

## PROFESSIONAL SERVICES AGREEMENT

### BETWEEN THE CITY OF RIALTO AND INTERWEST CONSULTING GROUP

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective this **14<sup>th</sup> day of August 2018**, by and between THE CITY OF RIALTO, a California municipal corporation ("City"), and INTERWEST CONSULTING GROUP ("Consultant") in the amount of **\$50,000**. City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties".

#### RECITALS

**WHEREAS**, on August 9, 2016 the first approved the Professional Services Agreement with Consultant for a total contract authorization of \$50,000; and

**WHEREAS**, on July 25, 2017, the City approved the First Amendment to the Professional Service Agreement increasing the contract amount by \$50,000 to a total of \$100,000 for work through fiscal year 2017/18.

**WHEREAS**, on December 12, 2017, the City Council approved the Second Amendment to the Professional Service Agreement, which increased the contract amount by \$80,000 to a total of \$130,000 for work performed during fiscal year 2017/18, and total purchase authorization from August 9, 2016 through June 30, 2018 of \$180,000.

**WHEREAS**, on June 26, 2018, the City Council approved a Third Amendment with Interwest Consulting Group to increase its total contract amount by \$20,000 from \$180,000 to \$200,000 for services performed through June 30, 2018.

**WHEREAS**, the City and Consultant desire to consolidate the original Professional Service Agreement and all of the subsequent Amendments into a single Amended and Restated Agreement that extends the term and increases the compensation available to Consultant for services to be performed to a maximum amount of \$485,000 for the term commencing on August 9, 2016 through June 30, 2019, subject to specific purchase authorizations granted by the City for each fiscal year commencing on July 1 and ending on June 30.

**NOW, THEREFORE**, City and Consultant for and in consideration of the mutual promises, covenants, and conditions contained hereafter agree as follows:

#### 1. SERVICES OF CONSULTANT

**1.1 Scope of Services.** In compliance with all of the terms and conditions of this Agreement, the Consultant shall perform the work or services set forth in the "Scope of Work" attached hereto as **Exhibit "A"** and incorporated herein by this reference (hereinafter referred to as the "Services" or "Work"). Consultant warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such Work and Services in a professional and satisfactory manner.

**1.2 Compliance with Law.** All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any federal, state, or local governmental agency of competent jurisdiction.

**1.3 Licenses, Permits, Fees and Assessments.** Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

**1.4 Familiarity with Work.** By executing this Agreement, Consultant warrants that Consultant (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the Services should be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services hereunder. Should the Consultant discover any latent or unknown conditions that will materially affect the performance of the Services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City.

**1.5 Care of Work.** Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by the City, except such losses or damages as may be caused by City's own negligence.

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

## **2. COMPENSATION**

**2.1 Maximum Contract Amount.** For the Services rendered pursuant to this Agreement, Consultant shall be compensated by City in accordance with the Scope of Work, which is attached hereto as **Exhibit "A"** and is incorporated herein by reference, but not exceeding the maximum contract amount of **Four Hundred Eighty Five Thousand Dollars, (\$485,000)**; hereinafter referred to as the "Maximum Contract Amount".

**2.2 Invoices.** Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. sub-contractor charges shall also be detailed by such categories. Contractor shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's

correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law

**2.3 Additional Services.** City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Maximum Contract Amount or \$15,000., whichever is less, may be approved by the City Administrator/Executive Director, or his designee, as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the City's Board. It is expressly understood by Consultant that the provisions of this section shall not apply to the services specifically set forth in the Scope of Work or reasonably contemplated therein, regardless of whether the time or materials required to complete any work or service identified in the Scope of Work exceeds any time or material amounts or estimates provided therein.

No claim for an adjustment in the contract amount or time for performance shall be valid unless the procedures established in this Section are followed.

**2.4 Prevailing Wages.** It is the understanding of the City and Consultant that the California Prevailing Wage laws do not apply to this Agreement because the Agreement does not involve any services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder.

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

### **3. SCHEDULE OF PERFORMANCE**

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

**3.2 Schedule of Performance.** Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed given by the City, and shall perform all Services within the time period(s) established in the Turn-Around Schedule, which is attached hereto as **Exhibit "B"** and is incorporated herein by reference. The City may, by written notice to Consultant, terminate its right to proceed with the work, or such part of the work as which there has been a delay. When requested by Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved

in writing by the Contract Officer, but such extensions shall not exceed ninety (90) days cumulatively; however, the City shall not be obligated to grant such an extension.

**3.3 Force Majeure.** The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the Agency, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Administrator/Executive Director in writing of the causes of the delay. The City Administrator/Executive Director shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Administrator/Executive Director such delay is justified. The City Administrator/Executive Director's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the Agency for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

**3.4 Term.** Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect from the August 9, 2016 until June 30, 2019. (**Exhibit "D"**).

#### **4. COORDINATION OF WORK**

**4.1 Representative of Consultant.** The following representative of Consultant is hereby designated as being the main point of contact of Consultant authorized to act in its behalf with respect to the Services to be performed under this Agreement and make all decisions in connection therewith: **Ron Beehler, SE, CBO**. All personnel of Consultant and any authorized agents shall be under the exclusive direction of the representative of Consultant. Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, and shall keep City informed of any changes. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires to reassign any staff or subcontractor of Consultant, Consultant shall, immediately upon a Reassign Notice from City of such desire of City, reassign such persons or persons.

**4.2 Contract Officer.** **Robb R. Steel**, is hereby designated as being the representative the City authorized to act on its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Contract Officer"). The City Administrator shall have the right to designate another Contract Officer by providing written notice to Consultant.

**4.3 Prohibition Against Subcontracting or Assignments.** Consultant shall not contract with any entity to perform in whole or in part, the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

**4.4 Independent Contractor.** Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

## **5. INSURANCE AND INDEMNIFICATION**

**5.1 Insurance Coverages.** The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance, which shall cover all elected and appointed officers, employees, and agents of City:

- (a) **Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent).** A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury, and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.
- (b) **Workers' Compensation Insurance.** A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for both the Consultant and the City against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.
- (c) **Commercial General Liability Insurance.** Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.
- (d) **Automotive Insurance (Form CA 001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent).** A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, and hired cars.
- (e) **Professional Liability.** Professional liability insurance appropriate to the

Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

- (f) **Additional Insurance.** Policies of such other insurance, as may be required in the Special Requirements.

**5.2 General Insurance Requirements.** All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees, and agents as additional insureds, and any insurance maintained by City or its officers, employees, or agents shall apply in excess of, and not contribute with, Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees, and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide, or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

**5.3 Indemnification.** To the full extent provided by law, Consultant agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorney's fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the negligent performance of the work or services of Consultant, its officers, agents, employees, agents, subcontractors, or invitees, provided for herein ("indemnitors"), arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the sole negligence or willful misconduct of the City.

## 6. REPORTS, RECORDS, AND RELEASE OF INFORMATION

**6.1 Records.** Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the “books and records”), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

**6.2 Reports.** Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

### **6.3 Confidentiality and Release of Information.**

- (a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the Contract Officer.
- (b) Consultant shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives the City notice of such court order or subpoena.
- (c) If Consultant provides any information or work product in violation of this Agreement, then the City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys’ fees, caused by or incurred as a result of Consultant’s conduct.
- (d) Consultant shall promptly notify the City should Consultant be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. The City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with the City and to provide the City with the opportunity to review any response to discovery requests provided by Consultant.

**6.4 Ownership of Documents.** All studies, surveys, data, notes, computer files, reports, records, drawings, specifications, maps, designs, photographs, documents and other materials (the “documents and materials”) prepared by Consultant in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by the City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Moreover, Consultant with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

## **7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

**7.1 California Law.** This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California.

**7.2 Disputes; Default.** In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall proceed with payment on the invoices only when the default is cured. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

**7.3 Legal Action.** In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**7.4 Termination Prior to Expiration of Term.** This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days’ written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days’ written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of

termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the "Fee Schedule" section of the proposal attached hereto as **Exhibit "E"**. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

## **8. MISCELLANEOUS**

**8.1 Non-liability of City Officers and Employees.** No officer or employee of the City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by the City or for any amount, which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

**8.2 Covenant Against Discrimination.** Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or other protected class in performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, or other protected class.

**8.3 Facilities and Equipment.** Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desks, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing of City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet, or other communication charges, vehicles, and reproduction facilities.

**8.4 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any federal and state taxes.

**8.5 Notice.** Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party shall be in writing and shall be personally delivered, sent by pre-paid First Class U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, and/or instant messages are not acceptable manners of notice required hereunder.

Notices or other communications shall be addressed as follows:

To City: City of Rialto  
Attention: City Administrator  
150 S. Palm Ave.  
Rialto, California 92376  
Telephone: (909) 820-2689  
Facsimile: (909) 820-2527

With copy to: Aleshire & Wynder, LLP  
18881 Von Karman Ave., Suite 1700  
Irvine, CA 92612  
Attention: Fred Galante, City Attorney  
Telephone: (949) 223-1170  
Facsimile: (949) 223-1180

To Consultant: INTERWEST CONSULTING GROUP  
Attention: Ron Beehler, SE, CBO  
15140 Transistor Lane  
Huntington Beach, CA 92649  
Telephone: (714) 899-9039  
Facsimile: (714) 899-9146

**8.6 Integration; Amendment.** It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

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

**8.8 Waiver.** No delay or omission in the exercise of any right or remedy by any party shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

**8.9 Attorney's Fees.** If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such

action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment.

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

**8.11 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

(SIGNATURES ON FOLLOWING PAGE)

**IN WITNESS WHEREOF**, the City and the Consultant have caused this Agreement to be executed the day and year first above written.

**CITY**

CITY OF RIALTO,  
a municipal corporation

\_\_\_\_\_  
Deborah Robertson, Mayor

**ATTEST:**

\_\_\_\_\_  
Barbara McGee, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Fred Galante, City Attorney

**CONTRACTOR:**

INTERWEST CONSULTING GROUP

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of \_\_\_\_\_



On \_\_\_\_\_

Date

before me, \_\_\_\_\_

Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature \_\_\_\_\_

Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

# EXHIBIT "A" SCOPE OF SERVICES

## SECTION F

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### WORK PLAN

#### PROPOSED APPROACH TO SCOPE OF WORK

Interwest is honored to present this proposal to the City of Rialto to serve as the consultant to provide plan check and building inspection services to ensure compliance with federal, state, local and City of Rialto adopted ordinances, codes and standards. Anticipated plan checks include new buildings (commercial and residential), tenant improvements, revisions to approved plans, electrical, resident improvements, and electronic plan review, including on-site, over-the-counter minor plan check review, plan review corrections, and minor structural plan review.

At times, large and more complex projects will benefit from advanced participation of code experts in the project development phase. Interwest professionals led by Project Manager Y. Henry Huang extend the offer **proactively** to meet with the design team to provide **advanced code consultation** during the design phase, and with full participation of City staff. The benefit of advanced participation of our professional expert team can assist the design team in correctly interpreting the code provisions and complete the design more quickly, reducing time-consuming confusion, mistakes and wasteful corrections by the design team.

Interwest can also assist the City to draft new Ordinances to amend and adopt the new Building Code as mandated by the State of California if requested.

Further, Interwest understands that for most projects, time is just as or more important than money. Helping applicants and designers shorten the time of approval often benefits the project and developers. Therefore, Interwest is also available to provide expedited plan review if the City sees the need for it.

#### Plan Review Services

**Plan Review Services** include the following elements:

- ✓ Plan review project plans, construction documents and revisions in conformance with the appropriate ICC, state and local codes and amendments. Current codes include: the 2013 California Building Code; Title 24 disabled access and energy requirements; 2013 California Fire Code with County amendments; 2013 California Residential Code; 2013 California Mechanical Code; 2013 California Plumbing Code; 2013 California Electrical Code; 2013 Cal Green Building Code and the City's ordinances and regulations.
- ✓ Coordination of plan reviews with other City departments or agencies with jurisdictions
- ✓ Maintain records related to all plans, calculation and documents received. We will provide, in the City's approved format, a complete list of plan check comments referring to appropriate sheets, details or

## **EXHIBIT “A” SCOPE OF SERVICES**

calculations pages and the code section of concern. Plan review lists shall bear the stamp and signature of a licensed engineer when required.

- ✓ Systematically logging/entering status of plan review activities and records
- ✓ Meet and confer with permit applicants to resolve all outstanding plan review comments and approving their projects
- ✓ Working with permit counter staff to facilitate the issuance of construction permits for approved documents
- ✓ Attend/participate in meetings with other City plan review or inspection staff, property owners, contractors or design professionals
- ✓ Conduct expedited plan review on as-needed basis
- ✓ Staff who are CASp certified will be made available as needed
- ✓ Staff who are highly qualified in fire plan review and stormwater related services will be provided if needed
- ✓ Submit accurate and timely reporting on the activities to the City in the approved format
- ✓ All plans will be picked up within 24 hours upon notification and delivered back to the City at no cost
- ✓ Maintain a high level of customer service to the community
- ✓ Perform related duties as needed

### **CODE INTERPRETATIONS**

Code interpretations and review of Alternate Methods or Materials are subject to final review and approval by the Building Official and or City designated staff. Interwest’s engineers and plans examiners will provide unbiased recommendations and background information to help the Building Official make an informed decision. All plan review comments are subject to review and approval by the Building Department.

### **COMMUNICATING PLAN REVIEW RESULTS**

Plan reviews will consist of written comments and redlined plans (1 copy). Comments and redlined plans or approval/denial letter and 1 set of plans will be returned to the City after each review is completed.

Specifically, plan reviews, when not immediately approved, will result in lists of comments referring to specific details and drawings, and referencing applicable code sections. Interwest will provide a clear, concise, and thorough document (i.e., comment list) from which clients, designers, contractors, and owners can work. Comment lists are delivered to our clients and other designated recipients (e.g., designers, contractors, owners) via email, FAX, and/or reliable overland carrier. If requested, Interwest will transmit plan review comments and coordinate re-checks directly to the applicant as required and completed plan review documents ready for approval will be returned to the City for final approval.

# EXHIBIT “A”

## SCOPE OF SERVICES

### **ELECTRONIC PLAN CHECK SERVICES**

The City of Rialto has the option of digital plan submittal and review (E-Plan). Interwest currently provides electronic permitting and plan review services for multiple jurisdictions, and we are comfortable utilizing this option to decrease both time and cost required. Depending on the software used by Rialto, Interwest staff will have the capability to adapt the procedures and provide the same level of plan check expertise expected by the City. Interwest’s Information Technology Department is available to provide technical assistance should the City require it.

### **Building Inspection Services**

Building Inspection Services include, but are not limited to:

- ✓ Review the approved construction documents to gain familiarity with construction projects
- ✓ Work closely with property owners and contractors to provide solutions to problems on-site
- ✓ Attend/participate in meetings with other City inspection or plan review staff, property owners, contractors or design professionals
- ✓ Maintain appropriate records and files of non-complying items and ensure the resolution of each item
- ✓ Ensure that any construction changes are properly documented and approved by appropriate City staff
- ✓ Maintain and accurately enter the status of construction inspection activities
- ✓ Administrative duties including but not limited to scheduling of inspections and record keeping

Interwest tailors inspection services to the particular needs of each client with special attention to providing competent, consistent service at all levels—at all times. We handpick our candidates and identify skill levels required to best match the City’s inspection goals and philosophy. All Interwest inspectors are ICC certified and are fully qualified to perform residential, commercial, industrial and mixed-use project inspection for compliance with approved plans and related documents. All inspections will be performed in accordance with the City’s adopted version of the California Building Code, California Residential Code, California Green Building Code, California Mechanical Code, California Plumbing Code, California Electrical Code and the Accessibility, Noise and Energy Conservation requirements as mandated by State Title 24 and all applicable Ordinances.

Interwest staff has performed inspection services on a wide variety of construction projects including custom homes, large residential developments, and commercial, institutional and essential service buildings. We provide valuable experience gained through successful work with government clients throughout California. This clear understanding of the construction process enables our people to quickly identify and resolve problems both in the office and in the field.

## EXHIBIT “A” SCOPE OF SERVICES

Assigned staff will perform continuous or periodic construction inspections to verify that the work of construction is in conformance with the approved project plans as well as identifying issues of non-compliance with applicable building codes. Many of our inspector candidates can provide dual plan check and inspector services for our clients. When necessary for large or fast-track projects, multiple inspectors are available.

Interest inspectors assigned will report directly to the Building Official or other person designated for all project-related work. Items, if any, which cannot be resolved between the project inspectors and contractors, will be forwarded to the Building Official for final resolution.

Inspection personnel assigned will be able to read, understand and interpret construction plans, truss drawings and calculations, prepare and maintain accurate records and reports, communicate effectively orally and in writing and to work effectively with contractors, the public and general staff. Inspectors will possess knowledge of approved and modern methods, materials, tools and safety used in building inspection and the most current building standards.

### **Fire Prevention, Plan Check and Inspection Services**

Interest has a group of Fire Prevention Engineers and fire prevention experts available to the City to consult on Fire Code and Fire prevention related issues if requested.

Fire Prevention Plan Review Services include the following elements:

- ✓ Perform preliminary plan review consultations
- ✓ Perform plan reviews to determine compliance with applicable codes, standards, and City specifications as adopted by the City of Rialto
- ✓ Meet or exceed the City's turn-around timeframe requirements
- ✓ Perform over-the-counter plan reviews as required by the Fire Marshal or designee
- ✓ Provide a list of items (corrections) needing clarification or change on submitted plans to achieve conformance with City regulations
- ✓ Perform plan reviews on revisions of plans that have been previously approved for permit issuance
- ✓ Perform all necessary liaisons with applicant, business owner/representative, City staff, Fire Marshal, or designee
- ✓ Log fire prevention activities into fire department records management system and City permit software
- ✓ Complete fire prevention activity reports
- ✓ Regularly meet with the Fire Marshal or designee
- ✓ Perform extra work as needed when requested by the Fire Marshal or designee
- ✓ Attend meetings related to fire inspections and plan checks with customers and City staff as requested by the Fire Marshal or designee.

## **EXHIBIT “A” SCOPE OF SERVICES**

Our staff works with project applicants in a collaborative and professional manner to quickly identify and resolve any violations of codes, standards or local ordinances. Providing thorough plan reviews result in complete and accurate construction documents, minimizing questions, inspection issues and potential problems during the construction phase.

### **PROPOSED TASK PLAN**

Interwest proposes the following:

- The Project Manager and/or lead Plan Check Engineer will meet with design team during project development phase to provide advanced code consultation for large and complex projects.
- When plans are ready, either Interwest staff or designated carrier service will pick up plans within 24 hours.
- Plan Check Engineer will provide thorough, accurate, consistent plan review within the proposed turn-around time. All checks will be performed by qualified professionals within their respective disciplines.
- Plan Check Engineer will provide concise but comprehensive plan review comments or corrections to make revisions easy for the applicant and its design team.
- The Interwest team will provide expedited plan review if requested by the City.

**END OF EXHIBIT “A”**

**EXHIBIT "B"**  
**SCHEDULE OF PERFORMANCE**

The Services provided hereunder this Agreement shall occur on an as-needed "on-call" basis, pursuant to separate individual tasks. The City and Consultant shall agree on a schedule of performance for scopes of work on assigned projects.

## EXHIBIT “B” SCHEDULE OF PERFORMANCE

### PROPOSED PROJECT SCHEDULE

We consistently complete plan reviews within the timeframes or sooner. We work hard to accommodate any turnaround schedule desired by the City. Multi-disciplinary reviews are typically performed in our offices but we are available for on-site work when required and whenever possible. We can provide the following tiered turnaround:

Type of Job	Maximum Turn Around Time	
	First Check	Second Check
<b>RESIDENTIAL</b>		
New Construction	10 Business Days	7 Business Days
Room Addition and remodel	10 Business Days	7 Business Days
Photovoltaic only	3 Business Days	3 Business Days
<b>NON-RESIDENTIAL</b>		
New Construction	14 Business Days	7 Business Days
Addition	10 Business Days	5 Business Days
Tenant improvements	10 Business Days	5 Business Days
Electrical only	7 Business Days	4 Business Days
<i>Electronic plan review</i>	<i>1 less Business Day</i>	<i>1 less Business Day</i>

All subsequent reviews will be completed within the requested 5 Business days. For projects over 500,000 sf, or those with special complexity, Interwest will propose a conference with City's Building Official to set a reasonable delivery time. Expedited Plan Review is available upon mutual agreement with the City.

END OF EXHIBIT “B”

**EXHIBIT "C"**  
**CITY'S REQUEST FOR PROPOSALS**

**CITY'S REQUEST FOR PROPOSAL #16-101 INCORPORATED BY REFERENCE**

**EXHIBIT "D"**  
**CONSULTANT'S PROPOSAL**

**CONSULTANT'S PROPOSAL DATED MAY 26, 2016 INCORPORATED BY REFERENCE**

# EXHIBIT “E” SCHEDULE OF COMPENSATION

## SECTION G

### FEE PROPOSAL

#### BUILDING & SAFETY SERVICES

Our compensation schedule is provided to accommodate the different ways the City may collect fees for services in the building and safety department. We look forward to the opportunity to refine the mechanics of the method of compensation, if required, to align with new or revised fee schedules the City may implement in the future.

#### INSPECTION SERVICES

If the City wishes, we are also available to provide inspection services on an hourly basis using our Schedule of Hourly Billing Rates below.

#### PLAN REVIEW SERVICES

For complete plan review services, we propose **68% of the established City plan check fee schedule**. For structural-only reviews, we propose 45% of the plan review fees based on your adopted City schedule. For partial reviews, such as foundation only, preliminary reviews, code interpretation, review of Alternate Method or Materials, or others, we propose to develop a mutually agreeable fee based on the specific project at hand, or provide services on an hourly basis using the rates listed in our Schedule of Hourly Billing Rates. There is no additional charge for courier or shipping services.

For expedited or fast-track projects, we propose a fee of 150% of the above noted fees contingent upon the availability of staff to perform the plan review.

#### SCHEDULE OF HOURLY BILLING RATES

<u>Certified Classification</u>	<u>Hourly Rate</u>
Plan Check Engineer	\$125
ICC Certified Plans Examiner	95
Building Inspector	90
CASp Specialist	100

*Rates are typically reviewed yearly on July 1 after the first anniversary and may be subject to revision unless under specific contract obligations. Mileage performing City duties reimbursable at IRS rate.*

**END OF EXHIBIT “E”**

Exhibit “E”  
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