



**DEVELOPMENT SERVICES DEPARTMENT
Administrative Hearing Officer Services RFP
November 4, 2020**

REQUEST FOR PROPOSALS Administrative Hearing Officer Services

The City of Murrieta (“City”) is seeking to retain the services of one or more qualified individuals (“Proposer(s)”) who can serve as contract administrative hearing officers and provide written decisions in appeals of administrative citations and other cases authorized under the City’s short-term vacation rental ordinance.

RFP RELEASE DATE Thursday, November 5, 2020

CITY CONTACTS Chris Tracy AICP, Senior Planner
CTracy@MurrietaCA.gov
(951) 461-6046

Jarrett Ramaiya, City Planner
JRamaiya@MurrietaCA.gov
(951) 461-6069

PROPOSAL DUE **5:00 p.m. Pacific Standard Time (PST),
Tuesday, November 24, 2020**

LATE PROPOSALS WILL NOT BE ACCEPTED.

PROPOSAL SUBMISSION Proposal must be submitted **electronically in PDF format**
to the City Clerk at the following email address:

City of Murrieta
Attn: Stephanie Smith, City Clerk
SSmith@MurrietaCA.gov

OPENING LOCATION City of Murrieta
1 Town Square, Murrieta, CA 92562

NOTE: This RFP does not constitute an order for the goods or services specified.



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SECTION I

PURPOSE OF REQUEST FOR PROPOSAL AND GENERAL TERMS AND CONDITIONS

NOTICE TO PROPOSERS:

Prospective proposers should note that a Short-Term Vacation Rental Ordinance will be presented to the City Council for consideration. Any and all requirements are subject to change in accordance with the requirements contained in the adopted Ordinance.

1.0 PURPOSE OF RFP

The City of Murrieta is seeking to retain the services of one or more qualified individuals who can serve as contract administrative hearing officers and provide written decisions in appeals of administrative citations and other cases authorized under the City's Short-Term Vacation Rental Ordinance.

1.1 QUESTIONS REGARDING RFP

Any questions, interpretations or clarifications regarding this RFP, either administrative or technical, must be requested **electronically**, in writing, prior to the date and time indicated in Section II of this RFP (Schedule of Events), and shall be directed to either of the following City contacts:

Chris Tracy AICP, Senior Planner
Email: CTracy@MurrietaCA.gov

Jarrett Ramaiya, City Planner
Email: JRamaiya@MurrietaCA.gov

All questions will be answered in writing and conveyed to all Proposers.

1.2 ERRORS AND OMISSIONS

If a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP or any of its attachments, the Proposer shall immediately notify the City of any such error in writing and request modification or clarification of the document. Modifications will be made by addenda. Clarifications will be given by written notice to all parties who have been furnished or who have requested an RFP for proposal purposes, without divulging the source of the request for same.



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If a Proposer fails to notify the City prior to the date fixed for submission of proposals of a known error in the RFP, or of an error that reasonably should have been known to the Proposer, the Proposer shall bid at their own risk, and if awarded the contract, the Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

1.3 ADDENDA

The City may modify this RFP, any of its key action dates, or any of its attachments, prior to the proposal submittal date indicated on the cover page of this RFP and in in Section II (Schedule of Events). Addenda will be numbered consecutively as a suffix to the RFP reference number. It is the Proposer's responsibility to ensure they have incorporated all addenda in the submission of its proposal. Failure to acknowledge and incorporate addenda will not relieve the Proposer of the responsibility to meet all terms and conditions of the RFP and any subsequent addenda. . No addenda will be issued after **5:00 p.m. PST on Thursday, November 19, 2020**. Proposer is required to check the City website at <http://www.murrietaca.gov/Bids.aspx> to verify no addenda have been issued prior to submitting a proposal.

1.4 SUBMISSION OF PROPOSAL

Proposals will be accepted on or before the date and time indicated in Section II of this RFP (Schedule of Events), and shall be submitted in accordance with Section V (Evaluation and Award Criteria) and Section VI (Proposal Instructions and Format).

1.5 PROPOSER'S COST

Costs for developing and submitting proposals in response to this RFP are entirely the responsibility of the Proposer and shall not be chargeable to or reimbursed by the City.

1.6 EXCEPTIONS

If a Proposer takes exception to any part of these specifications in this RFP as written, or as amended by any addenda subsequently issued, or any part of the attached Agreement, they must do so in writing. Said exceptions must be submitted with the proposal. Failure to do so will be construed as acceptance of all items of the specification and the Agreement.



1.7 DELIVERY OF PROPOSALS

The Proposer must provide the required information electronically in a PDF format to the City Clerk at the following email address.

- a. Email /Submit Proposals to: City of Murrieta
Attn: Stephanie Smith, City Clerk
SSmith@MurrietaCA.gov
- b. Proposals must be received by the City Clerk, no later than the date and time specified on the cover page and Section II "Schedule of Events". **LATE PROPOSALS WILL NOT BE ACCEPTED.** Submittal of response by fax is **NOT** acceptable.
- c. Proposals shall be titled: "Administrative Hearing Officer Services for STVRs".
- d. The email header shall state "RFP: Administrative Hearing Officer Services for STVRs".

1.8 PROPOSALS BECOME THE PROPERTY OF CITY

After the Notice of Intent to Award is issued by the City, all proposals and the information contained therein shall become the property of the City, subject to disclosure laws. The City reserves the right to make use of any information or ideas contained in the proposals.

1.9 CONFIDENTIAL MATERIAL

Proposer must notify the City in advance of any proprietary or confidential material contained in the proposal and shall provide justification for not making such material public. The City shall have sole discretion to disclose or not disclose such material, absent any protective order secured by Proposer.

1.10 REJECTION OF PROPOSALS

The City may reject any or all proposals and may waive any immaterial deviation in any proposal. The City's waiver of an immaterial defect shall in no way modify the RFP documents or excuse the Proposer from full compliance with the specifications if awarded the contract. Proposals referring to terms and conditions other than the City's terms and conditions may be rejected as being non-responsive.



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The City may make investigations as deemed necessary to determine the ability of the Proposer to perform the work, and the Proposer shall furnish to the City all such information and data for this purpose as requested by the City. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Proposer fails to demonstrate, to the satisfaction of the City that such Proposer is properly qualified to carry out the obligations of the Agreement and to complete the work specified.

1.11 CANCELLATION

This solicitation does not obligate the City to enter into an agreement. The City retains the right to cancel this RFP at any time, should the STVR Ordinance not be adopted by the City Council, the need for services be canceled, should the City lose the required funding, or if cancellation is deemed in the best interest of the City. No obligation, either expressed or implied, exists on the part of the City to make an award or to pay or reimburse any costs incurred in the preparation or submission of a proposal.

1.12 INSURANCE REQUIREMENTS

The City requires a certificate of insurance prior to commencement of any work described in this RFP or the Agreement. An underwriter's endorsement is also required with additional insured verbiage and must be an admitted surety in the State of California.

Insurer Requirements. All insurance required by express provision of the attached Agreement shall be carried only by responsible insurance companies that are rated "A-" and "V" or better by the A.M. Best Key Rating Guide, and are licensed to do business in the State of California. City will accept insurance provided by non-admitted "surplus lines" carriers only if the carrier is authorized to do business in the State of California.

Deductibles. All deductibles on any policy shall be the responsibility of Proposer and shall be disclosed to City at the time the evidence of insurance is provided.

Specific Provisions Required. Each policy required under this (See Section 6 of Agreement) shall expressly provide, and an endorsement shall be submitted to the City, that: (a) the policies are primary and non-contributory to any insurance that may be carried by City; and (b) City is entitled to thirty (30) days' prior written notice (10 days for cancellation due to non-payment of premium) of cancellation, material reduction, or non-renewal of the policy or policies. Additionally, the CGL policy shall expressly provide, and an endorsement shall be submitted to City, that the City of Murrieta and its respective officers and employees are additional insureds under the policy.



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Indemnity Not Limited by Insurance. Proposer's liabilities, including, but not limited to, Proposer's indemnity and defense obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement, and Proposer's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by City of Murrieta.

Commercial General Liability (CGL): Insurance written on an occurrence basis to protect Proposer and the City of Murrieta against liability or claims of liability which may arise out of the Agreement in the amount of One Million Dollars (\$1,000,000) per occurrence and subject to an annual aggregate of Two Million Dollars (\$2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability.

Vehicle Liability Insurance: Proposer shall procure and shall maintain during the term of the Agreement vehicle liability insurance in an amount not less than One Million Dollars (\$1,000,000) for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than One Million Dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than One Million Dollars (\$1,000,000). If a Proposer or Proposer's employees will use personal autos in any way on this project, the Proposer shall obtain evidence of personal auto liability coverage for each such person.

Workers' Compensation Insurance: For all of Proposer's employees who perform work under the Agreement, and to the extent required by applicable state or federal law, Proposer shall keep in full force and effect a Workers' Compensation policy. That policy shall provide a minimum of One Million Dollars (\$1,000,000) of employers' liability coverage, and Proposer shall provide an endorsement that the insurer waives the right of subrogation against the City of Murrieta and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against the City by a bona fide employee of Proposer participating under this Agreement, Proposer agrees to defend and indemnify the City from such claim.

Professional Liability: If required, for all of Proposer's employees who perform work under the Agreement, Proposer shall keep in full force and effect Professional Liability coverage for professional liability with a limit of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate. Proposer shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the services under the Agreement; and (2) the policy will be maintained in force for a period of four years after termination of this Agreement or substantial completion of services under this Agreement, whichever occurs last. Proposer agrees that for the time period



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defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss.

1.13 DISPUTES/PROTESTS

The City encourages Proposers to resolve issues regarding the requirements or the procurement process through written correspondence and discussions during the period in which clarifying addenda may be issued. The City wishes to foster cooperative relationships and to reach a fair agreement in a timely manner.

Proposers filing a protest must do so within five (5) calendar days after the Notice of Intent to Award has been issued by the City. The protesting Proposer shall submit a full and complete written statement detailing the facts in support of the protest.

Protests must be submitted electronically to the City Clerk at the following email address:

City of Murrieta
Attn: Stephanie Smith, City Clerk
SSmith@MurrietaCA.gov

The City will provide a decision on the matter. The decision will be provided in writing and transmitted electronically by email to the protesting Proposer. The decision of the City is final.



1.14 AWARD CRITERIA

Award, if any, will be to the Proposer whose proposal best complies with all of the requirements of the RFP documents and any addenda. Evaluation methodology and basis for award are described in Section V of this RFP (Evaluation and Award Criteria).

1.15 TERM OF AGREEMENT

The period of services under the Agreement shall be for one (1) year with the option to renew for an additional, one-year period. Annual renewals shall be automatic and based on satisfactory performance of service, unless the Agreement is terminated by either party with thirty (30) days written notice prior to the expiration of the annual renewal.

1.16 CONTRACTUAL DOCUMENTS

In the event of a conflict between documents, the following order of precedence shall apply:

1. City of Murrieta Agreement and Addenda
2. City of Murrieta Request for Proposal and Addenda

1.17 AGREEMENT

If a proposal is accepted, the City's standard Agreement for Consultant Services is attached to this RFP as Attachment 1 (City of Murrieta Administrative Hearing Officer Professional Services Agreement). Proposer will be expected to enter into the attached Agreement applicable to the services provided.

1.18 EXECUTION OF AGREEMENT

The Agreement shall be signed by the Proposer and returned, along with the required attachments to the City of Murrieta within 10 business days of the contract award. The period for execution may be changed by mutual agreement of the parties. Agreements are not effective until approved by the appropriate City officials. Any work performed prior to receipt of a fully executed Agreement shall be at Proposer's own risk.

1.19 FAILURE TO TIMELY EXECUTE AGREEMENT

Failure to execute the Agreement within the timeframe identified above shall be sufficient cause for voiding the award. Failure to comply with other requirements within the set time shall constitute failure to execute the Agreement. If the successful Proposer



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refuses or fails to execute the Agreement within the specified timeframe, the City may award the Agreement to the next qualified highest ranked Proposer.

1.20 CITY BUSINESS LICENSE

The successful Proposer is required to obtain a City of Murrieta business license prior to award of the Agreement, and to maintain the license for the entire term of the Agreement. The business license is not a prerequisite for submission of the proposal.

1.21 NON-ENDORSEMENT

If a proposal is accepted, the Proposer shall not issue any news releases or other statements pertaining to the award or servicing of the Agreement, which state or imply the City's endorsement of Proposer's services.

1.22 INDEPENDENT CONTRACTOR

If a proposal is accepted, the Proposer's relationship to the City in the performance of services for this Agreement is that of an independent contractor. The personnel performing said services shall at all times be under the Proposer's exclusive direction and control and shall be employees of the Proposer and not employees of the City. The Proposer shall pay all wages, salaries and other amounts due their employees in connection with the performance of said work, and shall be responsible for all employee reports and obligations, including but not necessarily restricted to: Social Security, income tax withholding, unemployment compensation, and workers' compensation.

1.23 CONFLICT OF INTEREST

The City requires a Statement of Economic Interests (Form 700) to be filed by the successful Proposer awarded a contract by the City who is involved in the making, or participation in the making, of decisions which may foreseeably have a material effect on any City financial interest [reference Government Code § 82019].



SECTION II

SCHEDULE OF EVENTS

| | |
|---|---|
| Release of Request for Proposal | November 5, 2020 |
| Deadline for Submittal of Questions | November 17, 2020, 5:00 p.m. PST |
| Last Day for City to Respond to Questions | November 18, 2020, 5:00 p.m. PST |
| Last Day for Addendum to be issued by the City | November 19, 2020, 5:00 p.m. PST |
| Deadline for Receipt of Proposals | November 24, 2020, 5:00 p.m. PST |
| Optional Interview - If Required | November 30, 2020 and December 1, 2020 via Teleconference Call – Due to Covid-19 – City Staff will reach out to Proposers with a few timeframe options if an optional interview is necessary. |
| Consultant or Consultant(s) Selection, <u>Tentative</u> Notice of Intent to Award | December 2, 2020 |
| Council Meeting Agenda - Award of Contract | January 19, 2021 |
| Contract Execution Deadline | January 28, 2021 |
| Tentative Agreement Start Date | February 1, 2021 |

***NOTE: The dates subsequent to receipt of proposal may be adjusted by the City without further notice.**



SECTION III

PROPOSER QUALIFICATIONS

In order to be considered for the contract described in this RFP the individual making the proposal shall meet the following requirements. Applicants not meeting these minimum requirements will be disqualified and their proposal will not be considered.

- a.** A Juris Doctor degree and a license to practice law in the State of California.
- b.** Minimum five (5) years of experience as a judge (now retired), arbitrator, hearing officer, or licensed attorney representing clients before administrative decision makers such as hearing officers, city councils, county boards of supervisors, and/or city commissions in the State of California, preferably with short-term vacation rental law related experience, though not required.
- c.** Be in possession of a City of Murrieta business tax certificate or be able to obtain one.



SECTION IV

SCOPE OF WORK

4.0 THE COMMUNITY

The City of Murrieta is a general law city located in Southwest Riverside County, 60 miles north of San Diego and immediately to the north of the City of Temecula. Murrieta was incorporated in 1991, currently encompass 33.61 square miles, and includes a current population of approximately 115,000. Murrieta has a Council-Manager form of government, with the City Manager reporting to a five-member City Council. Based on Tourism data from 2018 (most recent available), the immediate area received approximately 1,056,650 visitors / 528,320 groups annually and the City currently has a limited number of hotels (five currently) to accommodate visitors. The average overnight stay length in 2018 was an average of two nights. Visitor daily spending in the valley, for 2018, averaged approximately \$300 per day on restaurants, retail and accommodations. Additional information about the City can be found on the City of Murrieta's website: <http://www.murrietaca.gov>

4.1 PROJECT DESCRIPTION

In recent years, many cities have been grappling with the growth of Short-Term Vacation Rentals (STVRs) facilitated by online rental platforms such as Airbnb, HomeAway, Craigslist, FlipKey, VRBO and many others. Statewide, short-term vacation rental listings have been increasing dramatically in recent years with deployment of technology and the use of technology in this space by consumers. The short-term vacation rental of residential property is currently prohibited by the Murrieta Municipal Code, as it is an "undefined" use. It is estimated that there are approximately 214 properties currently operating as "unpermitted" short-term vacation rentals within the City limits.

In February 2020, the City conducted its first public workshop on short-term vacation rentals. Based on public input, the direction from the City Council was to craft an ordinance including a STVR rental "registration", "tax collection" and "enforcement" program.

In July 2020, a second public workshop was conducted to clarify if the City desired a "hosted"-only option, or allow for both a "hosted" and "non-hosted" option. Additionally, potential enforcement mechanisms were presented in detail, as well as, general components of the proposed ordinance framework for any additional direction/clarification. The direction from this workshop was to implement a 300-foot separation criteria from "non-hosted" units within ordinance options to limit "non-



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hosted” STVRs to all residential zones, or limit it to Estate (ER) and Rural Residential (RR) zones with distance criteria. “Hosted” would be permitted in all residential zones under all ordinance options. Both types would fall under a citywide cap at 300 short-term vacation rental units.

On September 9, 2020, the Planning Commission considered three locational options for “non-hosted” STVRs. From this, Option B-2 was recommended to the City Council, with a modification that no non-hosted short-term vacation rental unit shall be located within three hundred (300) feet of another “non-hosted” STVR and the 300-foot separation distance shall be measured as a radial distance from all property lines of the subject “non-hosted” STVR unit property.

On October 12, 2020, the City Council selected Option B-2 under the proposed Ordinance with a modification to the Ordinance language to remove Non-hosted short-term vacation rentals as a permissible use in the Estate-Residential 3 (ER-3) zone.

To summarize, as adopted, the Ordinance permits Hosted short-term vacation rentals in all residential zones within the City. Non-hosted short-term vacation rentals units would be limited to the following zones within the City’s jurisdiction: Estate Residential 1 (ER-1), Estate Residential 2 (ER-2), and Rural Residential (RR), and would require a 300-foot “full radius” separation between Non-hosted short-term vacation rental units (as measured from all property lines) in the ER-1 and ER-2 zones.

Provided this background, the City is seeking to retain the services of one or more qualified individuals who can serve as contract administrative hearing officers and provide written decisions in appeals of administrative citations and other cases authorized under the City’s Short-Term Vacation Rental Ordinance.

NOTICE TO PROPOSERS:

Prospective proposers should note that a Short-Term Vacation Rental Ordinance will be presented to the City Council for consideration. Any and all requirements are subject to change in accordance with the requirements contained in the adopted Ordinance.

4.2 TASKS

a. The City invites proposals from attorneys to provide administrative hearing officer services to hear and adjudicate cases authorized under:

- 1) Murrieta Municipal Code Title 5.27 (Short-Term Vacation Rentals) and Title 16 – Applicable Sections;**



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2) Murrieta Municipal Code Chapters 1.32 (General Penalty), 1.26 (Administrative Citations) and 8.20 (Nuisances Generally)

Tasks Details:

- b.** Hearing officers shall conduct on-site administrative hearings pursuant to the aforementioned authorizing statutes for short-term vacation rentals.
- c.** The responsibilities will include:
 - 1) Coordinate hearing scheduling with City staff;
 - 2) Reviewing case documentation;
 - 3) Conducting hearings and hear testimony and evidence from parties regarding the issues;
 - 4) Preparing a written determination making a decision, which sets forth the legal and evidentiary basis for the decision, and adopting findings as required by City Code; and
 - 5) Performing all other work necessary for the effective handling of the City's administrative hearings.
- d.** Hearing officers will confirm the absence of conflicts before undertaking any new matters for the City. Hearing officers will inform and seek the consent of the City before representing another client in any matter directly adverse to the City (e.g., transactions, negotiations, proceedings, or other representations involving specific parties).
- e.** All hearings will be conducted in English and with the assistance of foreign language interpreters consistent with reasonable accommodation requirements.
- f.** Hearing officers shall be required to submit a typed draft of a statement of decision as to each hearing conducted within the statutorily required time following the closing of the hearing record in a format approved by the City for review and approval.
- g.** Hearing officers will provide all labor, clerical support, equipment and materials to perform the services. Hearing preparation could include, but is not limited to, reading the agenda and file materials, knowledge of City municipal codes, rules of evidence and hearing materials. Hearing officers shall be responsible for all travel, mileage, and telephone expenses. Hearing officers shall provide a detailed invoice for services rendered each month, including the case number, hearing date, time incurred and hourly rate.



- h.** The City will provide hearing rooms, use of copy equipment, documents, materials and equipment necessary for carrying out hearings. The locations and times of said hearings shall be designated by the City, but normally will be conducted Monday through Friday between the hours of 7:30 a.m. and 5:30 p.m. at City Hall located at 1 Town Square, Murrieta, CA 92562. **Please Note: Due to the location limitations of Covid-19 Virus, these hearings may be conducted remotely. It is expected that a hearing officer have the technological hardware and associated internet connection to conduct a hearing.** City staff may provide limited administrative support for scheduling and records. The contract will not obligate the City to assign the contractor hearings. Once a hearing is accepted, however, the contractor will be required to provide hearing officer services.

SECTION V

EVALUATION AND AWARD CRITERIA

5.0 EVALUATION METHOD

All proposals shall be reviewed to verify that the Proposer has met the minimum requirements. Proposals that have not complied with requirements, do not meet minimum content and quality standards, or take unacceptable exceptions to the General Terms and Conditions, will be eliminated from further consideration. Proposals will be reviewed and evaluated by an evaluation committee (Committee) comprised of City of Murrieta personnel. This Committee may include the Assistant City Manager, City Attorney, City Planner, Director of Finance, Code Enforcement Supervisor, Senior Planner, and Financial Analyst. This is an open and competitive process. RFPs will be evaluated utilizing the criteria listed below. Award will be made in the best interest of the City of Murrieta.

5.1 EVALUATION CRITERIA

- a.** The City will evaluate Proposals based on qualifications, experience, references, proposed rates, training, experience, writing skills, availability, interview, conflicts and other limitations, as follows:

| Evaluation Criteria | Points |
|-----------------------------|---------------|
| Experience & Qualifications | 40 |
| Cost | 20 |
| Scope of Work | 20 |



| | |
|--|----|
| 1. Responsiveness and thoroughness of proposal. 2. Appropriateness of approach. | |
| Availability 1. Availability for scheduling informal hearings. 2. Cancellation policy. | 20 |

b. Optional Interview - In the event the City decides that interviews are necessary, Proposers who are finalists will be notified as promptly as possible. Each interview will consist of a presentation of no longer than one (1) hour. Notice of confirmation of the interview date/time will be given by telephone or in writing.

5.2 PROJECT TERM, BUDGET, AND AWARD

The City may award a contract to one or more Proposers in response to this RFP. It is anticipated that a Proposer or Proposer(s) will be **tentatively** selected by December 2, 2020. The selected Proposer will be offered an agreement for up to one year (February 2021 – February 2022), although no level of work is guaranteed and work effort needed may fluctuate at the City’s need. A one-year extension may be granted at the City’s discretion.



SECTION VI

PROPOSAL INSTRUCTIONS, FORMAT, AND SUBMITTAL REQUIREMENTS

6.0 INTRODUCTION

To be considered responsive to this RFP, Proposer must submit proposals in the format identified in this Section. All requirements and questions in the RFP must be addressed and all requested data must be supplied. The City reserves the right to request additional information that, in City's opinion, is necessary to assure that the Proposer's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to contract.

6.1 SUBMISSION OF PROPOSALS

The Proposer must provide the required information electronically in a PDF format to the City Clerk at the following email address:

- e. Email/Submit Proposals to: City of Murrieta
Attn: City Clerk
Stephanie Smith
SSmith@MurrietaCA.gov
- f. Proposals must be received by the City Clerk, no later than the date and time specified on the cover page and Section II "Schedule of Events". **LATE PROPOSALS WILL NOT BE ACCEPTED.** Submittal of response by fax is **NOT** acceptable.
- g. Proposals shall be labeled as follows: "Administrative Hearing Officer Services for STVRs" as it relates to the PDF.
- h. The email heading shall indicate this it is an RFP for: "RFP: Administrative Hearing Officer Services for STVRs".

6.2 PREPARATION

Proposals should be prepared as simply as possible. Emphasis should be concentrated on accuracy, completeness and clarity of content. Each proposal must conform to the outlined format below. Be sure to provide an answer to each requirement. If a requirement does not pertain to your proposal, enter "N/A" in the table. Proposals with blank sections may be deemed non-responsive.



6.3 PROPOSAL FORMAT

Proposals should be prepared as simply as possible. Emphasis should be concentrated on accuracy, completeness and clarity of content. Each proposal must conform to the outlined format below. Be sure to provide an answer to each requirement. If a requirement does not pertain to your proposal, enter “N/A” in the table. Proposals with blank sections may be deemed non-responsive.

a. Cover Letter

- 1) The name, firm name, address, e-mail address and telephone number of the Respondent.
- 2) The subject areas in which the Respondent proposes to serve as a Hearing Officer.
- 3) Ability to perform the contract.
- 4) Knowledge of local government processes.
- 5) Any potential conflicts or other matters (e.g., substantial practice areas, capacity, compensation arrangements, personal or business relationships, etc.) that may limit the Respondent’s ability to serve as a Hearing Officer or act in an impartial and fair manner or that would create a conflict of interest. Include any matters in which you have represented persons adverse to the City.
- 6) Signed by individual authorized to bind the proposing firm or Hearing Officer contractually.

b. Qualifications

- 1) Resume or curriculum vitae, listing education, training, background and experience of the individuals conducting the hearings.
- 2) Evidence of California State Bar membership of the individuals conducting the hearings. Two (2) writing samples of administrative hearing decisions and/or briefs filed with an administrative or quasi-judicial body in the State of California.
- 3) Minimum of three (3) professional references.
- 4) List of current agencies that you are providing administrative hearing services to and frequency of or days committed to each agency.



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- 5) Certificate of insurance showing evidence that the Respondent's insurance coverage meets or exceeds the City's Insurance provisions in its Professional Services Contract (Attachment 1).
- 6) Evidence of financial resources to perform the scope of work proposed.
- 7) Has your organization ever been suspended or debarred or is otherwise excluded from or ineligible for participation in Federal programs under Executive Order 12549, "Debarment and Suspension."

c. Scope of Work

- 1) Provide a description of proposed services that address the scope of work as described in Section 4.2.
- 2) Provide an explanation of the purpose of informal hearings and the role of the hearing officer in the process.
- 3) Describe your availability. How many days advance notice do you need for scheduling an informal hearing? Also, include any fixed days and times that you are not available.
- 4) Proposed hearing schedule between the hours of 8:00 a.m. and 5:30 p.m. City Council

d. Cost Proposal

- 1) Compensation proposal, including: (i) hourly rate for hearings billed at quarter hour increments; (ii) daily minimum hours; (iii) proposed minimum charge for no-show applicants/contestants; cancellation rates (including the number of days advanced notice needed prior to charging the cancellation rate); and (iv) initial orientation and subsequent trainings hourly rate.
- 2) Compensation proposal for one annual contract renewal options for FY 21-22.
- 3) The hourly amount is expected to be \$150 per hour or less with a general expectation that most hearings would require approximately 3-5 hours of time, including pre-hearing preparation and the post-hearing determination. With cases in excess of five hours, the administrative hearing officer will need to seek approval from the City Manager or his/her designee.



e. Exceptions, RFP, Contract & Insurance

- 1) Identify any exceptions the vendor takes to the City's RFP, or declare that there are no exceptions taken to the RFP.
- 2) The City maintains various policies related to contractual service providers. Among these is an anti-discrimination, a living wage, and equal benefits policy. In submitting proposals, indicate whether or not the Respondent is prepared to comply with City ordinances and policies.
- 3) Affirm that the Respondent has reviewed the City's Professional Services Agreement (Attachment 1) and list any proposed changes to the boilerplate contract language. Proposed changes will not have any influence on the evaluation of the proposal, but will speed up the process contracting process.
- 4) For the duration of the contract, Respondents shall procure and maintain insurance as described in the City's Professional Services Contract (Attachment 1).
- 5) The cost of such insurance shall be borne by the Respondent. Indicate whether or not the Respondent is prepared to meet these requirements.

6.4 PROPOSAL CONDITIONS

a. Inclusion of Proposal

The proposal submitted in response to this RFP may be incorporated as part of the final contract with the selected vendor

b. Right to Purchase From Any Source

The City reserves the right to purchase from any source or sources any desired products or services relating to this proposal

c. Right to Reject Any or All Proposals

The City reserves the right to reject any or all proposals, to waive technicalities or formalities, and to accept any proposal deemed to be in the best interest of the City. Where two or more proposals are deemed equal, the City reserves the right to make the award to one of the two Respondents

d. Withdrawal of Proposals



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Proposals may be withdrawn any time before the Deadline for Receipt of Proposals as specified in Section 2 provided notification is received in writing. Proposals cannot be changed or withdrawn after the Deadline for Receipt of Proposals specified in Section 2.

e. Proposal Validity Period

Submission of a proposal will signify the Respondent's agreement that the proposal is valid for 180 days from the Deadline for Receipt of Proposals as specified in Section 2. Proposals should stipulate the expiration date of their quoted proposal.

f. Firm Prices

It is the City's policy is to obtain goods and services of the highest quality for the lowest cost from the most qualified vendor. Prices quoted shall be firm prices and not subject to increase during the term of any contractual agreement arising between the City and Vendor as a result of said proposal, unless explicitly stated. Quoted prices must include any applicable federal or state tax.

g. Expenses of Proposal Preparation

Each proposal prepared in response to this RFP shall be done at the sole cost and expense of each proposing firm and with the express understanding that no claims against the City for reimbursement will be accepted.

h. Public Records and Rights to Submitted Materials

All proposals, inquires, responses, or correspondence related to or in reference to this request for proposals, and all reports, charts, displays, schedules, exhibits, and other documentation submitted by the Vendor will become the property of the City when received.

The City of Murrieta is subject to California law regarding the disclosure of public records. Respondents must clearly identify any information they regard as proprietary in the proposal. Any such information should be marked "Proprietary" or "Confidential." Information that is proprietary within the meaning of California law will be withheld from any public records requests. All other information is subject to disclosure.

i. No Collusion



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By submitting a proposal, the prospective Respondent certifies that its submission is not the result of collusion or any other activity that would tend to directly or indirectly influence the selection process. The proposal will be used to determine the prospective Respondent's capability of rendering the services to be provided.

Proposals shall adhere to the following format for organization and content. Proposals must be divided into the individual sections listed below, indexed, and tabbed.



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ATTACHMENT NO. 1

City of Murrieta
City of Murrieta Administrative Hearing Officer Professional Services Agreement



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**AGREEMENT BETWEEN THE CITY OF MURRIETA
AND
[Name]**

This Agreement (“Agreement”), made this [Enter the day] day of [Enter the month], 20[Enter the year], by and between the CITY OF MURRIETA, a Municipal Corporation, duly organized and existing under and by virtue of the laws of the State of California (“CITY”), and [NAME], a California [Title] (“CONSULTANT”) (collectively “PARTIES”) with reference to the following facts, which are acknowledged by each party as true and correct:

RECITALS

A. WHEREAS, the CITY is a General Law city, formed and existing pursuant to the provisions of the California Government Code.

B. WHEREAS, the CITY is authorized to enter into consultant agreements under the provisions of California Government Code section 53060.

C. WHEREAS, the CITY desires or is in need of administrative hearing officer services related to short-term vacation rentals as described and detailed in this AGREEMENT to be provided to the CITY.

D. WHEREAS, the CONSULTANT has special knowledge, experience and facilities for accomplishing the above services.

E. WHEREAS, the CITY now desires to retain CONSULTANT to accomplish the above administrative hearing officer services for short-term vacation rentals, and CONSULTANT is willing to be so retained pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, it is agreed by and between the PARTIES as follows:

OPERATIVE PROVISIONS

1. RESPONSIBILITIES OF CONSULTANT

1.1 CONSULTANT shall undertake to carry on the scope of services as listed in the attached Scope of Services (refer to Exhibit “A”), which is attached to and made a part of this Agreement. To the extent the provisions of Exhibit “A” are ambiguous in relation to the provisions of this Agreement, inconsistent with the provisions of this Agreement, or expand upon the provisions of this Agreement, the provisions of this Agreement shall take precedence and the provisions of Exhibit “A” shall not apply. These duties may be adjusted from time to time as agreed upon in writing by CONSULTANT and CITY. Any additional services authorized by CITY shall be subject to all terms and conditions of this Agreement, except as modified in writing in accordance with Section 24.



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1.2 CONSULTANT acknowledges that no level of work is guaranteed. Assignments will be determined on an as-needed basis for which purchase orders will be issued based on services required and CONSULTANT's fee schedule (refer to Exhibit "B"), which is attached to and made a part of this Agreement.

1.3 Representations. CONSULTANT will perform the services set out in this Agreement, as contemplated herein, in an efficient, timely, and professional manner, and in accordance with generally accepted standards for performing similar services. It is understood that CITY, in entering into this Agreement, is relying on CONSULTANT's representations for quality and professional work performed in a timely manner, and CONSULTANT shall perform in accordance with those representations and standards.

1.4 Regular Check-ins and Status Reports. The [Title] of CONSULTANT shall regularly coordinate with CITY staff with in person meetings and conference call check-ins as needed throughout the project. The CONSULTANT shall prepare and submit to the Development Services Director a monthly written report specifying the activities of CONSULTANT pursuant to this Agreement. CONSULTANT shall prepare the monthly written report in a format acceptable to the CITY. CONSULTANT shall submit the monthly written report to the CITY by the second Friday of each month.

2. ADMINISTRATION OF AGREEMENT

2.1 CITY appoints its City Manager, or his/her designee, to administer CITY's rights under this Agreement, and to review the work performed by CONSULTANT pursuant to the scope of services.

2.2 CONSULTANT shall keep the City Manager, CITY's representative, or his/her designee or designees, fully informed as to the progress of the work and shall submit to CITY such oral and written reports as CITY may specify.

2.3 This Agreement shall be administered on behalf of the parties hereto, and any notice desired or required to be sent to a party hereunder shall be addressed, as follows:

| | |
|------------|---|
| For CITY: | Ivan Holler, Assistant City Manager |
| Address: | City of Murrieta One Town Square Murrieta, CA 92562 |
| Phone: | (951) 461-6078 |
| Facsimile: | (951) 461-6049 |

| | |
|-----------------|------------------------|
| For CONSULTANT: | [Name] [Title] |
| CONSULTANT: | [Name] |
| Address: | [Address] [Address] |
| Phone: | [(999) 999-9999] |
| Facsimile: | [(999) 999-9999] |



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3. TERM

3.1 The services called for under this Agreement shall be provided by CONSULTANT during the period commencing upon execution of this Agreement and shall continue through February 1, 2022. This Agreement may renew for up to one (1) additional one (1) year term based on satisfactory performance of the services called for in the Agreement, at the discretion of the City Manager at least thirty (30) days written notice prior to the expiration of the initial term or any subsequent annual renewal.

3.2 Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

4. PAYMENT TO CONSULTANT

4.1 Consideration. In consideration of the services to be performed by CONSULTANT for the CITY as set forth in Section 1, the CITY agrees to pay CONSULTANT for hours worked at the hourly rates specified in the CONSULTANT'S rate and fee schedule in Exhibit "B". Any hours in excess of five hours per hearing shall require authorization of the City Manager or his or her designee. The specified hourly rates include direct salary costs, employee benefits, overhead, and fee. CONSULTANT shall be responsible for all travel time and mileage costs, which shall not be billable as an additional cost to the CITY. The CITY also agrees to pay CONSULTANT for incurred direct costs other than salary costs, and other costs that are identified in Exhibit "A". The total amount payable by the CITY shall not exceed the amount designated on individual purchase orders issued pursuant to this Agreement. Each purchase order will require a scope of services, expected results, project deliverables, period of performance, and project schedule. CONSULTANT shall accept such sums as full compensation for the services listed on each individual purchase order. The rates on Exhibit "B" may be adjusted at the beginning of each fiscal year up to the amount of change in the Consumer Price Index, not to exceed five percent (5%).

4.2 Additional Services. If CITY desires any additional services ("Additional Services"), CONSULTANT may, upon written request by the CITY, furnish a proposal including an itemized statement of the estimated cost of the Additional Services thereof, and the CITY may modify or alter the proposal, or may reject the proposal in its entirety, at its sole discretion, or may direct the submission of a new proposal which may be accepted, altered or rejected. Upon the written approval of any Additional Services including costs by CONSULTANT and CITY, CONSULTANT shall perform the Additional Services and CITY will pay to CONSULTANT the cost of the Additional Services as agreed in writing. All money due for Additional Services shall be supported by a detailed statement of CONSULTANT showing the basis of said claims, and certified by proper officers of CONSULTANT.

4.3 Payments. CONSULTANT shall submit monthly invoices to the CITY for CONSULTANT's services rendered, in accordance with the schedule of tasks and charges attached as Exhibit "B", not to exceed the amount of the City issued purchase order. Payment of CONSULTANT's fee shall be made in accordance with CITY's normal schedule for issuance of checks. CONSULTANT agrees and acknowledges that it is CONSULTANT's sole responsibility to report as income all compensation received from CITY, and to make the requisite tax filings and payments to the appropriate federal, state and local tax authorities.



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5. STATUS OF CONSULTANT

5.1 Independent Contractor. It is understood and agreed that CITY is interested only in the results obtained from service hereunder and that CONSULTANT shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. CONSULTANT shall complete this Agreement according to its own methods of work which shall be in the exclusive charge and control of CONSULTANT and which shall not be subject to control or supervision by the CITY, except as to the results of the work. CONSULTANT is, for all purposes arising out of this Agreement, an independent contractor, and neither CONSULTANT, nor its employees, agents, or representatives shall be deemed an employee of the CITY for any purpose.

5.2 Employee Benefits. CONSULTANT shall be responsible for all salaries, payments, insurance and benefits for all of its officers, agents, representatives and employees in performing services pursuant to this Agreement. It is expressly understood and agreed that CONSULTANT and its employees, agents, and representatives shall in no event be entitled to any CITY benefits to which CITY employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation, sick or injury leave, or other benefits.

5.3 Workers' Compensation Insurance. CONSULTANT agrees to procure and maintain in full force and effect Workers' Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder, as provided in Section 6.1.2 of this Agreement.

5.4 Prevailing Wages. Pursuant to provisions of section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Agreement, from the Director of the Department of Industrial Relations. These rates are on file with the City Clerk. Copies may be obtained at cost at the City Clerk's office. CONSULTANT shall post a copy of such rates at their office and shall pay the adopted prevailing wage rates as a minimum. If applicable, CONSULTANT shall comply with the provisions of sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code and any other applicable laws.

Pursuant to the provisions of section 1775 of the Labor Code, CONSULTANT shall forfeit to CITY, as a penalty, the sum of fifty dollars (\$50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Agreement, by him or by any sub-consultant under him, in violation of the provisions of this Agreement.

6. INSURANCE

CONSULTANT shall not begin the services under this Agreement until it has: (a) obtained, and upon the CITY's request, provided to the CITY, insurance certificates reflecting evidence of all insurance required in this Section 6; however, CITY reserves the right to request, and CONSULTANT shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies as required by Section 6; and (c) confirmed that all policies contain the specific provisions required in Section 6.



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6.1 Types of Insurance. At all times during the term of this Agreement, CONSULTANT shall maintain insurance coverage as follows:

6.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an occurrence basis to protect CONSULTANT and CITY against liability or claims of liability which may arise out of this Agreement in the amount of One Million Dollars (\$1,000,000) per occurrence and subject to an annual aggregate of Two Million Dollars (\$2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability.

6.1.2 Workers' Compensation. For all of CONSULTANT's employees who are subject to this Agreement and to the extent required by applicable state or federal law, CONSULTANT shall keep in full force and effect a Workers' Compensation policy. That policy shall provide employers' liability coverage as required by applicable state and/or federal Workers' Compensation laws, and CONSULTANT shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against CITY by a bona fide employee of CONSULTANT participating under this Agreement, CONSULTANT agrees to defend and indemnify the CITY from such claim.

6.1.3 Professional Liability. For all of CONSULTANT's employees who are subject to this Agreement, CONSULTANT shall keep in full force and effect Professional Liability coverage for professional liability with a limit of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate. CONSULTANT shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of services under this Agreement; and (2) the policy will be maintained in force for a period of four years after termination of this Agreement or substantial completion of services under this Agreement, whichever occurs last. CONSULTANT agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the CITY's exposure to loss.

6.1.4 Commercial Automobile Liability. Limits shall be no less than \$1,000,000 per accident, combined single limit. If CONSULTANT owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONSULTANT or CONSULTANT's employees will use personal autos in any way on this project, CONSULTANT shall obtain evidence of personal auto liability coverage for each such person.

6.2 Insurer Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that are rated "A-" and "V" or better by the A.M. Best Key Rating Guide, and are licensed to do business in the State of California. CITY will accept insurance provided by non-admitted "surplus lines" carriers only if the carrier is authorized to do business in the State of California.



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6.3 Deductibles. All deductibles on any policy shall be the responsibility of CONSULTANT and shall be disclosed to CITY at the time the evidence of insurance is provided.

6.4 Specific Provisions Required. Each policy required under this Section 6 shall expressly provide, and an endorsement shall be submitted to CITY, that: (a) the policies are primary and non-contributory to any insurance that may be carried by CITY; and (b) CITY is entitled to thirty (30) days' prior written notice (10 days for cancellation due to non-payment of premium) of cancellation, material reduction, or non-renewal of the policy or policies. Additionally, the CGL policy shall expressly provide, and an endorsement shall be submitted to CITY, that the City of Murrieta and its respective officers and employees are additional insureds under the policy.

6.5 Indemnity Not Limited by Insurance. CONSULTANT's liabilities, including, but not limited to, CONSULTANT's indemnity and defense obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement, and CONSULTANT's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by CITY.

7. AUDIT AND INSPECTION OF RECORDS

At any time during CONSULTANT's normal business hours and as often as CITY may deem necessary, and upon reasonable notice, CONSULTANT shall make available to CITY, or any of its duly authorized representatives, for examination, audit, excerpt, copying or transcribing, all data, records, investigation reports and all other materials respecting matters covered by this Agreement. CONSULTANT will permit CITY to audit and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement. All material referenced in this Section, including all pertinent cost accounting, financial records, and proprietary data, must be kept and maintained by CONSULTANT for a period of at least four (4) years, or for the period required by law, whichever is greater, after completion of CONSULTANT's performance hereunder, unless CITY's written permission is given to dispose of same prior to that time.

8. CONFIDENTIALITY AND USE OF INFORMATION

8.1 Except as otherwise provided by law, all reports, communications, documents and information obtained or prepared by CONSULTANT respecting matters covered by this Agreement shall not be published without prior written consent of City Manager or his designees, nor shall CONSULTANT issue any news releases or publish information relating to its services hereunder without the prior written consent of the City Manager. CONSULTANT shall hold in trust for the CITY, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the CITY's research, development, trade secrets and business affairs, but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

8.2 CONSULTANT shall advise CITY of any and all materials used, or recommended for use, by CONSULTANT to achieve the project goals that are subject to any copyright restrictions or requirements. In the event CONSULTANT shall fail to so advise CITY and, as a result of the use of any



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programs or materials developed by CONSULTANT under this Agreement, CITY should be found in violation of any copyright restrictions or requirements, CONSULTANT agrees to indemnify and hold harmless CITY against any action or claim brought by the copyright holder.

8.3 Ownership of Records. All records created by the CONSULTANT shall become the property of the CITY and shall be subject to state law and CITY policies governing privacy and access to files. The CITY shall have access to and the right to examine all books, documents, papers and records of the CONSULTANT involving transactions and work related to this Agreement. The CONSULTANT shall retain all copies of records for a period of five (5) years from the date of final payment.

9. NOTICE

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service, (b) by U.S. Mail, mailed either by certified mail, return receipt requested, with postage prepaid and addressed to the party to whom the notice is directed, or (c) via facsimile transmission (with proof of confirmation by sender). Service shall be considered given when received if personally served or, if mailed, two days after deposit in the United States Mail by certified mail, return receipt requested. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are as set forth in Section 2 above.

10. TERMINATION FOR CAUSE

10.1 CITY may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) a material violation of any of the covenants, agreements, or stipulations of this Agreement by CONSULTANT, (b) CONSULTANT, through any cause, failing to fulfill in a timely and proper manner its obligations under this Agreement, (c) any act by CONSULTANT exposing CITY to liability to others for personal injury or property damage, or (d) if CONSULTANT is adjudged bankrupt, CONSULTANT makes a general assignment for the benefit of creditors, or a receiver is appointed on account of CONSULTANT's insolvency. Written notice by CITY of termination for cause shall contain the reasons for such intention to terminate and shall specify the effective date thereof. Unless prior to the effective date of the termination for cause the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall cease and terminate on the effective date specified in the written notice by CITY.

10.2 In the event of such termination, CONSULTANT shall be paid the reasonable value of satisfactory services rendered up to the date of receipt of the notice of termination in accordance with this Agreement, less any payments theretofore made, as determined by CITY, not to exceed the amount payable herein, and CONSULTANT expressly waives any and all claims for damages or compensation arising under this Agreement in the event of such termination, except as set forth herein.

11. TERMINATION FOR CONVENIENCE OF CITY

11.1 CITY may terminate this Agreement at any time and for any reason by giving written notice to CONSULTANT of such termination, and specifying the effective date thereof, at least fifteen (15) days prior to the effective date.



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11.2 If the Agreement is terminated as provided in this Section, CONSULTANT shall be entitled to receive compensation for any satisfactory work completed up to the receipt by CONSULTANT of notice of termination, less any payments theretofore made and not to exceed the amount payable herein, and for satisfactory work completed between the receipt of notice of termination and the effective date of termination pursuant to a specific request by CITY for the performance of such work.

12. PERFORMANCE AFTER TERMINATION

Upon termination of this Agreement as provided herein, CONSULTANT shall, within such reasonable time period as may be directed by City Manager, complete those items of work, which are in various stages of completion, and, which City Manager determines are necessary to be completed by CONSULTANT to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by CONSULTANT shall be delivered to the City Manager, upon his request, as property of CITY.

13. DEFENSE AND INDEMNIFICATION

13.1 Indemnity for Professional Liability. Except for the sole negligence or willful misconduct of CITY, CONSULTANT shall, to the fullest extent permitted by law, hold harmless, protect, defend (with attorneys approved by CITY) and indemnify the CITY, its council and each member thereof, its officers, employees, representatives and their successors and assigns from and against all losses, liabilities, claims, suit, damage, expenses, cost, including reasonable attorney's fees and costs, and expert costs and investigation expenses, caused in whole or in part by the negligent, reckless or wrongful acts, errors or omissions of CONSULTANT in the performance of the professional services under this Agreement and those of CONSULTANT's sub-consultants or anyone for whom CONSULTANT is liable regardless of whether or not such claim, loss or liability is caused in part by a party indemnified hereunder.

13.2 Indemnity for Other than Professional Liability. With respect to operations other than the performance of the professional services under this Agreement, CONSULTANT shall, to the fullest extent permitted by law, hold harmless, protect, defend (with attorneys approved by CITY) and indemnify the CITY, its council, and each member thereof, its officers, agents, employees, representatives and their successors and assigns, from and against any and all losses, liabilities, claims, suit damage, expenses and costs including reasonable attorney's fees and costs, and expert costs and investigation expenses ("Claims"), which arise out of or are in any way connected to the performance of CONSULTANT, its officers, employees, representatives, subcontractors, or agents under this Agreement regardless of whether or not such claim, loss or liability is caused, in part by a party indemnified hereunder. CONSULTANT shall have no obligation, however, to defend or indemnify CITY if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of CITY.

13.3 General Indemnity Provisions. This indemnity is in addition to any other rights or remedies which CITY may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, CITY may, at its sole discretion,



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reserve, retain or apply any monies due to CONSULTANT under this Agreement for the purpose of resolving such claims; provided however, that CITY may release such funds if CONSULTANT provides CITY with reasonable assurances of protection of the CITY's interest. The CITY shall, in its sole discretion determine whether such assurances are reasonable.

CONSULTANT agrees that its duty to defend the indemnities arises upon an allegation of liability based upon the performance of services under this Agreement by CONSULTANT, its officers, agents, representatives, employees, sub-consultants, or anyone for whom CONSULTANT is liable and that an adjudication of CONSULTANT's liability is not a condition precedent to CONSULTANT's duty to defend.

14. CONFLICT OF INTEREST

CONSULTANT shall be bound by the requirements of the FPPC (Fair Political Practice Commission) and state law with regard to disclosure of financial interests and prohibited conflicts of interest.

14.1 Prior to execution of this Agreement, CONSULTANT shall disclose in writing to CITY any and all compensation, actual or potential, which CONSULTANT may receive in any form from a party other than CITY as a result of performance of this Agreement by CONSULTANT. If CONSULTANT becomes aware of the potential for such compensation subsequent to the execution of this Agreement, CONSULTANT shall disclose such compensation within three (3) working days of becoming aware of the potential for such compensation.

14.2 Prior to or concurrent with making any recommendation of any products or service for purchase by the CITY, CONSULTANT shall disclose any financial interest that CONSULTANT may have in any manufacturer or provider of the recommended products or services. The term "financial interest" includes, but is not limited to, employment (current or prospective) or ownership interest of any kind and degree.

14.3 CONSULTANT shall not conduct business for third parties which may be in conflict with CONSULTANT's responsibilities under this Agreement. CONSULTANT may not solicit any business during the term of this Agreement which conflicts with its responsibilities under this Agreement. CONSULTANT shall provide no services for any private client within the corporate boundaries or sphere of influence of CITY during the period of this Agreement which may constitute a conflict of interest.

15. ASSIGNMENT

No portion of this Agreement or any of the work to be performed hereunder may be assigned or delegated (including hiring and retaining use of any other person or entity for any purpose, except for those certain subconsultants specifically included in the attached "Scope of Services") by CONSULTANT without the express written consent of CITY, nor may any interest in this Agreement be transferred (whether by assignment or novation) by CONSULTANT without the express written consent of CITY, and without such consent all services hereunder are to be performed by CONSULTANT, its officers, agents and employees. However, claims for money due or to become due to CONSULTANT from CITY under this Agreement may be assigned to a bank, trust company, or other financial institution



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without such approval. Notice of such assignment or transfer shall be furnished promptly to CITY. Any assignment requiring approval may not be further assigned without CITY approval.

16. SURVIVAL

CONSULTANT's representations, insurance and indemnity obligations, and performance obligations post-termination shall survive termination of this Agreement.

17. COMPLIANCE WITH APPLICABLE LAWS

CONSULTANT agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to CONSULTANT, CONSULTANT's business, equipment and personnel engaged in activities covered by this Agreement or arising out of the performance of such activities.

18. PERMITS/LICENSES

CONSULTANT and all of CONSULTANT's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

19. RESPONSIBILITY FOR EQUIPMENT

CITY shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by CITY. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT's employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, indemnify and hold harmless CITY from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

20. NONDISCRIMINATION IN EMPLOYMENT

CONSULTANT agrees that it will not engage in unlawful discrimination in employment and shall comply with all applicable laws and regulations of CITY and/or all other relevant government agencies, including, but not limited to, the California Department of Fair Employment and Housing and the Federal Equal Employment Opportunity Commission. Also, CONSULTANT certifies and agrees that all persons employed by CONSULTANT, its affiliates, subsidiaries and related entities, if any, will be treated equally by CONSULTANT, without unlawful discrimination based upon creed, sex, race, national origin, or any other classification prohibited by state or federal law. If CITY finds that any of the provisions of this Section have been violated, such violation shall constitute a material breach of this Agreement, upon which CITY may determine to cancel, terminate, or suspend this Agreement. While CITY reserves the right to determine independently that the anti-discrimination provisions of the Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or California Department of Fair Employment and Housing, or successor agency, or the Federal Equal Employment Opportunity Commission, or successor agency, that CONSULTANT has



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violated state or federal anti-discrimination laws relative to this Agreement shall constitute a finding by CITY that CONSULTANT has violated the anti-discrimination provisions of this Agreement.

21. NON-WAIVER

The failure of CITY or CONSULTANT to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition. Payment to CONSULTANT of compensation under this Agreement shall not be deemed to waive CITY's rights or CONSULTANT's rights contained in this Agreement.

22. SEVERABILITY

If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, invalid, or void, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

23. DISPUTES

In the event that any action is brought by either party to construe this Agreement or enforce any of its terms, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred, whether or not the matter proceeds to judgment.

24. REMEDIES

The rights and remedies of the CITY provided in this Agreement are not intended to be exclusive, and are in addition to any other rights and remedies permitted by law.

25. ENTIRE AGREEMENT/AMENDMENT

This Agreement and any exhibits attached hereto constitute the entire agreement between the parties and supersede any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

26. GOVERNING LAW/VENUE

The terms and conditions of this Agreement shall be governed by the laws of the State of California. Any action or proceeding brought by any party against any other party arising out of or related to this Agreement shall be brought exclusively in Riverside County.

27. BINDING AGREEMENT

This Agreement is intended to be binding on the parties and their respective successors and assigns.



28. NUMBER

The plural shall include the singular, and the singular shall include the plural and neuter wherever the context so indicates or requires.

29. WARRANTY OF AUTHORITY

Each of the parties signing this Agreement warrants to the other that it has the full authority of the entity on behalf of which its signature is made.

30. COUNTERPARTS

This Agreement may be executed in counterparts, all of which taken together will be considered one original document.

31. EXHIBITS INCORPORATED

All Exhibits referenced in this AGREEMENT are incorporated into the AGREEMENT by this reference.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MURRIETA

[Name, Title]

Name of Consultant

Name/title of signatory [please print]

Signature

ATTEST:

Stephanie Smith, City Clerk

Name/title of signatory [if necessary]

Signature

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney



DEVELOPMENT SERVICES DEPARTMENT
Administrative Hearing Officer Services RFP
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NOTE: If this Agreement involves a corporate party, the corporation must be represented by two individuals as follows: (A) one from the corporation's "Operational Group" (Chair of the board, President or a Vice-president) and; (B) one from the corporation's "Financial Group" (Secretary, Assistant secretary, Chief financial officer or an Assistant treasurer). See California Corporations Code section 313.