

PRE-DEVELOPMENT AGREEMENT

City of Rialto

Police Station

THIS PRE-DEVELOPMENT AGREEMENT (hereinafter referred to as “AGREEMENT”) for purposes of identification hereby numbered _____, and dated November 15, 2022 is

BY AND BETWEEN **City of Rialto**, a State of California municipal corporation,
(hereinafter referred to as “OWNER”),

AND

Griffin / Swinerton, LLC, a State of Delaware limited liability
company (hereinafter referred to as “DEVELOPER”),

which are sometimes individually referred to as “PARTY” or collectively referred to as
“PARTIES.”

RECITALS

A. OWNER owns certain real property in the City of Rialto, California identified in Exhibit A.

B. OWNER desires to develop a new police station for the Rialto Police Department on the real property identified in Exhibit A.

C. OWNER is pursuing opportunities to implement its vision and develop the property through a public-private partnership pursuant to applicable law, including but not limited to the Infrastructure Financing Act (Govt Code §§5956 et seq.), and the PROJECT (as defined below) is a “fee-producing infrastructure project” as defined in Govt Code §5956.3.

D. DEVELOPER has developed properties similar to the PROJECT property, including the public-private partnership development of public, community, and commercial facilities in other cities and counties.

E. In April 2022, OWNER issued REQUEST FOR PROPOSAL #22-062 TO DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN A NEW POLICE STATION (the “RFP”). The RFP was a developer RFP (i.e., seeking a developer to take a project from design, planning and CEQA/approvals through financing and construction, which requires multiple phases); not a traditional design-bid-build or design-build contractor RFP.

F. DEVELOPER responded to the RFP and submitted a proposal to OWNER on July 29, 2022, which contemplated a two-phase project implementation, including refinements to the site design and facility programming into a final site plan, schematic design, design development,

approvals/entitlements, a Guaranteed Maximum Price (GMP), and project financing by DEVELOPER in close collaboration with and approval by OWNER (PHASE 1); and DEVELOPER's completion of construction drawings and vertical development of the PROJECT (PHASE 2).

G. After a multi-step developer solicitation process that included the RFP and an interview, OWNER selected DEVELOPER and DEVELOPER's two-phase proposal on November 15, 2022 to develop, design, construct, finance, operate, and maintain/manage the project identified in Exhibit B (the "PROJECT"), relying upon OWNER's primary selection criteria including the proposers' demonstrated competence and qualifications for studying, planning, designing, permitting, developing, financing, constructing, operating, managing, and maintaining a project that will fulfill OWNER's vision, including a plan to ensure that the eventual project developed on the Property will be operated at fair and reasonable prices and be widely affordable and available to the users (e.g. Rialto Police Department and community) of the facilities and services therein. As part of the solicitation process, OWNER determined that DEVELOPER has adequate financial resources to design, build, finance, and operate/maintain the PROJECT after the date of this AGREEMENT.

H. The PARTIES intend that this AGREEMENT is for PHASE 1 and a Development Agreement will be negotiated by the PARTIES and executed for PHASE 2.

I. OWNER desires to engage DEVELOPER with the intent that DEVELOPER will implement the PROJECT as envisioned in the RFP and DEVELOPER's two-phase proposal, according to DEVELOPER's proposed two-phase approach, and to provide the services as described herein, including the PHASE 2 SERVICES (defined below) (to be provided under the Development Agreement the PARTIES intend to execute at the conclusion of the PHASE 1 SERVICES provided under this AGREEMENT) and subject to the terms hereof.

J. OWNER and DEVELOPER are each entering into this AGREEMENT with the intent that DEVELOPER will provide all of the SERVICES (PHASE 1 and PHASE 2) required to fully and completely develop the PROJECT in accordance with the RFP and DEVELOPER's two-phase proposal selected by OWNER, subject to OWNER's approval of the results of the PHASE 1 SERVICES, which are required before commencement of PHASE 2 SERVICES, including the financing and construction of the PROJECT.

K. After completion of the PHASE 1 SERVICES described herein, OWNER may commence PHASE 2 by entering into a Development Agreement (to be negotiated by the PARTIES), Site Lease, a Facility Lease, Continuing Disclosure Statement and appurtenant and related documentation (e.g., additional documentation OWNER may require, but DEVELOPER will not be a party to, may include indenture, loan agreement, bond purchase agreement, and preliminary and final official statements, collectively, the "Lease Documents") for the development of the property and the lease-back of certain portions of the property to OWNER.

L. The PROJECT, this AGREEMENT and the Development Agreement (to be negotiated by the PARTIES) for PHASE 2 are authorized by applicable law, including but not limited to the Infrastructure Financing Act (Govt Code §§5956 et seq.).

NOW, THEREFORE, IT IS AGREED by and between the PARTIES hereto as follows:

1. Retainer

1.1 OWNER does hereby retain DEVELOPER to perform the SERVICES as defined in Section 2.

1.2 DEVELOPER shall assign one or more principals to perform the SERVICES. The principals assigned by DEVELOPER and whose expertise and services are offered by DEVELOPER and accepted by OWNER are Roger Torriero and Korin Crawford, acting in their capacity as principals of DEVELOPER.

1.3 DEVELOPER may employ such consultants, as well as Developer's General Contractor, as DEVELOPER determines appropriate for performance of portions of DEVELOPER's obligations under this AGREEMENT; provided, however, that DEVELOPER will remain responsible for all such obligations and the acts and omissions of DEVELOPER's consultants. The term "Consultants" refers to any professional directly retained by DEVELOPER for provision of any of the SERVICES required to be performed by DEVELOPER under this AGREEMENT. DEVELOPER's employment of independent Consultants shall not relieve DEVELOPER from the performance of its own responsibilities pursuant to this AGREEMENT. However, all consultants contracting separately with OWNER (if any) shall be independently liable to OWNER for the performance of the work pursuant to their agreements, and DEVELOPER shall have no liability for work by consultants contracting separately with OWNER.

1.4 DEVELOPER intends to retain LPA, Inc. as the architect for the schematic design and design development phases of architectural services ("Architect") for PHASE 1 and the construction documents and construction observation phases for PHASE 2. The plans and specifications prepared by Architect and approved by the PARTIES for the schematic design phase are referred to as the "Schematic Design Documents." The final, permitted set of plans and specifications prepared by Architect and approved by the PARTIES for the construction document phase are referred to as the "Construction Documents." DEVELOPER intends to retain Swinerton Builders as Developer's general contractor to perform the pre-construction services ("Developer's General Contractor"). DEVELOPER will have the right to select or replace all or any of the Consultants (including the Architect) and Developer's General Contractor, with OWNER's prior consent, which will not be unreasonably withheld. OWNER consents to DEVELOPER retaining LPA, Inc. as Architect and Swinerton Builders as Developer's General Contractor for the PHASE 1 and/or PHASE 2 SERVICES.

2. PROJECT and SERVICES.

2.1 Description of PROJECT.

(a) The PROJECT is in two phases as follows:

(1) PHASE 1 – Pre-Development Services

(2) PHASE 2 – Construction Documents and Construction Services

(b) DEVELOPER shall use commercially reasonable efforts to obtain a Leadership in Energy and Environmental Design Silver certification from the U.S. Green Building Council with respect to the PROJECT exclusive of the parking structure(s) if any.

2.2 Description of SERVICES.

For purposes of this AGREEMENT, the term “SERVICES” includes both the PHASE 1 and the PHASE 2 SERVICES. DEVELOPER shall first provide the PHASE 1 SERVICES pursuant to this AGREEMENT, which includes determining a Guaranteed Maximum Price (“GMP”) for the PROJECT. OWNER will then either (1) terminate this AGREEMENT or (2) have DEVELOPER perform the PHASE 2 SERVICES.

2.3 Description of PHASE 1 SERVICES.

PHASE 1 includes development of a needs assessment and program, pre-design services, basis of design, schematic design services, entitlement package, environmental review, design development services, financing, and estimated costs of operation and maintenance, culminating in an OWNER approved design development set of plans and specifications (“Approved Design Development Plans and Specifications”) for the PROJECT in accordance with OWNER standards and procedures and applicable local, state, and federal requirements. DEVELOPER shall also deliver to OWNER a GMP (which shall also refer to the associated documentation related to the work to be performed for a Guaranteed Maximum Price) for the delivery of the PROJECT, complete and operational. DEVELOPER will deliver the GMP in accordance with the schedule described in Exhibit C. The PHASE 1 SERVICES are described in detail in Exhibit D.

2.4 Description of PHASE 2 SERVICES.

PHASE 2 SERVICES include completion of the construction documents, and construction of the PROJECT. These services include preparation of the 100% construction documents, construction observation by the design team, competitive bidding of trade contractors, construction, and PROJECT close-out, all as more fully set forth in the Development Agreement. OWNER shall provide a PHASE 2 PROJECT budget to DEVELOPER in accordance with the schedule described in Exhibit C.

2.5 OWNER Election to Terminate or Proceed to PHASE 2

(a) OWNER will have sixty (60) days after DEVELOPER submits its GMP to OWNER to elect one of the following options:

(1) Terminate this AGREEMENT;

(2) Proceed with the PROJECT on a public-private partnership basis, in which case the PARTIES will proceed pursuant to the Lease Documents (including a Development Agreement that the PARTIES will negotiate in good faith to achieve their goals, comply with legal requirements, include the budget, schedule, and scope exhibits, or that may be necessary or desirable to the PARTIES), with the understanding that the Lease is to be financeable in the public, tax-exempt financing markets (including any changes required by the party providing the financing) with financing terms acceptable to OWNER, lender(s), and DEVELOPER and a lease structure to be determined and agreed upon by the Parties for the PROJECT so that the lease payment will only be recapturing DEVELOPER's fixed fee and total costs incurred for the design and construction of the PROJECT (inclusive of all legal and all financing related costs). The final and actual base annual lease rent will be determined by several factors and components, including but not limited to the amortization period, final PROJECT GMP, and all costs of financing (including then current market conditions and interest rate) established on the actual date of placement and issuance of the PROJECT financing. The Lease will provide OWNER with the option to purchase the building and improvements during the lease term and/or provide that at the end of the lease term (not to exceed thirty years), OWNER will own the project/facility for one dollar.

(b) GMP will become void and unenforceable if OWNER fails to provide written notice of its election to DEVELOPER within sixty (60) days because OWNER will be deemed to have elected the option to terminate this AGREEMENT if the Parties have not agreed in writing to extend this deadline.

(c) If OWNER and DEVELOPER are unable to agree as to the GMP and terms of the Lease Documents (including the Development Agreement) in accordance with subsection (a), then at the end of the sixty (60) day period, this AGREEMENT will terminate.

2.6 Conflicts.

In the event Exhibits D or E shall be in conflict with any provision of this AGREEMENT, Exhibits D or E, as applicable, shall prevail.

2.7 Contingency.

(a) OWNER's contingency are funds to be used at the discretion of OWNER usually to cover, among other things, any increases in PROJECT costs that result from OWNER directed changes or unforeseen site conditions ("OWNER's Contingency"). For OWNER's convenience, if requested by OWNER, DEVELOPER will include OWNER's Contingency as a separate line item in DEVELOPER's budget(s) for PHASE 1 and/or PHASE 2. Markups for overhead, profit, taxes, and insurance will be applied by DEVELOPER at the time that OWNER's Contingency is used. Any OWNER Contingency not utilized shall remain as

OWNER's funds after PROJECT completion. Owner must approve in writing any use of OWNER's Contingency. The City Manager may authorize use of OWNER's Contingency up to \$250,000.

(b) The amount of DEVELOPER Contingency (defined below) will be noted as a separate line item in the budget for each phase and shall reflect DEVELOPER's risk for the PROJECT. DEVELOPER's Contingency is a fund to cover cost growth or unexpected or unforeseen costs that may arise during the PROJECT ("DEVELOPER's Contingency"). DEVELOPER has a DEVELOPER Contingency line item in the PHASE 1 budget (Exhibit E) and will have a separate DEVELOPER Contingency line item in DEVELOPER's PHASE 2 budget. The amount of DEVELOPER's Contingency for PHASE 1 and PHASE 2 will be separate line items in the applicable budgets. DEVELOPER's Contingency for each PHASE may be used at DEVELOPER's discretion with OWNER's approval, which will not be unreasonably withheld.

(c) DEVELOPER's budget (Exhibit E) for PHASE 1 includes line items for DEVELOPER's Contingency and Allowances. "Allowances" are funds allocated for known future costs that have not been specified with a high enough degree of detail to enable an accurate estimate of costs to be created. Allowances are usually associated with materials the owner intends to select after the contract is formed. Payment for any Allowance identified in Exhibit E shall be for direct cost reimbursement only, unless Exhibit E identifies it as a "Time and Materials" or "T&M" item. Reimbursable direct costs shall be verified by invoices and shall include any amounts paid to third parties, and do not include markups, including but not limited to supervision, labor, overhead, or profit related to the item. Payment for any work to be performed in connection with any Allowance identified in Exhibit E will be made by OWNER as part of the normal payment procedures for the PROJECT. Any costs that exceed the maximum amount of any Allowance line item shall be addressed as a change to the AGREEMENT.

DEVELOPER's Contingency in Exhibit E may be used at DEVELOPER's discretion with OWNER's approval, which will not be unreasonably withheld, for increases in the cost of the PHASE 1 SERVICES which are not OWNER's responsibility. However, the DEVELOPER may not apply DEVELOPER's Contingency to DEVELOPER's fixed fee.

2.8 GMP.

DEVELOPER will prepare the GMP in accordance with OWNER's reasonable requests and will obtain from the Architect four (4) sets of the Approved Design Development Plans and Specifications (including all addenda). DEVELOPER will place a signature block on each page of each document of each set upon which its proposed GMP is based. OWNER, DEVELOPER, Developer's General Contractor, and the Architect will all approve, in writing, the Approved Design Development Plans and Specifications (including all addenda) upon which DEVELOPER's GMP for PHASE 2 is based. DEVELOPER will send one set of those documents

to OWNER, retain one set, and return a set to both the Architect and Developer's General Contractor.

2.9 Construction Schedule.

An updated/revised PROJECT Schedule will be included with the GMP that reflects the Approved Design Development Plans and Specifications.

2.10 Savings.

In PHASE 1, all savings from the budget (Exhibit E) shall be fully for the benefit of OWNER.

2.11 GMP Review and Approval.

(a) DEVELOPER will meet with OWNER, Architect, and Developer's General Contractor to review the GMP and the written statement of its basis. If OWNER discovers inconsistencies or inaccuracies in the information presented, DEVELOPER will make adjustments as necessary to the GMP, its basis or both. OWNER, DEVELOPER, Architect, and Developer's General Contractor will each review and initial each page of the Approved Design Development Plans and Specifications upon which the GMP will be based. The Approved Design Development Plans and Specifications shall comport with the preliminary building program set forth in Exhibit F. OWNER will attend meetings during each design phase and will have the opportunity to review the design documents at those meetings as the design documents are being developed. OWNER will have 30 days to review and approve in writing each set of documents (schematic, design development, and construction documents) when they are deemed completed and delivered by DEVELOPER to OWNER. If OWNER approves a set of documents, on which DEVELOPER relies, then later directs DEVELOPER to make material changes to the approved documents, then OWNER will pay DEVELOPER for the actual cost of making such revisions as an additional cost through a Change Order. For example, if OWNER approves the Schematic Design Documents, but then during the Design Development or Construction Document phase directs a change to a PROJECT component that was previously agreed to in the Schematic Design Documents, then the cost of making those OWNER directed revisions will be deemed a valid Change Order.

(b) DEVELOPER may be requested to, or at its own discretion may, submit a revised GMP for consideration by OWNER, including reducing scope, quality, or features if necessary to bring the PROJECT within budget reflecting the anticipated scope and timing of the PROJECT that is deemed fair and reasonable to DEVELOPER. At that time, OWNER may do one of the following:

(1) Accept DEVELOPER's original or revised GMP without comment, if within OWNER's budget.

(2) Accept DEVELOPER's original or revised GMP that exceeds OWNER's budget, and indicate in writing to DEVELOPER that the PROJECT budget has been increased to fund the differences through an amendment to this AGREEMENT.

(3) Reject DEVELOPER's original or revised GMP because it exceeds OWNER's budget and the independent third party's estimate, in which event OWNER may terminate this AGREEMENT and/or elect to not enter into the Development Agreement with DEVELOPER for PHASE 2.

(4) With DEVELOPER's consent, wait to accept the GMP if OWNER believes adequate funding will be available in the near future.

(c) If during OWNER's review of the GMP, design changes are required or requested by OWNER, then DEVELOPER will authorize and cause its Consultants to revise the Approved Design Development Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP. Such revised documents will be furnished to OWNER. The provisions of Section 2.11(a) apply to determine whether OWNER is responsible for paying for the revisions. OWNER will promptly notify DEVELOPER in writing if any such revised documents are inconsistent with the agreed-upon assumptions and clarifications.

2.12 PHASE 1 Schedule.

DEVELOPER will perform the PHASE 1 SERVICES in accordance with the schedule in Exhibit C.

3. Assistance and Cooperation by and between OWNER and DEVELOPER.

3.1 OWNER and DEVELOPER shall assign an appropriate staff member (or members) to work with each other in connection with the work of this AGREEMENT. OWNER designates Marcus Fuller or his/her designee as "OWNER Representative." DEVELOPER designates Roger Torriero and Korin Crawford as DEVELOPER Representatives. Each PARTY may change its designated representative by giving written notice to the other PARTY of the name and contact information for the new representative. The Representatives' duties will consist of the giving of advice and consultations, providing information in a timely manner as requested by each other, assisting each other in negotiations with other public agencies and private parties, miscellaneous items which in the judgment of DEVELOPER or OWNER's staff warrant attention, and all other duties as may be described in Exhibit D. The Representatives will be the single points of contact between the PARTIES and will be responsible for obtaining information from others within their organization or team (e.g., OWNER Representative is responsible for obtaining information from other departments within OWNER in accordance with the Project Schedule, DEVELOPER Representative is responsible for obtaining information from DEVELOPER's Consultants and Developer's General Contractor in accordance with the Project Schedule).

3.2 All of the activities described in Exhibit D, however, shall be the primary responsibility of DEVELOPER to schedule, initiate and carry through to completion, except to the extent that they rely on receiving information from OWNER; OWNER is responsible for timely providing necessary information.

4. Non-Employment of OWNER and DEVELOPER Personnel.

4.1 DEVELOPER and OWNER agree that they will neither negotiate, offer, nor give employment to any full-time, regular employee of the other PARTY in professional classifications of the same skills required for the performance of this AGREEMENT who is involved in this PROJECT in a participatory status during the life of this AGREEMENT regardless of the assignments said employee may be given or the days or hours employee may work.

4.2 Nothing in this AGREEMENT shall be deemed to make DEVELOPER, or any of DEVELOPER's employees or agents, agents or employees of OWNER, or deemed to make OWNER, or any of OWNER's employees or agents, agents or employees of DEVELOPER. DEVELOPER shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work, provided that DEVELOPER is in compliance with the terms of this AGREEMENT. Anything in the AGREEMENT which may appear to give OWNER the right to direct DEVELOPER as to the details of the performance of the work or to exercise a measure of control over DEVELOPER shall mean that DEVELOPER shall follow the desires of OWNER, only in the results of the work.

5. Non-Discrimination, Prevailing Wages and Project Labor Agreement

5.1 In the performance of this AGREEMENT, DEVELOPER agrees that it will comply with the requirements of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons.

5.2 DEVELOPER acknowledges that a violation of this provision shall subject DEVELOPER to all the penalties imposed for a violation of the California Labor Code. The Development Agreement will include a trade contractor procurement plan that will comply with applicable competitive bidding laws and OWNER's local vendor preference policies.

5.3 Employee Wages; Records; Apprentices. To the extent required by law, DEVELOPER shall require that its General Contractor pay prevailing wages to its employees on subcontract in excess of \$1,000.00 (one thousand dollars). Copies of the prevailing rate of per diem wages are on file at Owner's principal office. DEVELOPER shall require that its General Contractor comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. DEVELOPER shall require that its General Contractor and all subcontractors shall keep and maintain accurate payroll records of employees working in relation to this Order, and certify these records upon request, pursuant to

Labor Code Section 1776. DEVELOPER shall require that its General Contractor comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to this Order. DEVELOPER shall require that for any contract that exceeds \$2000 and is funded with federal funds, that its General Contractor pay federal Davis Bacon wages and comply with applicable federal requirements.

5.4 Department of Industrial Relations Registration and Reporting. In accordance with California Civil Code Section 1771.4, the Phase 2 PROJECT work is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Pursuant to the provisions of Section 1771.1 of the California Labor Code, DEVELOPER shall require that its General Contractor and all subcontractors be currently registered and qualified to perform public work pursuant to Civil Code Section 1725.5. DEVELOPER shall require that any bids submitted without proof that the General Contractor and any listed subcontractor(s) are currently registered and qualified to perform public work, pursuant to Labor Code Section 1725.5, not be accepted.

5.5 Notice Of Prevailing Wage Requirements. Notice is hereby given that pursuant to Labor Code 1771, prevailing wages are required to be paid for any work that is a “public work” as defined in Labor Code Section 1720(a). DEVELOPER acknowledges that the Work of this AGREEMENT is a public work. To the extent required by law:

(a) DEVELOPER shall require that its General Contractor pay to persons performing labor in and about the PROJECT an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which PROJECT work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to perform the work of the PROJECT. DEVELOPER shall require that its General Contractor cause a copy of such determination of the prevailing rate of per diem wages to be posted at each Site.

(b) DEVELOPER shall require that its General Contractor forfeit, as a penalty to Owner, Two Hundred Dollars (\$200.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any Work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. DEVELOPER shall require that the sums and amounts which shall be forfeited pursuant to this Paragraph and the terms of the California Labor Code shall be withheld and retained from payments due to DEVELOPER’S General Contractor under the Contract Documents, pursuant to this Section 2.010 and the California Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either

the State Department of Industrial Relations or by Owner. The Labor Commissioner pursuant to California Labor Code §1775 shall determine the final amount of forfeiture.

(c) DEVELOPER shall require that its General Contractor insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the California Labor Code.

(d) DEVELOPER shall obtain from its General Contractor a stipulation that it shall comply with all applicable wage and hour laws, including without limitation, California Labor Code §§ 1776 and 1810-1815 and that failure to so comply shall constitute a default under the DEVELOPER's contract with General Contractor.

(e) DEVELOPER shall require that its General Contractor and its Subcontractors be responsible for compliance with Labor Code §§ 1810-1815.

(f) Eight hours of labor performed in execution of the Contract constitutes a legal day's work. The time of service of any workman employed on the Project is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week.

(g) DEVELOPER shall require that its General Contractor and its Subcontractors keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the Project. The record shall be kept open at all reasonable hours to the inspection Owner and to the Division of Labor Standards Enforcement.

(h) DEVELOPER shall require that its General Contractor or its Subcontractors shall, as a penalty to Owner, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract Documents by the respective General Contractor or Subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Labor Code §§ 1810-1815.

(i) DEVELOPER shall require that work performed on the PROJECT by employees of DEVELOPER'S General Contractor or its Subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

(j) DEVELOPER shall require that its General Contractor and its Subcontractors shall be responsible for compliance with Labor Code Section 1776. Further, this Project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations.

(k) DEVELOPER shall require that its General Contractor and Subcontractors keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work of the Contract Documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.

(l) DEVELOPER shall require that the payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor as required by Labor Code Section 1776.

(m) DEVELOPER shall require that its General Contractor inform Owner of the location of records enumerated above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(n) DEVELOPER shall require that its General Contractor or Subcontractor comply within ten days subsequent to receipt of a written notice requesting the records enumerated above. DEVELOPER shall require that in the event that the Contractor or Subcontractor fails to comply with the ten-day period, he or she shall, as a penalty to Owner on whose behalf the contract is made or awarded, forfeit \$100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. DEVELOPER'S General Contractor shall not be subject to a penalty assessment pursuant to this Paragraph due to the failure of a Subcontractor to comply with this Paragraph.

5.6 In order to avoid any delay to the PROJECT because of strikes, sympathy strikes, work stoppages, picketing, lockout, slowdowns, or other labor interferences that could disrupt and hinder the completion of the PROJECT, the DEVELOPER shall cause its General Contractor for PHASE 2 SERVICES to enter into a Project Labor Agreement with the applicable trades union for any and all covered work for the PROJECT. In addition, the Project Labor Agreement will create more local job opportunities for the Owner's residents.

6. Employee Eligibility Verification

6.1 DEVELOPER warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens, and others and that all its employees performing work under this AGREEMENT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. DEVELOPER shall obtain from all employees performing work hereunder all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations, including but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324 *et seq.*, as they currently exist and as they may be hereafter

amended. DEVELOPER shall retain all such documentation for all covered employees for the period prescribed by the law.

6.2 DEVELOPER shall indemnify, defend with counsel approved in writing by OWNER, and hold harmless, OWNER, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against DEVELOPER or OWNER or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this AGREEMENT.

7. Termination of AGREEMENT for Cause.

7.1 If DEVELOPER breaches any material covenant or condition of this AGREEMENT, then OWNER may send DEVELOPER a notice of default setting forth the nature and extent of the alleged default and, if not otherwise self-evident, the actions necessary to cure the alleged default. DEVELOPER must cure the default within fifteen (15) days after receipt of the notice of default (or if the default is not capable of being cured in such time, DEVELOPER must commence necessary actions to timely remedy such default and thereafter diligently prosecute such cure to completion). If DEVELOPER fails to timely cure the breach, then OWNER shall have the right to terminate this AGREEMENT upon three (3) days additional written notice prior to the effective day of termination.

7.2 DEVELOPER shall have the opportunity to cure the alleged breach prior to termination as set forth in Section 7.1.

7.3 Should any OWNER termination for cause subsequently be found to be without merit, such termination for cause shall automatically be converted to a termination for convenience.

7.4 In the event the alleged breach is not cured by DEVELOPER prior to termination, all work performed by DEVELOPER pursuant to this AGREEMENT, which work has been reduced to plans or other documents, shall become the property of and be made available to OWNER (subject to the provisions of Section 22).

7.5 If OWNER breaches any material covenant or condition of this AGREEMENT, then DEVELOPER may send OWNER a notice of default setting forth the nature and extent of the alleged default and, if not otherwise self-evident, the actions necessary to cure the alleged default. OWNER must cure the default within fifteen (15) days after receipt of the notice of default or if the default is not capable of being cured in such time, then OWNER must commence to cure the default within fifteen (15) days after receipt of the notice of default and thereafter diligently prosecute such cure to completion. If OWNER fails to timely cure the breach, then DEVELOPER shall have the right to terminate this AGREEMENT upon three (3) days additional written notice prior to the effective day of termination.

7.6 OWNER shall have the opportunity to cure the alleged breach during the notice periods set forth herein prior to termination as set forth in Section 7.5.

7.7 If the PROJECT and/or SERVICES are delayed in the aggregate more than 60 calendar days from the Schedule agreed to by the PARTIES for PHASE 1 SERVICES (Exhibit C) because of suspensions, delays, or interruptions of the PROJECT by OWNER (“OWNER-CAUSED DELAYS”), then DEVELOPER may terminate the AGREEMENT by providing fifteen (15) days’ written notice to OWNER of DEVELOPER’S intention to terminate the AGREEMENT. OWNER-CAUSED DELAYS, as used in this Section 7.7 shall not include any force majeure delays under Section 37 that prevent OWNER’s performance (“OWNER FORCE MAJEURE DELAYS”). If the PROJECT and/or SERVICES are delayed in the aggregate more than 60 calendar days from the Schedule for PHASE 1 SERVICES (Exhibit C) because of OWNER FORCE MAJEURE DELAYS, then DEVELOPER may terminate the AGREEMENT by providing fifteen (15) days’ written notice to OWNER of DEVELOPER’S intention to terminate the AGREEMENT. For clarity, it is the PARTIES’ intent to track the OWNER-CAUSED DELAYS and OWNER FORCE MAJEURE DELAYS separately, each with their own 60-day limit, and DEVELOPER may only terminate if one of the limits has been exceeded. Additionally, instead of terminating the AGREEMENT, the PARTIES may negotiate a mutually acceptable change order to equitably increase the time and scope arising from the OWNER-CAUSED DELAYS and/or OWNER FORCE MAJEURE DELAYS. If DEVELOPER terminates the AGREEMENT under this provision, OWNER shall pay DEVELOPER for all SERVICES performed, all previously-authorized unpaid costs incurred, and all reimbursable expenses incurred prior to the effective date of the termination, in accordance with Exhibit E, and such payment shall be DEVELOPER’s sole remedy for termination of this AGREEMENT under this provision.

8. Termination of AGREEMENT for Convenience.

8.1 Notwithstanding any other provision of the AGREEMENT, OWNER may at any time, and without cause, terminate this AGREEMENT in whole or in part, upon not less than thirty (30) calendar days’ written notice to DEVELOPER. Such termination shall be effected by delivery to DEVELOPER of a written notice of termination specifying the effective date of the termination and the extent of the Work to be terminated.

8.2 DEVELOPER shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by OWNER.

8.3 OWNER shall pay DEVELOPER for all costs paid, or incurred but unpaid for the Work completed and reimbursable expenses incurred prior to the effective date of the termination, according to Exhibit E, and such payment shall be DEVELOPER’s sole remedy under this AGREEMENT.

8.4 Under no circumstances will DEVELOPER be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Section 8.

8.5 DEVELOPER shall insert in all Consultants' contracts that the Consultant shall stop work on the date of and to the extent specified in a written notice of termination, and shall require Consultants to insert the same condition in any lower tier contracts.

9. Term.

The term of this AGREEMENT is not to exceed 11 months commencing upon approval and execution of this AGREEMENT by OWNER and in accordance with the schedule described in Exhibit C. The term of the Agreement may be mutually extended by the Parties as an Amendment to this AGREEMENT.

10. Compensation and Extra Work.

For the SERVICES authorized under this AGREEMENT, DEVELOPER shall be compensated in accordance with the following:

10.1 OWNER will pay DEVELOPER the compensation (costs and fee) for the PHASE 1 SERVICES as set forth in Exhibit E. DEVELOPER will also be entitled to reimbursement of out-of-pocket costs as they are incurred, which costs are identified in Exhibit E. Reimbursable expenses will be paid at cost and will not exceed what is shown in Exhibit E without an amendment to this Agreement. DEVELOPER may allocate savings from other line items to cover cost overruns in other line items or the reimbursable expenses budget, with notice to OWNER, so long as doing so does not exceed the total cost set forth in Exhibit E. DEVELOPER's fee and DEVELOPER's overhead for PHASE 1 SERVICES will be fixed amounts as set forth in Exhibit E. DEVELOPER's fixed fee and DEVELOPER's fixed overhead for DEVELOPER's PHASE 1 SERVICES will be paid in equal monthly installments (the number of installments equal to the number of months for the PHASE 1 SERVICES duration under the PROJECT Schedule in Exhibit C); provided, however, that if DEVELOPER completes the PHASE 1 SERVICES in less time, then the unpaid balance of DEVELOPER's fixed fee and DEVELOPER's fixed overhead is due with the final payment to DEVELOPER under this AGREEMENT (i.e., the equal monthly installments are for billing purposes, but the intent is that OWNER will pay the full amount of DEVELOPER's fixed fee and DEVELOPER'S fixed overhead). If the PHASE 1 SERVICES takes more time due to causes within DEVELOPER's control, then DEVELOPER is not entitled to additional DEVELOPER's fixed fee and DEVELOPER'S fixed overhead compensation. DEVELOPER would only be entitled to additional fixed fee or fixed overhead for delays caused by OWNER-CAUSED DELAYS or increases in scope requested by OWNER that extend the total scheduled time of PHASE 1 SERVICES.

10.2 DEVELOPER's payment applications to OWNER for PHASE 1 SERVICES shall include, but not be limited to the following:

- DEVELOPER's name and address
- DEVELOPER's remittance address, if different from (A), above
- Name of OWNER agency/department

- Delivery/service address
- Contract number
- Service Date
- Description of Services
- Total
- Taxpayer ID number
- A list of all Consultants with whom DEVELOPER has entered into contracts, the amount of each Consultant contract, the amount requested for any Consultants in the Application for Payment and the amount to be paid to DEVELOPER from such progress payment.
- A payment breakdown for the PHASE 1 SERVICES for which DEVELOPER and each Consultant is responsible; such breakdown being submitted on a uniform standardized form reasonably approved by OWNER. The form shall reflect (1) description of services, (2) total value, (3) percent of the services completed to date, (4) value of services completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent completed, and (8) value of services completed to date.
- DEVELOPER's computerized summary of all costs, disbursements and activities for the most recent billing cycle.
- Any other information reasonably requested by OWNER.

10.3 Within 30 days of receiving DEVELOPER's application for payment, OWNER will notify DEVELOPER in writing of any objections to DEVELOPER's application for payment. Within 30 days of receiving an undisputed, properly completed application for payment, OWNER shall pay to DEVELOPER a sum equal to the value of the work completed since the commencement of the work, less all previous payments. OWNER shall not withhold retention. No progress payment by OWNER shall be considered OWNER's acceptance of any part of the SERVICES.

10.4 The compensation that OWNER pays to DEVELOPER for the PHASE 2 SERVICES (if OWNER elects to proceed with the PHASE 2 SERVICES) will be determined after completion of the PHASE 1 SERVICES, as the compensation for the PHASE 2 SERVICES will be dependent upon the GMP calculated during the PHASE 1 SERVICES.

10.5 Budget adjustments between task line items in Exhibit E may be made by DEVELOPER at DEVELOPER's sole discretion with notice to OWNER, including the reduction of the allocated budget for a task in order to augment by this same amount the budget for any other task.

11. Laws to be Observed.

11.1 DEVELOPER acknowledges that it is familiar with and, in accordance with the standard of care, shall observe and comply with all federal, state and local laws, ordinances and

regulations in any manner affecting the conduct of the SERVICES. To the extent required by law, the provisions set forth in Govt Code §5956.6(b) are hereby incorporated into this AGREEMENT for PHASE 1 and/or will be incorporated into the Development Agreement for PHASE 2. Without limiting the foregoing, DEVELOPER must comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

11.2 DEVELOPER and OWNER, as applicable, will each comply with the requirements for user fees for use of the PROJECT as set forth in Govt Code §5956.6(b)(4)-(6).

12. Errors and Omissions.

12.1 All SERVICES performed by DEVELOPER shall be complete and shall be reviewed prior to submission. DEVELOPER understands that OWNER's review is discretionary, and DEVELOPER shall not assume that OWNER will discover errors and/or omissions. If OWNER discovers any errors or omissions prior to approving DEVELOPER's SERVICES, the SERVICES will be returned to DEVELOPER for correction. Should OWNER or others discover errors or omissions in the work submitted by DEVELOPER after OWNER's approval thereof, OWNER's approval of DEVELOPER's SERVICES shall not be used as a defense by DEVELOPER.

12.2 DEVELOPER shall require its Consultants to purchase Professional Liability Insurance in accordance with the limits described in Section 13 (unless modified by Exhibits D or E, as applicable).

13. Insurance.

13.1 General

Prior to performing SERVICES under this AGREEMENT, DEVELOPER agrees to purchase all required insurance and to deposit with OWNER Certificates of Insurance, including all endorsements required herein, necessary to satisfy OWNER that the insurance provisions of this AGREEMENT have been complied with and to keep such insurance coverage and the certificates therefor on deposit with OWNER during the entire term of this AGREEMENT. OWNER reserves the right to request that DEVELOPER provide OWNER with copies of the declarations page showing all endorsements and a copy of the insurance policies.

13.2 Deductibles and SIRs

All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any deductible or self-insured retention (SIR) in an amount in excess of \$100,000 (\$25,000 for automobile liability), shall specifically be approved by OWNER's Director of Finance ("DIRECTOR OF FINANCE") upon review of DEVELOPER's latest financial reports. The named insured shall be responsible for reimbursement of any deductible to the insurer. Upon notice of any actual or alleged claim or loss arising out of the

PHASE 1 SERVICES, the responsible party for any actual or alleged claim shall immediately ensure a defense is mounted in favor of DEVELOPER and any Additional Insured prior to the satisfaction of the full the SIR.

13.3 Failure to Maintain Insurance

If DEVELOPER fails to maintain the required insurance for the full term of this AGREEMENT, then after notice and an opportunity to cure as provided in Section 7, OWNER may terminate this AGREEMENT for cause.

13.4 Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). The insurer shall be licensed to do business in the state of California (California Admitted Carrier) or be a surplus line carrier that is eligible to issue insurance policies pursuant to California Insurance Code Sections 1765.1 and 1765.2 (i.e., listed on the California Department of Insurance List of Approved Surplus Line Insurers [<http://www.insurance.ca.gov/01-consumers/120-company/07-lasli/lasli.cfm>], is an "eligible carrier" [carriers who have met the standards set forth in California Insurance Code Section 1765.1 and the NRRRA], or surplus line carriers that are non-U.S. domiciled ("alien") non-admitted insurers and are listed on the Quarterly Listing of Alien Insurers issued by the NAIC's International Insurers Department]). If the insurance carrier does not have an A.M. Best Rating of at least A-/VII, the Director of Finance retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

13.5 Insurance Limits

(a) The policy or policies of insurance maintained by DEVELOPER shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including converge for owned, non-owned and hired vehicles	\$1,000,000 per occurrence \$2,000,000 aggregate
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim \$2,000,000 aggregate

(b) The policy or policies of insurance maintained by Developer's General Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability Including Contractor's Pollution Liability and NODS	\$5,000,000 per occurrence \$5,000,000 aggregate
Automobile Liability including converge for owned, non-owned and hired vehicles	\$5,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

(c) The policy or policies of insurance maintained by Architect shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including converge for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim \$2,000,000 aggregate

(b) Increased limits of insurance may be met with umbrella/excess coverage provided the policy is written on a Follow Form basis.

13.6 Required Coverage Forms

(a) The Commercial General Liability coverage shall be written on Insurance Service Office (ISO) form CG 00 01, or substitute form providing liability coverage as broad.

(b) The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

13.7 Required Endorsements

(a) The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certification of Insurance:

(1) An Additional Insured endorsement using ISO form CG 20 10 or CG 20 33 or a form at least broad, naming the City of Rialto, their elected and appointed officials, and employees as Additional Insured.

(2) A primary non-contributing endorsement evidencing that DEVELOPER's insurance is primary and any insurance or self-insurance maintained by OWNER shall be excess and non-contributing.

(b) The Worker's Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against OWNER and members of the City Council, its elected and appointed officials, officers, and employees.

(c) All insurance policies required by this AGREEMENT shall waive all rights of subrogation against OWNER, and members of the City Council, its elected and appointed officials, officers, and employees when acting within the scope of their appointment or employment.

(d) DEVELOPER shall notify OWNER in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to OWNER. Failure to provide written notice of cancellation may constitute a material breach of the contract, upon which OWNER may suspend or terminate this AGREEMENT.

(e) If DEVELOPER's Professional Liability policy is a "claims made" policy, DEVELOPER shall agree to maintain professional liability coverage for two years following completion of this AGREEMENT.

(f) The Commercial General Liability policy shall contain a severability of interests' clause, a "separation of insureds" or "severability" clause which treats each insured separately (standard in the ISO CG 001 policy).

(g) Insurance certificates and endorsements shall be forwarded to OWNER at the address listed in Section 26.

(h) The procuring of such required policy or policies of insurance shall not be construed to limit DEVELOPER's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT, nor act in any way to reduce the policy coverage and limits available from the insurer.

14. Indemnification.

To the fullest extent permitted by law, DEVELOPER agrees to, indemnify, defend with counsel approved in writing by OWNER, and hold OWNER, their elected and appointed officials, officers, contractors, and employees (“OWNER Indemnitees”) harmless from any claims, demands or liability) to the extent arising out of, pertaining to, or relating to (a) death or injury to people or damage or injury to property in connection with the performance of the PHASE 1 SERVICES; (b) the negligence, recklessness, or willful misconduct of DEVELOPER or anyone for whom DEVELOPER is liable; (c) any liability under workers' compensation acts, disability benefits acts, and other employee benefit acts (provided, however, the indemnity obligation hereunder shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable under such acts); or (d) any liability stemming from the wrongful performance of PHASE 1 SERVICES. Notwithstanding the foregoing, DEVELOPER is not obligated under this AGREEMENT to indemnify any OWNER Indemnitees from any liability to the extent such liability is ultimately determined to be due to the active negligence, sole negligence, or willful misconduct of OWNER Indemnitees. If judgment is entered against DEVELOPER and OWNER by a court of competent jurisdiction because of the concurrent active negligence of DEVELOPER and OWNER or OWNER Indemnitees, then DEVELOPER and OWNER agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve DEVELOPER of any insurance requirements or obligations created elsewhere in this AGREEMENT. DEVELOPER shall require indemnification of OWNER in all of its contracts, including but limited to the Developer’s General Contractor and Architect and their subcontractors and subconsultants.

15. Amendments.

No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES; no oral understanding or agreement not incorporated herein shall be binding on either of the PARTIES; and no exceptions, alternatives, substitutes or revisions are valid or binding on OWNER unless authorized by OWNER in writing.

16. Successors and Assigns.

The terms and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the PARTIES hereto and their successors and assigns.

17. Entirety.

This AGREEMENT contains the entire agreement between the PARTIES with respect to the matters provided for herein.

18. Severability.

If any part of this AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

19. Binding Obligation.

The PARTIES to this AGREEMENT represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity enforceable in accordance with its terms. The rights and executory obligations of the PARTIES under this AGREEMENT will survive the expiration or termination of this AGREEMENT.

20. Governing Law and Venue.

This AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in San Bernardino County, California, and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

21. Staffing.

DEVELOPER will maintain an adequate number of competent and qualified persons, as reasonably determined by OWNER, to ensure acceptable and timely completion of the scope of SERVICES described in this AGREEMENT throughout the period of those SERVICES.

22. Ownership of Documents.

All work product (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file, and other related documents which are prepared by or for DEVELOPER specifically in the performance of this AGREEMENT (collectively referred to as "PROJECT DOCUMENTS") are the property of DEVELOPER (and DEVELOPER's Consultants). Upon final payment by OWNER, OWNER will have a perpetual, irrevocable, fully-paid, royalty-free, assignable license to the PROJECT DOCUMENTS used on this PROJECT as reasonably required to make use of the PROJECT DOCUMENTS for the sole purpose of completing the design, construction, remodeling, expansion and/or repair or remodeling of the PROJECT. DEVELOPER (and its Consultants) may retain a copy of all such PROJECT DOCUMENTS. It is the intent of the PARTIES that, upon final payment for the PROJECT DOCUMENTS, OWNER will have the exclusive rights to use such PROJECT DOCUMENTS as a whole, but DEVELOPER and its Consultants will continue to have ownership and the rights to use, reproduce, create derivatives

from, or otherwise deploy individual components of the PROJECT DOCUMENTS. DEVELOPER and its Consultants shall be owners of the copyrights in such drawings and OWNER shall have the exclusive right to reproduce those drawings as a whole, but DEVELOPER and its Consultants shall remain free to use the particular detailed drawings contained in them and other individual components of the PROJECT DOCUMENTS on other projects. Nonetheless, if OWNER re-uses, alters, modifies or adapts the PROJECT DOCUMENTS without the written consent of DEVELOPER for the specific purpose intended, which consent DEVELOPER will not unreasonably withhold, such action will be at OWNER's sole risk and without liability or legal exposure to DEVELOPER or its Consultants, and OWNER agrees to indemnify, defend, and hold DEVELOPER and its Consultants harmless to the extent permitted by law, from all claims, damages, losses, and expenses arising out of and/or resulting from, or alleged to arise out of or result from, OWNER's reuse, alteration, modification or adaptation of the PROJECT DOCUMENTS.

23. Confidentiality.

23.1 All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to DEVELOPER in connection with the performance of this AGREEMENT shall be held confidential by DEVELOPER and/or anyone acting under contract to DEVELOPER and shall not, without the prior consent of OWNER, be used for any purposes other than the performance of the SERVICES, not be disclosed to any person, partnership, company, corporation or agency, that is not connected with the performance of the SERVICES.

23.2 Nothing furnished to DEVELOPER which is generally known among cities in Southern California shall be deemed confidential.

23.3 DEVELOPER shall not use OWNER's name or insignia, photographs of the PROJECT, or any other publicity pertaining to the PROJECT in any magazine, trade paper, newspaper, or other medium without the consent of OWNER. DEVELOPER will also use reasonable efforts to prevent anyone acting under the supervision of DEVELOPER from using OWNER's name or insignia, photographs of the PROJECT, or any other publicity pertaining to the PROJECT in any magazine, trade paper, newspaper, or other medium without the consent of OWNER.

24. Publication.

24.1 No copies of sketches, schedules, written documents, computer-based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this AGREEMENT, are to be released by DEVELOPER and/or anyone acting under the supervision of DEVELOPER to any person, partnership, company, corporation, or agency, without prior approval by OWNER, except as necessary for the performance of the

SERVICES of this AGREEMENT. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after OWNER's approval.

24.2 DEVELOPER agrees that it will not issue any news releases or make any contact with or respond to inquiries from the media in connection with either the award of this AGREEMENT or any subsequent amendment of, or effort under this AGREEMENT. DEVELOPER must first obtain review and approval of said media contact from OWNER. Any requests for interviews or information received by the media shall be referred directly to OWNER. DEVELOPER is not authorized to serve as a media spokesperson for OWNER or the PROJECT without first obtaining consent from OWNER.

25. Records and Audit/Inspections.

25.1 DEVELOPER shall keep an accurate record of costs incurred by DEVELOPER and/or Consultants employed by DEVELOPER in the performance of this AGREEMENT.

25.2 Within ten (10) days of OWNER's written request, or sooner if ordered by a court of competent jurisdiction, DEVELOPER shall allow OWNER or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this AGREEMENT. At its option, OWNER may from time to time, at its expense, cause the books, accounts, and financial information of DEVELOPER regarding the PROJECT to be audited by an independent auditor selected by OWNER. DEVELOPER agrees to cooperate with such auditor and to make any of its books, accounts and financial information of DEVELOPER regarding the PROJECT available to such auditor. If an audit discloses a material discrepancy (*i.e.*, a discrepancy by more than five percent in the aggregate with respect to the expenses or fees billed by DEVELOPER), DEVELOPER shall reimburse OWNER for the cost of the audit up to a cap of \$50,000. Any adjustments in amounts due and owing by either Party to the other Party shall be promptly paid by the Party owing the amounts due.

25.3 DEVELOPER shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of three (3) years after termination or completion of the AGREEMENT or until resolution of any claim or dispute between the PARTIES, whichever is later. Prior to discarding such material, DEVELOPER shall offer the above material to OWNER.

25.4 Should DEVELOPER cease to exist as a legal entity, records pertaining to this AGREEMENT shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to OWNER.

26. Notices.

26.1 Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the PARTIES' project managers' routine exchange of information and cooperation during the SERVICES.

26.2 Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt, or no greater than five (5) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

26.3 All communications shall be addressed to the appropriate PARTY at the address stated herein or such other address as the PARTIES hereto may designate by written notice from time to time in the manner aforesaid.

For DEVELOPER:

Name: Griffin / Swinerton, LLC
Address: 1 Technology Drive, Building I, Suite 829
City: Irvine, CA 92618
Attn: Roger Torriero and Korin Crawford
Phone: 949.497.9000
E-mail: rtorriero@griffinholdings.net;
kcrawford@griffinswinerton.com

For OWNER:

Name: Marcus Fuller, City Manager
Address: City of Rialto
150 S. Palm Avenue
City: Rialto, CA 92376
Phone: Office: 909-820-2528
E-mail: mfuller@rialtoca.gov

27. Attorney's Fees.

In any action or proceeding to enforce or interpret any provision of this AGREEMENT, or where any provision hereof is validly asserted as a defense, the prevailing PARTY will be entitled to recover its reasonable attorney's fees, costs and expenses.

28. Interpretation.

28.1 This AGREEMENT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT.

28.2 In addition, each PARTY acknowledges that it has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite having the opportunity to do so.

28.3 Each PARTY further acknowledges that they have not been influenced to any extent whatsoever in executing this AGREEMENT by any other PARTY hereto or by any person representing them, or both.

28.4 Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this AGREEMENT against the PARTY that has drafted it is not applicable and is waived.

28.5 The provisions of this AGREEMENT shall be interpreted in a reasonable manner to affect the purpose of the PARTIES and this AGREEMENT.

29. Headings.

The various headings and numbers herein, the grouping of provisions of this AGREEMENT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

30. Acceptance.

Unless otherwise agreed to in writing by OWNER acceptance shall not be deemed complete unless in writing and until all the SERVICES have actually been received, inspected, and tested to the satisfaction of OWNER.

31. Consent to Breach not Waiver.

31.1 No term or provision of this AGREEMENT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the PARTY claimed to have waived or consented.

31.2 Any consent by any PARTY to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

32. Remedies Not Exclusive.

The remedies for breach set forth in this AGREEMENT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this AGREEMENT does not preclude resort by either PARTY to any other remedies provided by law.

33. Independent Contractor.

As referenced in Section 4 of this AGREEMENT, DEVELOPER shall be considered an independent contractor. Neither DEVELOPER, its employees nor anyone working under DEVELOPER shall qualify for workers' compensation or other fringe benefits of any kind through OWNER.

34. Changes.

DEVELOPER shall make no changes to the PROJECT or perform any additional work other than the SERVICES without OWNER's specific written approval.

35. Assignment.

The terms, covenants, and conditions contained herein shall apply to and bind the approved heirs, successors, executors, administrators and assigns of the PARTIES. Furthermore, neither the performance of this AGREEMENT nor any portion thereof may be assigned or sub-contracted by DEVELOPER, by any means whatsoever including but not limited to acquisition by merger, without the express written consent of OWNER or as specifically permitted herein. Except as set forth herein, any attempt by DEVELOPER to assign or sub-contract the performance or any portion thereof of this AGREEMENT without the express written consent of OWNER shall be invalid and shall constitute a breach of this AGREEMENT. As set forth hereinabove, OWNER hereby consents to DEVELOPER subcontracting the architectural/engineering services to LPA, Inc. and pre-construction services to Swinerton Builders.

36. Public Records Act.

Pursuant to the California Public Records Act ("CPRA"), Government Code Sections 6250 et seq., all records provided by DEVELOPER to OWNER are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to OWNER, and within ten (10) days of receiving a Public Records Act Request, DEVELOPER shall identify any records it believes are exempt from disclosure, identify the applicable CPRA exemption, and mark or otherwise conspicuously identify those documents as CONFIDENTIAL. If the disclosure of such records is subsequently requested or determined by OWNER to be required, OWNER will notify DEVELOPER of such request or determination. Unless DEVELOPER obtains a protective order issued by a court restricting disclosure of the requested records, OWNER may disclose the records if OWNER determines that the Public Records Act requires disclosure. DEVELOPER shall indemnify and defend OWNER in any action to compel disclosure of such records that DEVELOPER has identified as exempt from CPRA and requested OWNER not to disclose.

37. Force Majeure.

Neither PARTY shall be assessed with damages or unsatisfactory performance penalties during any delay beyond the time needed for the performance of this AGREEMENT caused by

any act of God, fires, floods, earthquakes, other natural disasters, epidemics and pandemics (other than COVID-19 or variants), nuclear incidents, strikes, lockouts, war, civil disorder, governmental statutes or regulations enacted or imposed after the fact, or other cause beyond its reasonable control, during which said PARTY is unable to perform, provided said PARTY gives written notice of the cause of the delay to the other PARTY within seven (7) days of the start of the delay and avails itself of any available remedies.

38. Calendar Days.

Any reference to the word “day” or “days” herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

39. Compliance with Laws.

DEVELOPER represents and agrees that the PHASE 1 SERVICES shall comply with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by OWNER in its governmental capacity and all other laws applicable to the SERVICES at the time SERVICES are provided to and accepted by OWNER, in accordance with the standard of care.

40. Authorization.

Each signatory to this AGREEMENT represents that it is authorized to execute and cause the respective PARTY to be bound by this AGREEMENT.

41. Availability of Funds.

The obligation of OWNER is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating OWNER to expend or as involving OWNER in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

42. Conflict of Interest DEVELOPER Personnel.

42.1 DEVELOPER shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of OWNER. This obligation shall apply to DEVELOPER, DEVELOPER’s employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and SERVICES hereunder.

42.2 DEVELOPER’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of OWNER.

43. Title to Data.

43.1 All materials, documents, data or information obtained from OWNER data files or any OWNER medium furnished to DEVELOPER in the performance of this AGREEMENT, will at all times remain the property of OWNER. Such data or information may not be used or copied for direct or indirect use by DEVELOPER after completion or termination of this AGREEMENT without the express written consent of OWNER.

43.2 All materials, documents, data or information, including copies furnished by OWNER and loaned to DEVELOPER for its temporary use, must be returned to OWNER at the end of this AGREEMENT unless otherwise specified by OWNER.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT on the dates opposite their respective signatures:

GRIFFIN / SWINERTON, LLC
a Delaware limited liability company
Contractor's License Number 1045588

Date: _____

By: _____
Signature

Roger Torriero, Principal
Print Name & Title

(If a corporation, the document must be signed by two corporate officers. The 1st must be either Chairman of the Board, President or any Vice President.)

Date: _____

By: _____
Signature

Korin Crawford, Executive Vice President
Print Name & Title

(If a corporation, the 2nd signature must be either the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.)

CITY OF RIALTO
a California municipal corporation

By: _____
MARCUS FULLER
City Manager

Date Signed: _____

ATTEST:

Barbara McGee
City Clerk

APPROVED AS TO FORM

ERIC S. VAIL
City Attorney

EXHIBIT A

DESCRIPTION OF LAND

The land referred to herein is situated in the State of California, County of San Bernardino and described as follows:

Property Address: 128 N Willow Avenue, Rialto, CA 92376

APN: 0130-191-11-0-000

Parcel 1 of Parcel Map No. 13781 in the City of Rialto, as shown by map on file in Book 167 Page 11 of Parcel Maps, Records of San Bernardino County, California. Excepting therefrom all of the minerals and mineral ores of every kind, including all petroleum, oil, natural gas and other hydrocarbon substances and products together with rights of ingress and egress beneath the surface of said land below the surface of 500 feet by Deed recorded August 5, 1966 in Book 6675 Page 129 of Official Records.

APN: 0130-191-11-0-000

(End of Legal Description)

EXHIBIT B

DESCRIPTION OF PROJECT

The new Police Station will encompass a two-story concrete police administration building of approximately 40,000 square feet, support building of approximately 17,000 square feet (with final sizing to be determined in the initial project program verification activity of PHASE 1), and on-site parking.

EXHIBIT C

SCHEDULE FOR PHASE 1 SERVICES

See attached.

RIALTO POLICE STATION

EXHIBIT C SCHEDULE

	2022				2023								2024								2025								2026																	
	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12						
PHASE 1 - PREDEVELOPMENT, DESIGN, GMP																																														
Program validation																																														
1. Schematic Design/Cost Estimate/Approvals																																														
2. Design Development/Cost Estimate/Approvals																																														
3. Developer GMP Estimate, City approve DA, and Financing																																														
CEQA documentation by City																																														
5. Notice To Proceed for Construction Documents/Permits																																														
PHASE 2 - FINAL CD'S AND CONSTRUCTION																																														
PD HQ - Relocation, demo, grading, utilities - CD's and permitting																																														
PD HQ - Foundations and shell structure - CD's and permitting																																														
PD HQ - Complete CD's and permitting																																														
PD HQ - Construction																																														
PD HQ - Move in																																														
Demo old PD HQ and complete sitework																																														
Support - Complete CD's and permitting																																														
Support - Construct temporary parking lot at lumber yard																																														
Support - Construction																																														
Support - Move in																																														
Final Project Completion																																														

Local agency approvals are included in time frames above

EXHIBIT D

SCOPE OF PHASE 1 SERVICES

See attached.

EXHIBIT D
SCOPE – PHASE 1 SERVICES
NEW RIALTO POLICE STATION
CITY OF RIALTO, CA

PHASE 1: Program Validation, Schematic Design, Design Development

1. General PROJECT Responsibilities of the DEVELOPER Throughout all Phases

- a. The intent is that completion of this Schematic Design and Design Development Scope of Services will culminate in the development of a Guaranteed Maximum Price (“GMP”) for inclusion in the Development Agreement for further development, financing, design, and construction of the PROJECT.
- b. DEVELOPER shall furnish, or cause to be furnished, all professional services, equipment, facilities, materials and labor necessary to perform in a complete, skillful and professional manner the PROJECT Work as described herein within the time periods set forth in the Schedule attached to this AGREEMENT as Exhibit C and incorporated by this reference, as it may be adjusted pursuant to this AGREEMENT.
- c. DEVELOPER, working in close cooperation with the OWNER, shall provide PROJECT leadership, management, direction, and general administration of the entire PROJECT team for the duration of PHASE 1 of the PROJECT. DEVELOPER shall work with the OWNER to define project goals and shall be responsible to assure team alignment with PROJECT goals at all times.
- d. Provide consultation and assistance to the OWNER concerning all matters with respect to the Schematic Design and Design Development of the PROJECT.
- e. Participate in periodic meetings with senior staff, elected officials, and community representatives as needed or requested to present periodic PROJECT updates and assist in securing required approvals.
- f. Understand and implement the PROJECT objectives and act in OWNER’s best interest at all times.
- g. Function as liaison and coordinate with OWNER staff as directed.
- h. Chair and document all team meetings.
- i. Retain the entire architect/engineering (“A-E”) project and consulting team and manage and administer their contracts throughout the Schematic Design and Design Development phase.
- j. Retain its General Contractor and manage and administer the contract throughout the entire Pre-Development phase.
- k. Create and regularly update the Master Project Development Schedule to identify and manage all phases of the PROJECT including Pre-Development, Preconstruction, Design, Permitting, Construction, Occupancy, Facility Training, and Close-Out.
- l. Create and regularly update the comprehensive PROJECT Development Budget to include all aspects of total PROJECT costs including design, construction, geotechnical, environmental, testing and inspections,

furnishings, utility connections, administration and other related costs.

Phase 1A - Program Validation Scope of Services

2. Retain and manage the activities and services of consultants to complete the following work:

- a. Initial project team meetings
- b. Program validation
- c. Surveying and preparation of base map
- d. Geotechnical investigation and report
- e. Civil Engineering
- f. Utility company coordination
- g. Design Review presentation with related documents
- h. Phase 1 Environmental Site Assessment

Phase 1-B: Schematic Design, Design Development, Guaranteed Maximum Price (GMP) Scope of Services

3. Schematic Design Phase

- a. Perform Constructability Reviews and Value Engineering.
- b. Two design progress presentations to the City Council or its designated representatives.
- c. Perform agency consulting, review, and approval services including: Agency consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials, appearances on the OWNER's behalf at agency meetings.
- d. Provide OWNER supplied data coordination services including: Review and coordination of complete as-built drawings, AutoCAD backgrounds and base maps and data furnished for the PROJECT as a responsibility of the OWNER.
- e. Perform and provide Geotechnical investigation and reports.
- f. Perform potholing and survey existing of underground utilities, if warranted.
- g. Prepare and submit PROJECT Schematic Design Documents for the OWNER's review and approval. Services and tasks will include:
 - i. Architectural/Engineering services responding to program requirements and consisting of preparation of:
 1. Building Shell and Core design.
 2. Site, floor and roof plans.
 3. Preliminary sections and elevations.
 4. Preliminary selection of building systems and materials.
 5. Perspective sketches.
 - ii. Electrical Engineering Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual design solutions for:
 1. Power service and distribution.
 2. Lighting Design.
 3. Special electrical systems.

4. General space requirements.
5. Fire detection and alarm requirements.
6. Security requirements.
7. Communication requirements.
8. Emergency power system requirements.
- iii. Mechanical and Plumbing Engineering Services consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
 1. Heating, ventilating and air conditioning.
 2. Plumbing.
 3. Fire protection.
 4. Special mechanical systems.
 5. General space requirements.
- iv. Structural Engineering Services consisting of recommendations regarding basic structural materials and systems, analyses and development of conceptual design solutions for:
 1. A predetermined structural system.
 2. Preliminary foundation plan.
 3. Preliminary sketches and descriptions of structural work.
- v. Civil Engineering Services consisting of development of schematic design solutions for site components. Conceptual design solutions will be developed for the following:
 1. On-site utility exhibit.
 2. Fire department access
 3. Drainage systems concept.
 4. Schematic Grading.
 5. Storm water management requirements.
- vi. Landscape Architecture services consisting of evaluating alternate materials, systems, equipment and development of conceptual design solutions for the following:
 1. Hardscape areas and materials.
 2. Plant palette and tree forms.
 3. Planting Plan.
- vii. Design of automated access control and video surveillance systems
- viii. Utilities coordination.
- ix. Interior Architecture. Interior Architecture includes:
 1. Initial meeting with OWNER user groups to establish the goals and objectives for the PROJECT. The meeting will be followed up by departmental program interviews in order to obtain and define the OWNER's program requirements.
 2. Program validation services, which will include:
 - a. Lead the initial meeting with the OWNER's Project Manager and user group to confirm and validate the OWNER'S PROJECT objectives and validate program requirements including:
 - i. PROJECT budget objectives for construction, furniture, fixtures, cabling, equipment, etc.
 - ii. Support areas and amenities.

- iii. Summarize programmatic requirements into a final report and Basis of Design to be provided for the OWNER's approval.
- 3. Preliminary "Test Fits:" Upon the OWNER's approval of the Space Program Document, prepare a Preliminary Test Fit Plans and Interiors Schematic Design for OWNER and user group review and approval. Services and tasks will include:
 - a. Prepare one (1) Preliminary Test Fit Plan in accordance with the approved Space Program Document and the OWNER's adjacency requirements for each building:
 - b. Based upon space studies of maximum efficiency bay depths, mullion and columns spacing.
- 4. Revisions include: One minor revision to the Test Fit Plans to obtain OWNER's and user group's approval.
- 5. Preliminary Space Plans: Upon the OWNER's approval of the Test Fit Plan Options, develop Preliminary Space Plans for the OWNER's and user group's review and approval. Services and tasks will include the following for each building location:
 - a. Develop Preliminary Space Plans, with conceptual furniture and equipment layouts, for the OWNER's review and approval.
 - b. Include functional layouts for all Specialty Areas and Support Spaces.
 - c. Distribute Preliminary Space Plans to the OWNER and user groups for review. Conduct two (2) review meetings to secure comments and approval of the Preliminary Space Plans.
- 6. Preliminary space Plan Revisions include up to two minor revisions to the Preliminary Space Plans to obtain OWNER's and user group's approval.
- 7. Interiors Schematic Design: Upon the OWNER's approval of the Preliminary Space Plans, develop Interiors Schematic Design Documents for the OWNER's and user group's review and approval. Services and tasks will include the following for each building location:
 - a. Obtain completed Equipment Survey Forms from the user group, keyed to the approved Space Plan, and clarify any outstanding information.
 - b. Identify preliminary materials and finishes to confirm quality level for OWNER and user group review and approval, based upon PROJECT budget, goals and objectives. Materials will be presented in a loose format. Three (3) preliminary material palettes will be prepared.
 - c. Prepare preliminary Outline Specifications of tenant improvements including but not limited to; ceiling treatments, flooring treatments and materials, wall types, door and hardware types, interior glazing, millwork and casework, lighting fixtures, FF&E, interior signage and graphics, AV criteria, acoustical criteria, etc.

8. Provide one Interiors Schematic Design Presentation with the OWNER and Tenant, to obtain comments and secure approval.
 9. Finalize the Interiors Schematic Design Documents to include OWNER and Tenant comments.
 10. Interiors Schematic Design Revisions include: one minor revision to the Schematic Design Documents.
- h. Examine the PROJECT site and surrounding areas to become familiar and ascertain potential issues that may be reasonably determined by a visual inspection that will need to be addressed in the design.
 - i. Prepare and issue a preliminary site logistics plan illustrating construction project ingress and egress, staging, haul routes, management office location, etc.
 - j. Prepare an estimate of PROJECT construction costs based on the Schematic Design Documents. Prepare estimates of all major portions of the work, and obtain preliminary estimates from key trade subcontractors, analyze the differences, and make appropriate adjustments before finalizing the estimate.
 - k. Provide a Value Analysis report based on the issued Schematic Design Documents. Include suggestions for alternative building systems where appropriate. Alternatives to include opinions regarding impact on PROJECT cost, schedule, quality, and operability.
 - l. Develop a summary level preliminary construction schedule to complement the Schematic Level construction estimate.
 - m. Deliverables at completion of Schematic Design phase
 - i. One approved Schematic Design documents package including:
 1. Approved Space Program and Executive Summary Visioning Document.
 2. One set of approved Preliminary Interior Test Fit Plans.
 3. One set of approved Space Plans.
 - ii. Preliminary site logistics plan.
 - iii. Summary level construction schedule.
 - iv. Basis of Design Report
 - v. Preliminary Project Master Development Budget
 - vi. Preliminary Project Master Development Schedule.

4. Design Development Phase

- a. Perform Constructability Reviews and Value Engineering.
- b. Two (2) design progress presentations to the City Council or its designated representatives.
- c. Perform agency consulting, review, and approval services including: Agency consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials, appearances on the OWNER's behalf at agency meetings
- c. Based on the OWNER's approval of the Schematic Design Documents, and on the OWNER's authorization of any adjustments in the PROJECT requirements, schedule, and the budget for the cost of the work, DEVELOPER shall prepare Design Development Documents for the OWNER's approval. The Design Development Documents shall illustrate the further development of the approved Schematic Design Documents.

- d. Provide Architectural/Engineering services consisting of continued development and expansion of Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the PROJECT through:
 - i. Plans, sections and exterior elevations.
 - ii. Typical construction details.
 - iii. Final materials selections.
 - iv. Equipment layouts.
 - v. Outline Specifications.
 - vi. Interior Design Services to establish the following shell and core components:
 - 1. Interior construction of the PROJECT.
 - 2. Special interior design features.
 - vii. Electrical Engineering Services consisting of development of Electrical Schematic Design Documents and development of materials list to establish:
 - 1. Criteria for exterior and interior lighting and electrical systems for Architectural components.
 - 2. Approximate sizes and capacities of major components, and basic equipment information.
 - 3. Provide preliminary analysis of the building design for compliance with any applicable energy conservation standards.
 - 4. Provide outline specifications and keynotes in Engineer's standard format and level of detail.
 - 5. Preliminary equipment and lighting layouts.
 - 6. Required space for equipment.
 - viii. Mechanical and Plumbing Engineering Services consisting of continued development and expansion of Schematic Design Documents and development of Outline Specifications or materials lists to establish:
 - 1. Approximate sizes and capacities of major components and basic equipment information.
 - 2. Provide outline specifications and keynotes in Engineer's standard format and level of detail.
 - 3. Preliminary equipment layouts.
 - 4. Required space for equipment.
 - 5. Acoustical and vibration control requirements.
 - 6. Visual impacts.
 - 7. Energy conservation measures.
 - ix. Structural Engineering Services consisting of continued development of the basic structural system and Tenant specific requirements and Schematic Design Documents in sufficient details to establish:
 - 1. Final structural design criteria.
 - 2. Foundation and framing sizes.
 - 3. Lateral load resisting system.
 - 4. Critical coordination clearances.
 - 5. Outline Specifications of materials lists.
 - x. Civil Engineering Services consisting of preliminary utility layout and storm water management concepts. Continued development and expansion of Schematic Design Documents and development of Outline

- Specifications or materials lists to establish the final scope and preliminary details for the specified areas.
- xi. Landscape Architecture Services consist of the development of Landscape Design Documents and development of materials lists to establish final scope and preliminary details for landscape work, through the preparation of the following exhibits:
 - 1. Hardscape Plan.
 - 2. Planting Plan.
 - 3. Typical Construction Details.
 - xii. Design of automated access control and video surveillance systems.
 - xiii. Design of AV systems.
 - xiv. Dry utilities coordination.
 - xv. Outline Specifications.
 - xvi. Provide two Design Development Presentations including final materials, finishes, sketches, elevations and plans for all disciplines noted, and all aspects of the PROJECT.
 - xvii. Upon approval of the Design Development, Documents prepare two sets of color, material and design presentation boards for the OWNER and tenant's use.
 - xviii. Revisions include: One revision to the Design Development Documents.
- e. Interiors Design Development: Prepare Interiors Design Development Documents for the OWNER's review and approval based on the approved Interiors Schematic Design documents and Preliminary Construction Cost Estimate. The documentation will define the final intent of the design and will illustrate all essential components.
- i. Develop interior Architectural elements, components and spaces including but not limited to; lighting concepts, ceiling and wall treatments.
 - ii. Develop three (3) final color palettes for all materials, finishes and fixtures based upon the approved material palette developed in the prior phase of work.
 - iii. Provide partial reflected ceiling plans of key design features, and elevations of key Architectural elements.
 - iv. Further develop floor and finish plans to incorporate all design elements.
 - v. Provide two Interiors Design Development Presentations including final materials, finishes, sketches, elevations and plans.
 - vi. Finalize the Interiors Design Development Documents, keynoting and outlining the following information:
 - 1. Wall types, doors, and glazing.
 - 2. Sound insulation requirements.
 - 3. Telephone data and electrical requirements.
 - 4. Special lighting and HVAC requirements.
 - 5. Special ceiling, wall and floor treatments.
 - 6. AV requirements.
 - 7. Acoustical requirements.
 - 8. Finishes and materials.
 - 9. Keynotes to describe key design features.
 - 10. Keynoted outline sheet specifications.
 - 11. Obtain the OWNER's and user group's approval.

12. Two (2) Interiors Design Presentations.

- f. Prepare and issue a detailed site logistics plan illustrating construction project ingress and egress, staging, haul routes, management office location, etc.
 - i. Provide a Value Analysis report based on the issued Design Development Documents. Include suggestions for alternative building systems where appropriate. Alternatives to include opinions regarding impact on PROJECT cost, schedule, quality, and operability.
 - ii. Prepare the GMP based on the completed Design Development documents.
 - iii. Develop a detailed construction schedule to complement the GMP.
- g. Deliverables at completion of Design Development phase
 - i. One approved Design Development package including:
 - 1. One approved Interiors Design Development Document set.
 - 2. Detailed site logistics plan.
 - 3. Detailed construction schedule.
 - 4. Value Analysis report.
 - 5. Project Master Development Schedule.
 - 6. Project Master Development GMP.

5. Development of Overall PROJECT Guaranteed Maximum Price (GMP)

DEVELOPER will assemble the documentation listed and organize them as necessary to serve as Exhibits to the Development Agreement for design, development, and construction of the PROJECT. DEVELOPER, in cooperation with OWNER will negotiate the terms of the Development Agreement for development, financing, design, and construction of the PROJECT. The Development Agreement will include a detailed plan for procurement of all construction services in accordance with an OWNER approved procurement process, as necessary.

6. OWNER Responsibilities

- n. OWNER shall provide in timely manner full information regarding its requirements for the PROJECT.
- b. Reviews
 - i. The OWNER or their designated representative shall review or cause to be reviewed on behalf of OWNER all reports, plans, and recommendations produced by DEVELOPER, and render, in accordance with the PROJECT Schedule, all decisions requested by DEVELOPER, which may be necessary to perform the PROJECT Work in accordance with the PROJECT Schedule.
 - ii. All decisions rendered by the OWNER or their designated representative shall be binding upon OWNER. Furthermore, it is expressly understood that all OWNER communication to DEVELOPER or any of its Consultants or their employees shall be issued solely by the OWNER or his/her designated representative and delivered exclusively to DEVELOPER. All communications from DEVELOPER or any of its Consultants or their employees to OWNER shall be issued solely by

DEVELOPER and delivered exclusively to the OWNER or his/her designated representative.

- c. Deliverables
 - i. OWNER shall deliver in accordance with the PROJECT Schedule all existing and available record documents pertaining to the property and improvements that are envisioned to be redeveloped under the PROJECT. OWNER has provided DEVELOPER with all documents and information relating to the existing PROJECT site.
 - ii. OWNER shall make available representatives of all of the various departments of the user group(s) that will occupy the proposed new facilities for consultation and review for the purpose of DEVELOPER's needs analysis and programming work.
- d. The OWNER hereby designates Marcus Fuller or his/her designee (the "OWNER Representative"), to be its designated representative for purposes of contact between the OWNER and DEVELOPER in connection with the PROJECT, including, without limitation, the giving of consents and approvals in a timely manner and in accordance with the PROJECT Schedule (Exhibit C) so as not to delay the overall progress of the PROJECT. The OWNER may at any time, by written notice given to DEVELOPER, remove the OWNER Representative as the OWNER's representative and appoint another individual to act as the OWNER's representative. Except as set forth in this AGREEMENT to the contrary, the OWNER Representative shall have the authority to bind the OWNER with respect to all matters for which the consent or approval of the OWNER is required or permitted pursuant to this AGREEMENT and all consents, approvals and waivers given by the OWNER Representative shall bind the OWNER and may be relied upon by DEVELOPER.
- e. The OWNER shall cooperate with DEVELOPER for the PROJECT and shall promptly and in a timely manner in accordance with the PROJECT Schedule (a) provide information regarding its requirements for the PROJECT, (b) answer inquiries DEVELOPER may have with respect to such information, and (c) timely approve or disapprove (in accordance with the terms of this AGREEMENT) any items or issues.
- f. The OWNER shall keep DEVELOPER promptly informed of all material matters which come to the OWNER's attention relating to or affecting the PROJECT relevant to the DEVELOPER Services, including, without limitation, all agreements and discussions between the OWNER and third parties relating to such matters, and the OWNER shall promptly notify DEVELOPER of any developments necessitating or warranting a change in the PROJECT.

7. Exclusions and Qualifications

- a. Facility Needs Assessment
- b. Phase 2 Environmental Assessment is excluded.
- c. Environmentally Regulated Materials (ERM) testing and evaluation.
- d. Design or mock-ups of furniture and owner supplied fixtures and equipment.
- e. All plan check and permit fees for City and all other Agencies having jurisdiction.
- f. City liability insurance.
- g. All utility company fees and charges.
- h. Independent arborist.

- i. Archeo/paleo observation and reporting.
- j. Additional services of professional Consultants including, but not limited to, the following that may be required for this PROJECT:
 - 1. Traffic/Parking.
 - 2. Transportation.
 - 3. Field verification of existing construction conditions where no as-built drawings/documentation exist, or they are not accurate.
 - 4. Assistance to the OWNER in obtaining record drawings for the property.
 - 5. Special Studies services consisting of investigation, research and analysis of the OWNER's special requirements for the PROJECT and documentation of findings, conclusions and recommendations for future facilities, systems and equipment which are not intended to be constructed as part of the PROJECT during the Construction Phase.
 - 6. Energy Studies services consisting of analyses of mechanical systems, fuel costs, on-site energy generation and energy conservation options for the OWNER's consideration.

EXHIBIT E

BUDGET AND FEES FOR PHASE 1 SERVICES

See attached.

EXHIBIT E



PREDEVELOPMENT BUDGET - OPTION B MODIFIED

CITY OF RIALTO POLICE STATION

PREDEVELOPMENT, SCHEMATIC, AND DESIGN DEVELOPMENT

Date: November 4, 2022

Gross Building Area (SF)

62,617

	COMPONENT	PHASE 1 PRE- DEVELOPMENT	COMMENTS
1	A/E SERVICES		
	AE Basic Fee	\$ 1,565,713	Includes Program Validation, Space Planning, Arch, Struct, MEP, Acoustical, Security, AV, Data Network
	Add to AE Fee to accelerate foundation and shell permit submittal	\$ 58,500	
	Law enforcement space planning	\$ 316,125	MWL Fee
	Reimbursables	\$ 19,403	
2	MISC CONSULTANTS		
	Structural peer review	\$ 7,829	
	Commissioning, Enhanced Commissioning, and MEP peer review	\$ 23,486	
	Security systems design (CCTV, access control, intrusion)		Included in AE Fee
	Roofing and waterproofing peer review	\$ -	Included in AE Fee
	Dry utility coordination (telco, cable, ISP)	\$ 10,000	
	Traffic Engineer		NIC
	ADA peer review	\$ 2,000	
	Misc added scope to be determined	\$ 10,000	
3	GEOTECHNICAL SERVICES		
	Design Fee for completion of CD's, final reports	\$ 26,000	Leighton Consulting proposal
4	CONSTRUCTION SERVICES		
	Preconstruction services	\$ 300,000	
5	DEVELOPMENT AND CONSTRUCTION MANAGEMENT		
	Legal	\$ 100,000	Allowance
	Reimbursables	\$ 10,000	Allowance
	Developer's Overhead	\$ 548,276	Fixed
	Developer Contingency	\$ 149,867	
	Developer's Fee	\$ 790,614	Fixed
	Insurance	\$ 39,378	
6	CITY CONTINGENCY	\$ 250,000	
	PHASE B TOTALS	\$ 4,227,190	

EXHIBIT F

PRELIMINARY BUILDING PROGRAM

See attached.

Exhibit F: Preliminary Building Program

Main Building

Administration	3,270
Office of the Chief	2,470
Professional Standards	800
Support Services (2)	5,230
Administration	800
Records Unit	1,060
Communications	1,400
Community Services Bureau	820
Technical Support	1,150
Operations Division	15,230
Patrol	7,780
Traffic Unit	1,660
School Resource	100
Investigations	3,230
Narcotics	1,150
Street Crime Attack Team (SCAT)	780
Crime Analysis	530
Common Areas	10,830
Public Lobby	2,300
Community Meeting / Multipurpose Rooms (w/ Skyfold Divider)	1,780
Staff Breakroom	1,370
Fitness	1,660
Open Locker Area	3,720
Net SF Subtotal	34,560
Net to Gross Addition	5,440
Main Building GSF	40,000

Support Building

Support Services (2)	1,180
Personnel & Training	740
Special Operations	440
Operations Division	1,040
K-9	280
SWAT	760
Common Areas	13,880
Firing Range	11,300
Command Vehicles Carport	2,580
Net SF Subtotal	16,100
Net to Gross Addition	900
Support Building GSF	17,000

City of Rialto Police Department GSF 57,000

Notes:

- 1 Based on Option B Site Alternative in Griffin|Swinerton's July 29 2022 proposal
- 2 Option B assumes that the existing off-site evidence storage will be retained and utilized by the PD