maintenance.

Project Background Information:

A LHMP is a document which identifies risks and vulnerabilities from natural disasters and develops long term strategies for protecting people and property from future hazardous events. FEMA approval of a City's LHMP establishes eligibility for participation in federal mitigation grant programs. Mitigation grant programs fund projects that lessen the impact of disasters. For jurisdictions which receive approval of a LHMP and who wish to continue their eligibility for mitigation grant programs, FEMA requires LHMP updates every five years. The City's current LHMP was adopted by the City Council in 2008. A copy of the City's current LHMP is available upon request. The LHMP was submitted to FEMA for review and comment, but was not ultimately approved by FEMA. Based on their review of the plan, FEMA requested detailed cost-benefit analysis of disaster scenarios to be included in a revision to the plan. Because there were no specific projects for which the City planned to seek funding, it was decided at that time to not expend the cost associated with preparing the analyses that would be required to obtain FEMA approval. Accordingly, the 2008 LHMP was never approved by FEMA, but is still a valuable local disaster preparedness resource.

The City is currently in the 3rd year of a three-year effort to update the General Plan. One of the required General Plan elements is the Safety Element, which identifies potential

natural and man-made safety risks (e.g., fire, flood, landslide, etc.) and describes the City's emergency and disaster preparedness programs. While a LHMP is not a required element in a General Plan, the Safety Element is required and relies on information contained in the City's 2008 HMP. It is timely to update the City's LHMP alongside the General Plan Update.

The City seeks a qualified consultant to prepare the updated LHMP and see the process in its entirety through to adoption by FEMA.

The City has secured a FEMA Grant as administered by Cal OES for the preparation and adoption of an Updated LHMP. The LHMP shall be updated for compliance with the following laws and requirements:

- a) The Disaster Mitigation Act of 2000 and Title 44 Code of Federal Regulations (CFR) §201.6, as outlined in FEMA's Local Mitigation Planning Handbook, published March 1, 2013.
- b) FEMA's Local Mitigation Plan Review Guide, published on October 1, 2011.
- c) Analysis of potential impacts and mitigation measures related to climate change for compliance with Senate Bill (SB) 379.

Tentative Schedule of Events:

The anticipated project timeline is as follows:

- | | |
|--|--------------------|
| • Request for Proposal Posting/Mailing | September 6, 2018 |
| • Proposals are Due | September 27, 2018 |
| • Consultant Selection | October 24, 2018 |
| • Expected Contract Start Date | November 1, 2018 |
| • Project Kick-Off Meeting | November 12, 2018 |
| • Public Review Draft | June, 2019 |
| • LHMP submittal to CalOES/FEMA | July, 2019 |
| • Approval from FEMA and Plan Adoption | December, 2019 |

Scope of Work and Deliverables:

The consultant will prepare an updated LHMP. Duties include the following:

- a) Gather and analyze necessary data. Review current LHMP.
- b) Attend a kick-off meeting with staff and working group meetings throughout the duration of the project.
- c) Assist City with planning and executing community outreach both on-line, and in person focus groups. The City may decide to complete all out-reach efforts in-house.

- d) Risk assessment to include hazard identification and profiles, vulnerability assessment, and capabilities assessment.
- e) Develop Mitigation Strategy.
- f) Prepare Public Review Draft.
- g) Prepare Plan Submittal for CalOES/FEMA review.
- h) Obtain FEMA approval and Plan Adoption by FEMA. The Consultant is responsible for completing all revisions and addressing all comments issued by CalOES and FEMA until final approval is received from these agencies.
- i) Obtain City Council Adoption.
- j) Project Closeout

Project Cost:

Consulting firms must include a detailed project budget for the scope of services. The City estimates that the work associated with the LHMP will not exceed \$75,060.00. The grant award was for \$56,295.00 and requires a City Match of \$18,765.00. The City may opt to perform all community outreach in-house to draw down the amount that the City is required to match.

SECTION V

COMPENSATION

Compensation will be provided in accordance with Section 2 of the Sample Professional Agreement (Appendix 4). Compensation will be made at the fees and schedule contained in the Proposer’s Proposal/Scope of Work and subject to a Maximum Contract Amount as agreed upon by Proposer and City. In order to facilitate comparison of proposals, the City requires all compensation proposals to be submitted in the format below based on the tasks and sub tasks (including optional or additional tasks) as noted in the Scope of Services above. For each of the tasks noted in Section IV, the Proposer **MUST** list all charges they are proposing and a total not-to-exceed amount for each task and the total cost for the entire proposal.

Proposers are required to include all costs for meeting attendance and City Council presentations, including travel time. The City will not separately reimburse Proposer for travel time or expenses to and from meetings or presentations.

Proposers are required to use the format included below for the detailed discussion of the Scope of Services, Compensation and Project Schedule. Proposers may also list and discuss additional subtasks not currently identified.

Phase Name:				
Name (Company/Person)	Title	Rate (Hourly)	Hours	Total
City of RSM				
Wendy Starks	Principal Planner	\$ 10.00	10	\$ 100.00
Planning Services Inc.				
Patrick Zoning	Senior Planner	\$ 15.00	15	\$ 225.00
Environmental Inc.				
Randy Riparian	Biologist	\$ 25.00	25	\$ 625.00
Phase Totals			50	\$ 950.00
Schedule/Timeline				
Phase or Task Number	Name	Dates		
1.1	Kick Off Meeting	Week 1		
1.2	Information Gathering	Weeks 3 - 5		
1.3	Summary Report	Week 6		

APPENDIX 1

NON-COLLUSION AFFIDAVIT

The undersigned declares, states and certifies that:

1. This Proposal is not made in the interest of, or on behalf of any undisclosed person, partnership, company, association, organization or corporation.
2. This Proposal is genuine and not collusive or sham.
3. I have not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal and I have not directly or indirectly colluded, conspired, connived, or agreed with any other Proposer or anyone else to put in sham proposal or to refrain from submitting to this RFP.
4. I have not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price or to fix any overhead, profit or cost element of the proposal price or to secure any advantage against the City of Rancho Santa Margarita or of anyone interested in the proposed contract.
5. All statements contained in the Proposal and related documents are true.
6. I have not directly or indirectly submitted the proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay any fee to any person, corporation, partnership, company, association, organization, RFP depository, or to any member or agent thereof to effectuate a collusive or sham proposal.
7. I have not entered into any arrangement or agreement with any City of Rancho Santa Margarita public officer in connection with this proposal.
8. I understand collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards.

I declare under penalty of perjury pursuant to the laws of the State of California and the United States that the foregoing facts are true and correct.

Executed this _____ day of _____, 2018, at _____ California.

Signature of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

APPENDIX 2

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

Consultant agrees, acknowledges and is fully aware of the insurance requirements as specified in **Section 5. Insurance Requirements** of the sample Agreement for Professional Services (Appendix 5) and accepts all conditions and requirements as contained therein.

Consultant: _____
Name (Please Print or Type)

By: _____
Consultant's Signature & Title

Date: _____

APPENDIX 3
CERTIFICATION OF PROPOSAL
TO THE CITY OF RANCHO SANTA MARGARITA

The undersigned hereby submits its proposal and agrees to be bound by the terms and conditions of this Request for Proposal (RFP) No. DS 18-002. By signing the Certification of Proposal (Appendix 3) and submitting a proposal to the City in response to this Request for Proposals, the Proposer hereby represents and certifies that:

- 1) 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 this proposal or any work connected with this proposal. Should any agreement be approved in connection with this Request for Proposal, Proposer declares and warrants that 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 that agreement, or obtain any present, anticipated or future material benefit arising therefrom.
- 2) By submitting the response to this request, Proposer agrees, if selected to furnish services to the City in accordance with this RFP.
- 3) 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.
- 4) 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.
- 5) The proposal response includes all of the proposal response requirements listed in the Request for Proposal, dated September 6, 2018.
- 6) The proposal shall be valid for 120 days from September 27, 2018.

Name of Proposer: _____

By: _____
(Authorized Signature)

Type Name: _____

Title: _____

Date: _____

APPENDIX 4

SAMPLE PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT
RBF Consulting, Inc.
(On-Call Environmental Review Consulting Services)

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter “Agreement”) is made and entered into, to be effective this 1st day of July 2016, 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 RBF CONSULTING, INC., a California corporation, a Michael Baker International Company (RBF Baker) (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 qualified on-call environmental review consulting services firm for the purpose of ensuring that the City complies with all aspects of the California Environmental Quality Act, as well to provide the City with other as-needed environmental review, compliance, and planning and support services that may be required on an on-call basis (the “Project”).

B. Consultant has submitted to City a proposal, dated _____, 2016, to provide professional on-call environmental review services, as well as a full range of other as-needed environmental review, compliance, and planning and support services that may be required on an on-call basis, to City for the Project pursuant to the terms of this Agreement.

C. Consultant represents and maintains that it is uniquely qualified by virtue of its experience, training, education, reputation, and expertise to provide these services to City for the Project and has agreed to provide such services as provided herein. City does not have the personnel or specialized technical expertise able to perform the work or services contracted for herein.

D. City desires to retain Consultant to provide such professional services for the Project.

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 and Standard of Performance. In compliance with all terms and conditions of this Agreement, Consultant agrees to provide and perform the professional

environmental review consulting services to City for the Project as set forth in the Proposal/Scope of Work, dated _____, 2016, which is attached hereto as Exhibit "A" and is incorporated herein by reference (hereinafter referred to as the "Scope of Services," the "Services" or "Work"). As a material inducement to the City entering into this Agreement, Consultant acknowledges and understands that the Services and Work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, Consultant's Services and Work shall be performed in a skillful and competent manner and shall be held to a standard of quality and workmanship prevalent in the industry for such Services and Work and with the standards recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and warrants that it is skilled in the professional discipline necessary to perform the Services and Work and that it holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. Consultant represents and warrants that it and all of its employees, subconsultants and subcontractors providing any Work or Services under this Agreement shall have sufficient skill and experience to perform the Services and Work assigned to them. All Services and Work shall be completed to the reasonable satisfaction of the City.

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; and, (2) the Consultant's signed, original _____, 2016 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.

OPTION/ALTERNATIVE -- LANGUAGE FOR INCLUSION OF CITY'S RFP

The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Consultant's signed, original Proposal/Scope of Work dated _____ ("Consultant's Proposal") and submitted to City; and, (3) the City's Request for Proposals dated _____, which shall all be referred to collectively hereinafter as the "Contract Documents." The Consultant's Proposal and the City's Request for Proposals, which are both attached hereto as Exhibits "A" and "B," respectively, are hereby incorporated by reference and are made a part of this Agreement. All provisions of this Agreement, the Consultant's Proposal, and the City's Request for Proposals 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 and conditions of this Agreement; (2nd) the provisions of the City's Request for Proposals (Exhibit "B"); and (3rd) the provisions of the Consultant's Proposal (Exhibit "A").

1.3 Compliance with Law. Consultant shall comply at all times during the term of this Agreement with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder, including without limitation all applicable fair labor standards and Cal/OSHA requirements. Consultant shall keep itself fully

informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Work and Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with performing the Work and Services. If Consultant performs any Work or Services in violation of such laws, rules, and regulations, Consultant shall be solely responsible for all penalties and costs arising therefrom. Consultant shall defend, indemnify, and hold City, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules, or regulations.

1.4 Licenses, Permits, Fees, and Assessments. Prior to performing any Services or Work hereunder Consultant shall obtain 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 and any extension, 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 defend, indemnify, and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from and against any claim or liability arising out of any failure or alleged failure to obtain such license, permits, and approvals of whatever nature that are legally required to perform the Work or Services.

1.5 Familiarity with Work. By executing this Agreement, Consultant represents and warrants that it (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 has carefully examined the location or locations at or with respect to where such Services or Work is to 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 represents and maintains 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 Services (Exhibit "A") 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 Work and Services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or materials required to complete any Work or Service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

1.9 Unauthorized Aliens. Consultant hereby represents and warrants that it will comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of any Work and/or Services under this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to reimburse City for any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, or penalties which arise out of or are related to such employment, together with any and all costs, including attorneys' fees, incurred by City.

1.10 Consultant Work Rules. Consultant shall be familiar with, observe, and comply at all times during the term of this Agreement with any work rules for consultants as may be established and promulgated by the City Manager, which work rules shall be additional terms and conditions for providing the Work and Services to the City pursuant to this Agreement, as may be updated and/or amended at the sole discretion of the City Manager from time to time.

1.11 Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other contractors, consultants, or vendors for services similar to the services that are the subject of this Agreement. Consultant further acknowledges that City may have its own employees perform services similar to the services that are the subject of this Agreement.

2. COMPENSATION

2.1 Maximum Contract Amount. For the Services and Work rendered pursuant to this Agreement, Consultant shall be compensated by City for the services performed, including authorized reimbursements, on a time and materials basis in accordance with the professional hourly rates and charges set forth in the Schedule of Compensation/Fees, which is attached hereto as Exhibit "A" and is incorporated herein by reference, but not exceeding the total maximum contract amount of _____ Dollars (\$xxxxx) (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 amount of City's payment obligation under this Agreement is the amount specified in this section.

OPTIONAL LANGUAGE – SERVICES SHALL NOT EXCEED A FIXED AMOUNT

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 Services 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 Services. The maximum amount of City's payment obligation under this Agreement is the amount specified in this section. 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 (10th) working day of such month, Consultant shall submit to the City, in a form approved by the City's Finance Director, 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 term of this 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.

3.2 Schedule of Performance. Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed, or on each task order, if applicable, 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; 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 for a period of five (5) years, commencing on July 1, 2016 and ending on June 30, 2021, unless extended by mutual written agreement of the Parties.

3.5 Task Orders. Consultant hereby agrees and acknowledges that any and all Services or Work performed pursuant to this Agreement shall be based upon the prior issuance of a written project task order by the City. Furthermore, Consultant hereby agrees and acknowledges that execution of this Agreement by the City does not in any way guarantee that a task order will be issued to Consultant. Moreover, execution of this Agreement by the City shall not entitle Consultant to any form of payment or compensation from the City without City first having issued a project task order.

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 to make all decisions in connection therewith: **Glenn Lajoie, Principal-in-Charge/Project Director**. 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 Work or 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. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. 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 officials, officers, employees, agents or volunteers 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 a permanent office or fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Consultant's officers, employees, 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 the performance of Services under 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 the performance of any Work or Services 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 any Work or 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 any Work or 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, representatives, agents, or subconsultants or subcontractors, Consultant shall defend, indemnify, and hold harmless City from and against all such financial obligations.

4.5 PERS Eligibility Indemnification.

A. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing any Work or Services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employee Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

B. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing any Work or Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

5. INSURANCE

5.1 Compliance with Insurance Requirements. Consultant shall obtain, maintain, and keep in full force and effect during the term of this Agreement, at its sole cost and expense, and in a form and content satisfactory to City, all insurance required under this section. Consultant shall not commence any Work or Services under this Agreement unless and until it has provided evidence satisfactory to City that it has secured all insurance required under this section. If Consultant's existing insurance policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

5.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement, and without limiting the indemnity provisions set forth in this Agreement, Consultant shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

A. **Commercial General Liability Insurance.** Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Commercial General Liability Insurance written on an occurrence basis 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. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

B. **Automobile Liability Insurance.** Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Automobile Liability Insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) combined limit for each occurrence covering bodily injury and property damage. The policy shall specifically include coverage for owned, non-owned, leased, and hired automobiles.

C. **Workers' Compensation Insurance.** Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of 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 all subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, employees, agents and volunteers, and to require each of its subconsultants and subcontractors, if any, to do likewise under their workers' compensation insurance policies. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Employer's Liability Insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

D. **Professional Liability (Errors & Omissions) Insurance.** Consultant shall obtain and maintain in full force and effect throughout the term of this Agreement, a policy of Professional Liability or Errors and Omissions Insurance appropriate to Consultant's profession

with limits of at least two million dollars (\$2,000,000.00). Covered professional services shall specifically include all Work or Services to be performed under the Agreement and delete any exclusions that may potentially affect the Work or Services to be performed under this Agreement.

1. The policy shall be endorsed to provide the following: Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must “pay on behalf of” the insured and include a provision establishing the insurer’s duty to defend.

2. If the policy of insurance is written on a “claims-made” basis, the City may require that the policy 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 Work or 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 the Work or 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.

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 Work or 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 Work or Services under the terms of this Agreement.

5.3 Acceptability of Insurers. Insurance required by this section shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A-:VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Approved Surplus Lines Insurers (LASLI), by the latest edition of A.M. Best’s Key Rating Guide, except that the City will accept workers’ compensation insurance from the State Compensation Fund. In the event the City 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. Consultant shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein.

5.4 Insurance Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for written approval. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

A. The policy or policies of insurance required by this section for Commercial General Liability and Automobile Liability Insurance shall be endorsed to provide the following:

1. Additional Insured: The City, its officials, officers, employees, agents and volunteers, shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement; and

2. Additional Insured Endorsements: Additional insured endorsements shall not (1) be restricted to “ongoing operations”, (2) exclude “contractual liability”, (3) restrict coverage to “sole” liability of Consultant, or (4) contain any other exclusions contrary to the Agreement; and, the coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

3. Notice: The policy or policies of insurance required by this section for Commercial General Liability and Automobile Liability Insurance shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or modified, 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, 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.

B. For all policies of Commercial General Liability Insurance, Consultant shall provide endorsements for ongoing operations and completed operations to effectuate this requirement.

5.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City in advance and shall protect the City, its officials, officers, employees, agents and volunteers, in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

5.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability Insurance and Automobile Liability Insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents or volunteers, shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

5.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability Insurance shall contain or be endorsed to waive subrogation against the City, its officials, officers, employees, agents and volunteers, or shall specifically allow Consultant or others providing insurance evidence in compliance with the requirements set forth in this section to waive their right to recovery prior to a loss. Consultant hereby agrees to waive its own right of recovery against the City, its officials, officers, employees, agents and volunteers, and Consultant hereby agrees to require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

5.8 Evidence of Coverage. Concurrently with the execution of the Agreement, Consultant shall deliver certificates of insurance together with original endorsements affecting each of the insurance policies required by this section. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for written approval. The certificates of insurance and original endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. Consultant shall promptly furnish, at City's request, copies of actual policies including all declaration pages, endorsements, exclusions and any other policy documents City requires to verify coverage.

5.9 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Nothing in this section shall be construed as limiting in any way the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

5.10 Enforcement of Agreement (Non-Estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of any non-compliance with any of the insurance requirements set forth in this section imposes no additional obligation on the City nor does it waive any rights hereunder.

5.11 Insurance for Subconsultants. Consultant shall either: (1) include all subconsultants or subcontractors engaged in any Work or Services for Consultant relating to this Agreement as additional named insureds under the Consultant's insurance policies, or (2) Consultant shall be responsible for causing its subconsultants or subcontractors to procure and maintain the appropriate insurance in compliance with the terms of the insurance requirements set forth in this section, including adding the City, its officials, officers, employees, agents and volunteers, as additional insureds to their respective policies. All policies of Commercial General Liability Insurance provided by Consultant's subconsultants or subcontractors performing any Work or Services related to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers, as additional insureds. Consultant shall not allow any subconsultant or subcontractor to commence any Work or Services relating to this Agreement unless and until it has provided evidence satisfactory to City that the subconsultant or subcontractor has secured all insurance required under this section.

5.12 Other Insurance Requirements. The following terms and conditions shall apply to the insurance policies required of Consultant pursuant to this Agreement:

A. Consultant shall provide immediate written notice to City if (1) any of the insurance policies required herein are terminated, cancelled or suspended, (2) the limits of any of the insurance coverages required herein are reduced, or (3) the deductible or self-insured retention is increased.

B. 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.

C. None of the insurance coverages required herein will be in compliance with the requirements of this section 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 and approved in writing.

D. 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.

E. Consultant agrees to ensure that subconsultants and 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.

F. Consultant agrees to provide immediate written notice to City of any claim, demand or loss against Consultant arising out of the Work or Services performed under this Agreement and for any other claim, demand or loss which may reduce the insurance available to pay claims, demands or losses arising out of this Agreement.

6. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense with legal counsel reasonably acceptable to City), indemnify and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from any and all claims, demands, orders, causes of action, costs, expenses, liabilities, losses, penalties, judgments, arbitration awards, settlements, damages or injuries of any kind, in law or in equity, including but not limited to property or persons, including wrongful death, (collectively "Claims") in any manner arising out of, pertaining to, related to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officers, directors, employees, subcontractors, consultants or agents, in connection with Consultant's performance under this Agreement, including without

limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent that the Work or Services performed by Consultant are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder. Notwithstanding the foregoing, such obligation to defend, hold harmless and indemnify the City, its officials, officers, employees, agents and volunteers, shall not apply to the extent that such Claims are caused in part by the sole negligence or willful misconduct of the City.

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, subconsultants, 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. 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 of its subconsultants and 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 any reason, with or without cause, 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, Consultant reserves the right to terminate this Agreement at any time 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 City Manager's designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she 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 Attorneys' 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 attorneys' fees, expert witness 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 or her financial interest or the financial interest of any corporation, partnership, or association in which they are, directly or indirectly, interested in violation of any state statute or regulation. Consultant represents and 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, disability, medical condition, religion, color, sex, sexual orientation, 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, disability, medical condition, religion, color, sex, sexual orientation, 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 permitted by 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 alleged 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. 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: RBF Consulting, Inc.
Attention: Eddie Torres, Project Manager
14725 Alton Parkway
Irvine, CA 92618
Telephone: (949) 472-3505
Facsimile: (949) 472-8373

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. 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/she is executing this Agreement is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he/she is signing, (iii) by so executing this Agreement, the Party for which he/she 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/she is signing is bound.

10.9 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"). Consultant agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). It is agreed by the Parties that, in connection with the Work or Services provided pursuant to this Agreement, Consultant shall bear all risks of payment or non-payment of prevailing wages under California law, and Consultant hereby agrees to defend, indemnify, and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

10.10 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

[SIGNATURES ON NEXT PAGE]

SIGNATURE REQUIREMENTS --

For Consultants that are a corporation, two (2) Corporate Officers must sign and staff may request that a copy of their corporate resolution confirming the names and titles of their authorized signatories be provided to the City in advance for review and approval, and the signature requirements are as follows:

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

-And-

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

For Consultants that are not a corporation, signature requirements are as follows: the person who has authority to bind the business entity must sign.

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

MICHAEL VAUGHN,
Mayor

ATTEST:

(SEAL)

AMY DIAZ,
City Clerk

APPROVED AS TO FORM:

GREGORY E. SIMONIAN,
City Attorney

“CONSULTANT”
RBF Consulting, Inc., a Michael Baker
International Company (RBF Baker),
a California corporation

By: _____
GLENN LAJOIE, AICP
Vice President

By: _____
HARLAN GLINES,
Senior Vice President

EXHIBIT “A”

CONSULTANT'S PROPOSAL/ SCOPE OF WORK
DATED: _____, 2016

SCOPE OF SERVICES FOR PROJECT
INCLUDING,
SCHEDULE OF PERFORMANCE
AND
SCHEDULE OF COMPENSATION/ FEES