

**ATTACHMENT 5**

**FIRST AMENDMENT TO THE  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF RIALTO  
AND  
ENGINEERING RESOURCES OF SOUTHERN CALIFORNIA**

**1. PARTIES AND DATE.**

This First Amendment to the Professional Services Agreement (“First Amendment”) is made and entered into this 10<sup>th</sup> day of August, 2021 by and between the City of Rialto (“City”) and Engineering Resources of Southern California, (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this First Amendment.

**2. RECITALS.**

2.1 Agreement. City and Consultant entered into that certain Professional Services Agreement dated September 22, 2020, (“Agreement”), whereby Consultant agreed to provide professional services to the City related to the Design of the Easton Street Sidewalk Improvements Project, City Project No. 190811.

2.2 Amendment. City and Consultant desire to amend the Agreement by this First Amendment to include additional tasks for the project as set forth in “Exhibit A”, to extend the term of the Agreement, and to increase the total amount of compensation for the Agreement.

**3. TERMS.**

3.1 Description. The following paragraph is hereby added to Section 1 of the Agreement:

“The additional services to be provided pursuant to this First Amendment to the Agreement are more particularly described in “Exhibit A”, attached hereto and incorporated herein by this reference.”

3.2 Scope of Work. The following paragraph is hereby added to Section 2 of the Agreement:

“Consultant’s scope of work for the additional services included in this First Amendment to the Agreement is described on “Exhibit A”, attached hereto and incorporated herein by this reference.”

## ATTACHMENT 5

3.3 Payment Terms. The following paragraph is hereby added to Section 3 of the Agreement:

“Consultant shall be compensated for the additional services included in the First Amendment to the Agreement as set for in “Exhibit A”, attached hereto and incorporated herein by this reference, which shall not exceed \$11,237.75 (Eleven Thousand Two Hundred Thirty Seven Dollars and Seventy Five Cents). The total compensation to the amended Agreement shall not exceed \$73,498.25 (Seventy Three Thousand Dollars Four Hundred Ninety Eight Dollars and Twenty Five Cents).”

3.4 Time for Performance. The following paragraph is hereby added to Section 4 of the Agreement:

“The additional services included in the First Amendment to the Agreement as set for in “Exhibit A”, attached hereto and incorporated herein by this reference, shall begin immediately upon the City Council’s approval of the First Amendment and shall be completed within thirty (30) days of its approval.”

3.5 Continuing Effect of Agreement. Except as amended by this First Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this First Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this First Amendment.

3.6 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this First Amendment.

3.7 Counterparts. This First Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

3.8 Conflict of Interest. Pursuant to Rialto Municipal Code section 2.48.145, Contractor represents that it has disclosed whether it or its officers or employees is related to any officer or employee of the City by blood or marriage within the third degree which would subject such officer or employee to the prohibition of California Government Sections 87100 et. seq., Fair Political Practices Commission Regulation Section 18702, or Government Code Section 1090. To this end, by approving this Agreement, Contractor attests under penalty of perjury, personally and on behalf of Contractor, as well its officers, representatives, that it/they have no relationship, as described above, or financial interests, as such term is defined in California Government Section 87100 et. seq., Fair Political Practices Commission Regulation Section 18702, or Government Code Section 1090, with any City of Rialto elected or appointed official or employee, except as specifically disclosed to the City in writing.

## ATTACHMENT 5

3.9 Corporate Authority. The persons executing this First Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this First Amendment on behalf of said party, (iii) by so executing this First Amendment, such party is formally bound to the provisions of this First Amendment and (iv) the entering into this First Amendment does not violate any provision of any other agreement to which said party is bound.

**[SIGNATURES ON FOLLOWING PAGE]**

**ATTACHMENT 5**

**IN WITNESS THEREOF**, the parties have caused their authorized representative to execute this agreement the day and year first above written.

**CITY OF RIALTO**

**ENGINEERING RESOURCES OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_  
                                Marcus Fuller  
                                City Manager

By: \_\_\_\_\_  
  Signature

\_\_\_\_\_  
  Printed Name

*Attest:*

\_\_\_\_\_  
  Title

By: \_\_\_\_\_  
                                Barbara McGee  
                                City Clerk

By: \_\_\_\_\_  
  Signature

*Approved as to Form:*

\_\_\_\_\_  
  Printed Name

Burke, Williams & Sorensen, LLP

\_\_\_\_\_  
  Title

By: \_\_\_\_\_  
                                Eric S. Vail  
                                City Attorney

**\*\*Two signatures are required if a corporation\*\***



July 28, 2021

Michael Tahan, Interim Public Works Director  
City of Rialto  
335 W. Rialto Avenue  
Rialto, CA 92376

**Re: Easton Street Sidewalk Improvements, Project Number 190811**

Dear Mr. Tahan,

On March 4, 2021, ERSC sent a letter to the City's consultant, Monae Pugh of TKE Engineering, Inc., outlining the additional tasks ERSC has been requested to include, as part of the plan preparation for the above-mentioned project, by City staff or the City's consultant. ERSC also indicated time spent on Optional Tasks identified in the Original Contract. At the request of the City, ERSC followed up the March 3, 2021 letter with another letter to TKE, dated March 17, 2021, detailing the Tasks and associated additional costs. Following the second letter, there was verbal discussion between ERSC, TKE and yourself regarding the project's costs to date. You indicated that you were going to allow ERSC to use the Optional Tasks 1, 2, and 3 of the Contract to cover some of the Project's over budget tasks and would present to City Council ERSC's additional funding request when presenting the award of contract for construction of the above-mentioned project. The project has been bid and is now being presented to City Council for award.

The tasks below include the costs included in the prior letters in addition to fees incurred since those letters were presented to the City.

**Task 5 - Coordination with Property Owners** – The assumption was all improvements for the project were to occur in City Right of Way. ERSC staff have spent time researching property addresses/APNs, property information; preparing multiple versions of exhibits for resident review to confirm property lines in conjunction with The Prizm Group (Surveyor); discuss relocation of items from City right of way onto private property; attendance of ERSC staff with Spanish speaking ability to converse with residents in ZOOM meeting and provide translation of notices; multiple trips into the field to meet with residents to accommodating their wishes, etc. – Added cost = \$7,610.25.

**Task 6.0 – Construction Bid Package** – ERSC staff prepared concept plans from review of topo identifying areas where sidewalk cross-slopes exceeded ADA requirements. A field walk resulted in ERSC being requested to prepare a cost estimate comparing removal and replacement of non-compliant sidewalk vs. full removal and replacement of all sidewalk. The City requested of ERSC to proceed with full removal and replacement of sidewalk. This resulted in the prior work completed on the 30% plans becoming obsolete and the need for redesign of demolition plans, and construction documents. ERSC staff prepared construction documents, quantities and technical specifications that include removals and relocation of private improvements including irrigation, trees, shrubs, pavers, walls located within the public right of way to the private property side of the right of way in order to accommodate resident

Re: Easton Street Sidewalk Improvements, Project Number 190811  
July 28, 2021

requests; after third plan check ERSC was requested to update specifications from SSPWC 2015 edition to 2018 edition. – Added cost \$15,602.50

Potholing – This item was listed under Exclusions in ERSC’s proposal. ERSC was requested to obtain cost estimates from companies that may perform the potholing for location of a waterline at 451 Easton Street and confirm location of an existing sewer lateral at 470 Easton Street. ERSC reached out to companies requesting the quotes so we are seeking compensation for the time spent by staff in this endeavor in addition to the cost of the contractor to perform the potholing and ERSC staff time to complete the potholing. – Added cost to date = \$450.00; Cost to complete the task = \$4,550.00. If the City desires to have the pothole locations surveyed, we will contact the surveyor for their additional cost.

Potholing was ultimately not needed for design services. Only \$450 was billed against a task for research and initial preparation of a pothole map.

These Optional Tasks are identified and as:

- **Optional Task 1 - Preparation of Legal/Plats** – in conjunction with Prizm, ERSC has prepared exhibits with very much of the same information as required for this task. - \$3,750.00
- **Optional Task 2 - Additional Landscape/Irrigation Design** – ERSC has inventoried and included in the construction documents items ranging from plants, shrubs, trees, irrigation, walls, concrete pavers, etc. for removal and reconstruction. - \$3,535.00
- **Optional Task 3 - Field Engineering/Additional Detailed Design** – ERSC has performed individualized detailed design exhibits for several of the properties. - \$5,140.00

ERSC has utilized the available funds in Optional Tasks 1, 2 and 3, totaling \$12,425.00, to cover a portion of the over-budget tasks. It is at this time that we are submitting our final request of \$11,237.75 for project costs that we feel are attributed to tasks that were outside of the original scope of work.

Thank you for your time and consideration, and if you have any questions, do not hesitate to contact me.

Respectfully,



Lori J. Askew  
Assistant Principal Engineer – Project Manager