ON-CALL PROFESSIONAL SERVICES AGREEMENT

BETWEEN THE CITY OF RIALTO AND

MTGL INC.

THIS ON CALL PROFESSIONAL SERVICES AGREEMENT (herein "Agreement") is made and entered into this 15th day of November, 2022, by and between the City of Rialto, a municipal corporation and California general law city ("City"), and MGTL, Inc., ("Consultant"). City and Consultant are sometimes individually referred to as "Party" or collectively as "Parties".

RECITALS

A. City has sought, by request for qualifications the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Following the submission of a proposal for the performance of the services defined and described particularly in Article 1 of this Agreement, Consultant was selected by the City to be eligible to perform those services as needed and requested by the City.

C. During the Term of this Agreement, the City may initiate or continue various projects for which Consultant's services may be used. For a given project, the City may solicit proposals from Consultant and other firms to perform services on that project, and the City may award a Task Order for the project based on availability, schedule, and cost proposal. Consultant understands and acknowledges that this Agreement provides no guarantee that Consultant will be selected to perform any volume or work for the City.

D. Pursuant to Chapter 2.48 of the Rialto Municipal Code, City has authority to enter into and execute this Agreement.

E. The Parties desire to formalize the selection of Consultant for the performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

Scope of Services. Consultant agrees to perform geotechnical services to provide staff support for various capital improvement projects, encroachment permit/utility construction, and on-site and off-site improvements associated with private land development projects within the City (hereinafter, the "Scope of Services" or "Services") as requested and authorized by the City. The Scope of Services are more particularly

described in Exhibit A attached hereto and incorporated herein. When the City desires to utilize Consultant for the Scope of Services, the City will issue a Task Order, in a form that is substantially similar to Exhibit B, that includes a Scope of Services to be performed and the compensation to be paid for the Services within the Task Order. Upon the issuance of a Task Order, that Task Order shall immediately be incorporated into this Agreement as part of Exhibit "A" (e.g., the first Task Order will be Exhibit "A-1", the second Exhibit "A-2," etc.). Each Task Order is made a part of this Agreement by this reference and encompassed within the Scope of Services of this Agreement.

As a material inducement for City to enter into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent, and professional manner, it meets all local, state, and federal requirements in performing the Services, and it is experienced in performing the work and Services contemplated herein. Consultant shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform all Services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and Services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more professional firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

The Agreement between the Parties shall consist of the following: (1) this Agreement, including the Recitals; (2) the Scope of Services, including all Task Orders; (3) the City's Request for Qualifications No. 22-051; and, (4) the Consultant's signed, original proposal submitted to the City ("Consultant's Proposal"), (collectively referred to as the "Contract Documents"). The Contract Documents and Accepted Proposal shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Scope of Services, Consultant's Proposal, and/or this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all Services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any federal, state, or local governmental entity having jurisdiction in effect at the time service is rendered. In addition to the terms, conditions, and performance obligations for the Work set forth in this Contract, Consultant must also comply with the federal contract terms, conditions, rules, and regulations set forth in the attached Exhibit D ("**Federal Contract Terms, Conditions, and Regulations**").]

1.4 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 this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the Services required by this

Agreement, and shall indemnify, defend, and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties, or interest levied, assessed, or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of Services to be performed, (ii) has carefully considered how the Services should be performed, and (iii) 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 Services hereunder. If Consultant discovers any latent or unknown conditions that will materially affect the performance of the Services hereunder, then Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

Consultant shall adopt reasonable methods during the life 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 City, except such losses or damages as may be caused by City's own negligence.

1.7 Prevailing Wages.

Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.* and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 1600, *et seq*., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. It is the understanding of City and Consultant that the Prevailing Wage Laws may 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. However, Consultant shall defend, indemnify, and hold City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.8 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. Unless specified in this Agreement, neither Party shall be responsible for the service of the other.

1.9 Additional Services.

City shall have the right at any time during the performance of the Services under an individual Task Order, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such extra work or change may be undertaken unless a written order is first given by the Contract Officer to the Consultant, describing in detail the extra work or change and the reason(s) therefor and incorporating therein any adjustment in (i) the Task Order sum for the actual cost of the extra work or change, and/or (ii) the time to perform the Task Order, which said adjustments shall be reflected in an amendment to the Task Order subject to the written approval of the Parties. Any amendment to a Task Order shall be reviewed and approved by the City Manager. In accordance with Rialto Municipal Code section 2.48.180, increases in compensation for a Task Order may be approved by the City Manager provided: (a) the initial Task Order amount was less than One Hundred Thousand Dollars ($100,000) and the amended Task Order sum when considering any or all amendments will not exceed One Hundred Thousand Dollars ($100,000); or (b) the Task Order was approved by the City Council and the increases in compensation taken either separately or cumulatively do not exceed One Hundred Thousand Dollars ($100,000). Any greater increases, taken either separately or cumulatively must be approved by the City Council. Payment for additional services rendered by Consultant under a given Task Order requires the submission of the actual costs of Consultant's performance of the extra work with the invoice(s) for the extra work claim(s), as provided in Section 2.4. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

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.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Sum.

City and Consultant acknowledge and agree that the Services required by this Agreement will vary dependent upon the number, type, and extent of the Services the Consultant shall provide; and no guarantee of the extent or the type of Services required of Consultant under the terms of this Agreement is made by the City. The annual or total level of Services required by this Agreement is unknown, and may significantly increase or decrease from year to year. In acknowledgement of the fact that the number and type of projects requiring the Consultant's Services has not been identified for this Agreement, City and Consultant acknowledge and agree that a specific "Maximum Contract Amount" shall be imposed on each separate project that the City may assign Consultant as provided in Section 1.9 and in this Section 2.1. Each such separate project shall be identified as a Task Order authorized by the City Manager or designee as provided in this Section 2.1. The Maximum Contract Amount of this Agreement is undefined, and is

subject to the number and type of projects requiring the Consultant's Services throughout the duration of the term of this Agreement, if any. Consultant's compensation shall be limited to the Maximum Contract Amount identified on each separate, individually authorized Task Order corresponding to a project requiring the Services of the Consultant in accordance with the Schedule of Compensation set forth in the attached Exhibit C. Subsequent approval of individual Task Orders shall be approved in accordance with the provisions of Chapter 2.48 of the Rialto Municipal Code.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the Services; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the Services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Unless otherwise specified by the Task Order, 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. Consultant 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, or as provided in Section 7.3, 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.

2.5 No Waiver.

Review and payment by City to Consultant of any invoice for work performed by Consultant pursuant to this Agreement shall not be deemed a waiver of any defects in work performed by Consultant or of any rights or remedies provided herein or any applicable law.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

The Services authorized by each Task Order shall be completed pursuant to the schedule stated in the Task Order. Should the Services not be completed pursuant to that schedule, the Contractor shall be deemed to be in Default of this Agreement. The City, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Contractor to continue performing the Services.

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, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall, within ten (10) days of the commencement of such delay, notify the Contract Officer in writing of the causes of the delay. The Contract Officer 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 Contract Officer such delay is justified. The Contract Officer shall extend the time for performance in accordance with the procedures set forth in Section 1.9. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

Subject to the termination provisions of this Agreement, the Term of this Agreement is for three years commencing on the date first ascribed above. City may extend the Term of this Agreement two times for one year each time, for a total potential term of five years.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Michelle Elliott	Owner/CEO
(Name)	(Title)
Steven Koch	Vice President
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability, and reputation of the foregoing Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the Services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, 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, if any, assigned to perform the Services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the Services required under this Agreement, prior to and during any such performance. 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 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care, or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be the City Manager or other such person designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the Services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

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 herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall perform all Services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor 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. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the Services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

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, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's 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) Automotive Insurance (Form CA 0001 (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 $1,000,000. Said policy shall include coverage for owned, non-owned, leased, and hired cars.

(d) 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.

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

(f) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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 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.

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (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, operations, or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for

which Consultant is legally liable ("indemnitors"), arising from Consultant's reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents, or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents, or employees, any and all costs and expenses incurred by the City, its officers, agents, or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional Services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness, or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

Notwithstanding the foregoing, to the extent that the Consultant's Services are subject to California Civil Code Section 2782.8, the above indemnity, including the cost to defend, shall be limited to the extent required by Civil Code Section 2782.8.

5.4 Sufficiency of Insurer or Surety.

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 Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or Services to be performed under this Agreement creates an

increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager Consultant.

ARTICLE 6. RECORDS, REPORTS, 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. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. 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. Such records shall be maintained for a period of 3 years following completion of the Services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

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 as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and Services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or Services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without

liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 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 City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, 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 City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subcontractors 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. 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 City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 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, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, Eastern Division.

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, though not reduced, 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. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or Services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. 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.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.6 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.

7.7 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. 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. 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, except as provided in Section 7.3. In the event of termination without cause pursuant to this Section, the City need not provide the Consultant with the opportunity to cure pursuant to Section 7.2.

7.8 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

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 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of Services under this Agreement or any individual Task Order subsequently awarded. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

Additionally, pursuant to Rialto Municipal Code section 2.48.145, Consultant 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, Consultant attests under penalty of perjury, personally and on behalf of Consultant, 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.

8.3 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, gender, sexual orientation, gender identity, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, sexual orientation, gender, gender identity, marital status, national origin, ancestry, or other protected class.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq*., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or Services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorney's fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 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.

9.2 Payment of Taxes.

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

9.3 Notices.

All notices or other communications required or permitted hereunder 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, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

If to City: City of Rialto
150 S. Palm Ave.
Rialto, CA 92376
Attn: City Manager

Tel: (909) 820-2525
Fax: (909) 820-2527

With copy to: Burke, Williams & Sorensen, LLP
1770 Iowa Avenue, Suite 240
Riverside, CA 92507
Attn: Eric S. Vail, City Attorney
Tel: (951) 788-0100
Fax: (951) 788-5785

If to Consultant: MGTL, Inc.
14467 Meridian Parkway, Building 2A
Riverside, CA 92518
Attn: Michele Elliot, Owner/CEO
Tel: (951-653-4999
Fax: (951) 653-4666

Either Party may change its address by notifying the other Party of the change of address in writing.

9.4 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.5 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.

9.6 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. 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. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.7 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or

unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder 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.

9.8 Corporate Authority.

The persons executing this Agreement 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 Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party 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 said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Agreement on the date first written above.

CITY:

CITY OF RIALTO, a municipal corporation

By: _____
Marcus Fuller
City Manager

ATTEST:

By: _____
Barbara A. McGee
City Clerk

APPROVED AS TO FORM:

Burke, Williams & Sorensen, LLP

By: _____
Eric S. Vail
City Attorney

CONSULTANT:

MGTL, Inc. a California corporation

By: _____
Name
Title

By: _____
Name
Title

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

EXHIBIT "A"

SCOPE OF SERVICES

Consultant shall provide On-Call Professional Geotechnical Services more described herein.

Consultant shall provide first-rate professional geotechnical services on an as-needed basis for various City projects as assigned. Responsibilities may include, but are not limited to, the following:

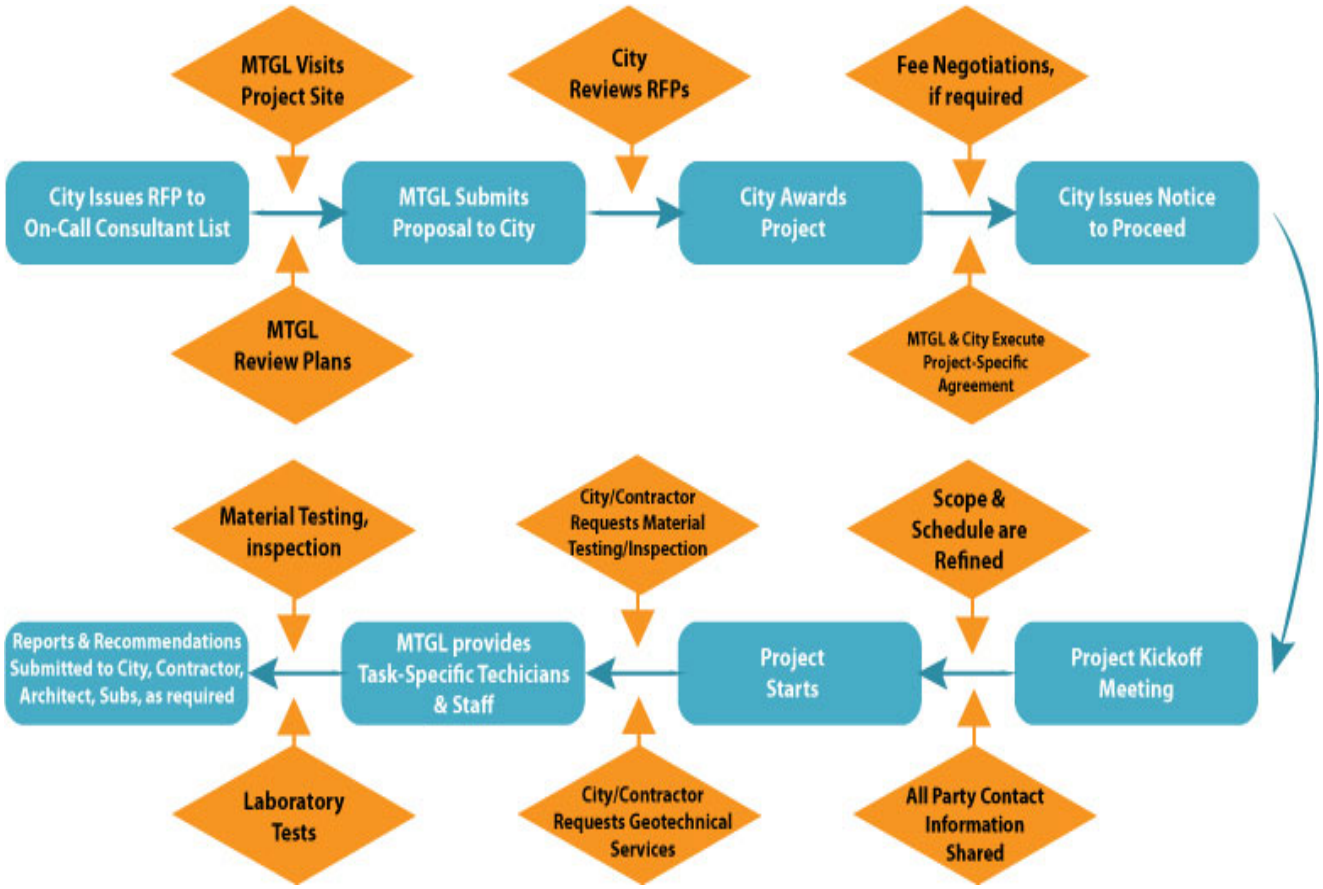
1. Provide complete and detailed geotechnical services in an expedited manner.
2. Evaluate geological and seismological hazards.
3. Geotechnical design parameters and grading recommendations.
4. Geotechnical supervision and oversight.
5. Soils, geological, seismic and geotechnical testing and preparation of reports and design recommendations.
6. Conducting compacted fill testing and monitoring.
7. Geophysical testing.
8. Construction oversight of excavation and compaction activities.
9. Inspection and preparation of surfaces to receive compacted fill.
10. Supervision and certification of the placement and compaction of fill including required compaction testing and reporting.
11. Geotechnical investigations to characterize materials and conditions to be encountered during construction.
12. Development of seismicity maps and recommendations.
13. Subsurface exploration (borings)
14. Lab tests of soil samples.
15. Recommendations for earthwork, seismic design, foundation design, structures settlement criteria, lateral earth pressures, soils corrosivity evaluation and mitigation measures and other relative design.
16. Coordination and submissions to the California Geological Survey (CGS), DSA and other AHJ for project approval and obtaining review and approval by applicable regulatory agencies.
17. Reporting shall be of such scope and detail as required by regulatory agencies and in accordance with CGS, DSA, current CBC code, CDE and shall be supervised by a registered geotechnical engineer or geologist, depending on the project.
18. Each firm shall be familiar with relevant codes pertaining to the assessment and remediation of geological, soils and seismic conditions relevant to determining the suitability for acquisition or new development.

Specifically, Consultant shall provide those Services as outlined in its proposal dated March 31, 2022, Included in the following pages.

UNDERSTANDING ON-CALL GEOTECHNICAL SERVICES

We understand the City of Rialto is seeking proposals from qualified professional firms to provide on-call geotechnical services in anticipation of several large public works capital projects. MTGL can provide on-call as-needed geotechnical services to provide staff support for various capital improvement projects. We understand the geotechnical services with an initial term of three (3) years, with two (2) one-year extensions upon approval of the City.

MTGL will respond to each request for service with project-specific scopes of work and detailed in fee proposals. MTGL is prepared to execute Project Services Agreement for each project awarded. Below is our On-Call Project Approach.



PROJECT KICKOFF

Upon notice to proceed, our Project Manager will work with the City's representative to gain a thorough understanding of the project and our role. Our initial meeting will review the following:

- Project schedule and budget constraints
- Geological conditions of the project area, i.e., liquefaction potential, groundwater, proximity to faults and/or AP Zone, soil type, etc.
- Regulatory and jurisdiction approval requirements i.e., Caltrans, Municipal Government, Federal Government, DTSC, etc.
- Contact information for all involved parties including: architect, engineer, contractor, regulatory agencies, suppliers, etc.

ENSURING CONTRACT REQUIREMENTS

MTGL will work diligently to ensure that all requirements are met for project certification and close out. We collect verified reports at the completion of each stage of construction. Completed project will ultimately end with an affidavit for certification.

DEFICIENCY LOG

MTGL will proactively work with all involved parties to ensure that all construction and materials conform to the project plans and specifications. Any deficiency found will be immediately brought to the City's Representative, Construction Manager, the Contractor and if applicable, the sub-contractor involved. If the deficiency is not resolved within 72 hours, we will distribute a deficiency log to all parties involved. We will proactively work with the party responsible for the deficiency to ensure that it is resolved.

SCHEDULING

MTGL DISPATCH: 800.491.2990

All requests for Materials Technicians, geotechnical staff, field technicians, and inspectors will be filled by the following business day if notification is received by 3:00 PM the prior business day. MTGL understands that projects may require last minute requests for testing and inspections. Should a last-minute request be received, MTGL will assign the next available technician.

TEST DELIVERY TIMELINE

MTGL strives to provide test results in a timely manner. Final reports for typical tests are provided within seven (7) calendar days. If requested, preliminary verbal results can be provided within one business day. In the event of sample yields abnormal results or fails a test, we provide verbal notification within two (2) hours, with the final written report delivered within 24 to 48 hours. After a failed test, we fast-track reporting of subsequent re-tests and provide a final report within three (3) to four (4) calendar days, or sooner per client request.

COST CONTROL PROCEDURES

MTGL's believes the greatest control of costs is achieved at the planning stage of any project. Effective cost control is achieved at this stage by the following actions:

- Clearly defining the scope of services;
- Detailed planning of each task;
- Detailed man hour requirements to fulfill those tasks;
- Assigning multi-certified personnel/staff to reduce costs to client;
- Defining a detailed cost estimate and budget to perform those tasks;
- Weekly reporting and communication with the client regarding the project, or as the client prefers; and
- Provide an accurate invoicing.

MTGL does not perform services outside the defined scope of services without prior approval from the client. Billing is done on a weekly basis along with labor compliance reports. Daily reports are sent with each billing as backup to our invoicing. MTGL shall submit invoices to the client on monthly basis or as requested. Each invoice will be itemized and show tasks performed, number of hours worked per person/consultant, rate per hour for each person/consultant (in accordance with California prevailing wage rates and requirements), total contract amount, percent complete for specified work items and remaining contract amount.

SCOPE OF SERVICES

Below is MTGL typical scope of services, but are not limited to:

GEOTECHNICAL ENGINEERING SERVICES

- Review pertinent project documents including specifications and drawings (Project General notes, Site Plan, Civil Grading/Drainage Plan and Structural Foundation Design Plan, etc.);
- Perform project related background research and conduct applicable studies;
- Provide preliminary evaluations and recommendations concerning groundwater, geologic and seismic hazards;
- Attend applicable meetings throughout the project with the design team, contractors, subcontractors, and representatives from the City;
- Observe and test activities associated with possible pile installations, site grading or other similar earthworks;
- Observe and test over-excavation and placement/compaction of structural fill;
- Monitor excavations for foundations;
- Observe subgrade preparation for floor slabs, site parking/driveway pavements and hardscapes;
- Prepare daily field engineering reports for submittal to the city and the project team;

- Perform confirmation laboratory tests in accordance with current ASTM and other acceptable standards. Laboratory tests may include Expansion Index (ASTM D-4829), maximum dry density/optimum moisture content (ASTM D-1557), R-value (ASTM D-2844), gradation/passing the #200 sieve tests (ASTM D-1140), and corrosion potential;
- Provide as-needed geotechnical consulting services and develop additional recommendations if site and subsurface conditions differ from those described in the contract documents;
- Prepare interim construction inspection and compaction report prior to excavation of footings;
- Upon completion of the project, prepare a final report detailing the construction monitoring and presenting all density testing results and test locations suitable for submittal to the City.

GEOTECHNICAL INVESTIGATION

- Review of published and unpublished reports and maps pertinent to seismic hazards, local and regional geology within and adjacent to the site that could impact the development.
- Prior to field investigation, perform site reconnaissance to locate and mark the exploratory boring locations and verify with DigAlert (Underground Service Alert of Southern California) to identify potential conflict between the planned boring locations and existing underground utilities.
- During drilling, relatively undisturbed ring samples, and bulk samples will be obtained at select intervals. Soil samples will be transported to the laboratory for testing and evaluation.
- Upon completion of the drilling operation, the exploratory borings will be immediately backfilled, and surface will be patched with asphalt or concrete to the match the existing conditions, wherever needed.
- Conduct necessary laboratory tests in orders to characterize the subsurface geologic profile and obtain parameters for engineering analysis. Laboratory tests may include, but not limited to, field moisture/density, particle size gradation, expansion index, consolidation characteristics, collapse potential, and corrosivity (soluble sulfate, chloride, pH, resistivity) determinations.
- Evaluation of the exploratory field logs and laboratory test data with consideration of the proposed project. Recommendations for earthwork, seismic design parameters, foundation and slab design, lateral earth pressures, site soil's corrosivity evaluations and mitigation measures, and other relevant geotechnical design parameters for the proposed improvements will be based on the engineering evaluations and analyses.
- Geotechnical engineering and report will be prepared summarizing our findings, conclusions and recommendations for design and construction.
- The report will be prepared in compliance with the requirements of the California Building Code (CBC). Report preparation will be performed under direct supervision of a California Registered Geotechnical Engineer (G.E.); the reports will be signed and stamped by MTGL's engineers.

As a minimum, the report will contain the following information:

- Site Location map
- Project Information
- Boring locations with log of borings and laboratory test results
- Soil Classification per the Unified Soil Classification System (USCS) in ASTM D2487
- Seismic Evaluation, Seismic Coefficients and Soil Profile per Section 1613A.5 of the 2010 CBC
- Review of Field and Laboratory Test Procedures and Data
- Geotechnical recommendations for the foundation design
- Submit five copies of the final written (signed and sealed) report.

Geotechnical investigation/geologic hazards report include:

- Geologic literature review to determine depth to historic groundwater, seismic setting, liquefaction potential and an initial site reconnaissance.
- Soil test borings are then performed to characterize the site soils and to collect soil samples for laboratory testing. Depths of the borings are dictated by anticipated geologic conditions.
- Laboratory testing of select soil samples to evaluate the physical and limited chemical properties of the soils.
- Evaluation of the field and laboratory data and preparation of a report.

Our recommendations will be consistent with sound engineering and geologic practices and shall incorporate federal, state and local laws, codes, ordinances and regulations which, in our professional opinion, are applicable at the time that our professional services are rendered.

FIELD TESTING SERVICES

MTGL is fully capable of providing Field Testing Services required for the successful completion of City Projects. Our general approach is as follows:

SOIL COMPACTION AND GRADING

Our services will consist of compaction testing of the backfills and paved areas on site and within the street right of way. MTGL's services will consist of performing in place density tests by either the sand cone method (ASTM D1556) or nuclear gauge method (ASTM D2922), water content test, and maximum density optimum moisture test per ASTM D1557 at locations selected by our representative per the geotechnical report requirements.

Trench backfill compaction test will be taken at locations and frequencies in accordance to guidelines provided by applicable requirements. In addition, sub-grade compaction testing of paved areas on-site and within the street right of way will be taken at locations and frequencies in accordance with guidelines provided by the City. Test locations will be selected by our technician at locations that represent the surface appearance of the sub-grade at the time of testing.

Additionally, MTGL's services will provide observations and testing of excavation during grading, rough grading operations, soils tests, and submittal of a soil grading report. Our technician will observe rough grading operations on a full-time basis. Water content, in place density (compaction), maximum density and optimum moisture, expansion index and soluble sulfate test will be performed at a frequency and at locations selected by the soils engineer. Our laboratory can perform other soils test, if required.

During the courses of construction, we will notify the City in writing, with a copy to the contractor, if in our opinion, any time the work is not in conformity to the plans and specifications. Upon completion of the work, we will prepare a final report for the City which will summarize our observations and the results of all tests performed. The final report will contain recommendations and opinions regarding the conformance of the completed rough grading to the intent of the plans, soil engineering reports, and specifications signed by a California Registered Geotechnical Engineer.

CONCRETE MATERIAL TESTING

Our services will consist of continual concrete inspection during the concrete placement, for conformance to approved plans, specifications, and building codes. During concrete placement, our inspector will fabricate four (4) compression test specimens for each 100 cubic yards of concrete placed. MTGL will provide testing at different intervals per request or project requirements. Test cylinders will be cured in our laboratory until they are tested in accordance with ASTM C192. Compression test will be performed in accordance with ASTM C39 at seven (7) and 28 days, respectively or by the City requirement. Copies of the results of all compression tests will be provided upon completion of the test.

ASPHALTIC CONCRETE TESTING

Our services will also include laboratory testing of the aggregate base and asphaltic concrete. Services will include Hveem stabilometer, sieve analysis, sand equivalents and R-Value testing of aggregate base. Tests will be performed on materials sampled at random locations and at frequencies based on the project specifications. Testing requirements for Oil Content of asphalt can be met with our Rapid Ignition Oven, providing real time results to batch plants supplying asphalt.

EXHIBIT B

MODEL TASK ORDER

TASK ORDER NO. __

CITY OF RIALTO

AND

[ ]

SECTION 1 – PURPOSE

The purpose of this Task Order is to authorize and direct [ADD CONSULTANT NAME] ("Consultant") to perform with the Scope of Work specified in Section 2 below, in accordance with the provisions of the On-Call Services Agreement between the City of Rialto ("CITY") Consultant dated [ADD DATE] ("Agreement"). This Task Order shall be incorporated into Exhibit A of the Agreement.

SECTION 2 – SCOPE OF WORK

The services authorized by this Task Order are presented in Attachment "A" – Scope of Services, which is attached hereto and incorporated by this reference.

SECTION 3 – COMPENSATION AND PAYMENT

Compensation shall be paid as provided in the Agreement. The total compensation for Scope of Services as set forth in Section 2 shall be as set forth in Attachment "B" – Compensation, which is attached hereto and incorporated by this reference. Total compensation for all services provided under this Task Order shall not exceed [ADD MAXIMUM TASK ORDER AMOUNT].

SECTION 4 – TIME OF PERFORMANCE

The services described in Section 2 of this Task Order shall be completed in accordance with the schedule set forth in Attachment "C" – Schedule of Completion, which is attached hereto and incorporated by this reference.

SECTION 5 – ITEMS AND CONDITIONS

All terms and conditions contained in the Agreement are incorporated by reference and remain in full force and effect.

Approved this _____ day of _____ 202_.

[*SIGNATURES ON NEXT PAGE*]

CITY OF RIALTO

By: _____ Date: _____

Marcus Fuller
City Manager

CONTRACTOR

By: _____ Date: _____

Name
Title

By: _____ Date: _____

Name
Title

ATTEST:

By: _____

Barbara A. McGee
City Clerk

APPROVED AS TO FORM

By: _____

Eric S. Vail
City Attorney

ATTACHMENT “A”

SCOPE OF SERVICES

ATTACHMENT “B”

COMPENSATION

ATTACHMENT “C”

SCHEDULE OF COMPLETION

EXHIBIT “C”

SCHEDULE OF COMPENSATION

MTGL HOURLY RATE SCHEDULE
CITY OF RIALTO RFP #22-051
ON-CALL GEOTECHNICAL SERVICES

PROFESSIONAL SERVICES	UNIT	RATE
Staff Engineer / Geologist	HR	$ 115.00
Project Manager/Engineer/Geologist	HR	$ 130.00
Principal Engineer/Geologist	HR	$ 175.00
Draftsperson	HR	$ 70.00
Administrative (Per Monthly Invoice)		5%

FIELD INSPECTION PERSONNEL	UNIT	RATE
ICC Special Inspector	HR	$ 105.00
Soils/Asphalt Technician	HR	$ 105.00
AWS/CWI Welding Inspector	HR	$ 105.00
NDT Technician	HR	$ 145.00
Field/Lab Supervisor	HR	$ 115.00
DSA Masonry/Shotcrete Inspector	HR	$ 125.00
L.A. Deputy Grading Inspector	HR	$ 125.00
L.A. City Special Inspector	HR	$ 115.00
Multi-Certified Inspector	HR	$ 115.00
Pull l Torque Testing Technician	HR	$ 115.00
Batch Plant (Concrete or Asphalt) Technician	HR	$ 105.00
Floor Flatness / Levelness (Inc. Equipment)	DAY	$ 1,500.00
Prestressed/Post Tensioned Inspector	HR	$ 105.00
Concrete, Masonry, Asphalt Coring or Sawing		QUOTE
Travel Time	HR	$ 105.00
Mileage	MILE	$ 0.58

LAB TESTING - SOIL	UNIT	RATE
D422 Hydrometer Analysis	EACH	$ 175.00
D422 Sieve Analysis of Soil	EACH	$ 200.00
D558 Soil Cement - Maximum Density	EACH	$ 300.00
D559 Soil Cement - Sample Preparation	EACH	$ 100.00
D854 Specific Gravity of Soils	EACH	$ 125.00
D1140 Materials Finer than #200 (Sieve)	EACH	$ 60.00
D1557 Maximum Density	EACH	$ 290.00
D1883 California Bearing Ratio (CBR)	EACH	QUOTE
D2216 Soil Moisture Content by Mass	EACH	$ 25.00
D2419 Sand Equivalent	EACH	$ 110.00
D2434 Permeability	EACH	QUOTE
D2435 Consolidation	EACH	$ 225.00
D2435 Consolidation with Time Rate	EACH	$ 275.00
D2844 R-Value & Expansive Pressures	3 Points	$ 250.00
D2937 Moisture & Density (Ring Samples)	EACH	$ 30.00
D3080 Direct Shear	EACH	$ 200.00
D4318 Plasticity Index of Soils	EACH	$ 145.00
D4829 Expansion Index of Soils	EACH	$ 135.00
CT 216 CA Impact Max Density	EACH	$ 225.00
CT 216 CA Impact Rock Correction	EACH	$ 95.00

LAB TESTING - AGGREGATES	UNIT	RATE
C40 Organic Impurities in Fine Agg	EACH	$ 95.00
C88 Soundness by Sodium Sulfate	EACH	$ 315.00

LAB TESTING - AGGREGATES continued	UNIT	RATE
C123 Percent Lightweight Particles	EACH	$ 215.00
C127 Specific Gravity (Coarse Agg)	EACH	$ 130.00
C128 Specific Gravity (Fine Agg)	EACH	$ 150.00
C131 Abrasion - Los Angeles Rattler	EACH	$ 235.00
C136 Sieve Analysis (Combined Agg)	EACH	$ 130.00
C136 Sieve Analysis (Fine or Coarse Agg)	EACH	$ 110.00
C142 Clay Lumps & Friable Particles	EACH	$ 135.00
C535 Abrasion (Large Agg) - Los Angeles Rattler	EACH	$ 235.00
C566 Moisture Content by Drying	EACH	$ 25.00
CT 227 Cleanness Value	EACH	$ 230.00
D3744 Durability Index	EACH	$ 180.00
D5821 Flat & Elongated Particles	EACH	$ 200.00
T335 Crushed Particles	EACH	$ 170.00

LAB TESTING - Misc.	UNIT	RATE
C67 Roofing Tile Absorption	EACH	$ 60.00
C67 Roofing Tile Strength Test	EACH	$ 60.00

Sample Pickup Charges	UNIT	RATE
Pick up Sample Trip Charge (2hr Minimum)	HR	$ 60.00
Weekend Sample Pick Up Charge (2hr Minimum)	HR	$ 95.00

LAB TESTING - CONCRETE	UNIT	RATE
C39 Compressive Strength Concrete Cylinders (6" x 12")	EACH	$ 35.00
C39 Compressive Strength Cores (6" Max. Diameter)	EACH	$ 75.00
C78 Flexural Strength - Beams (6" x 6")	EACH	$ 75.00
C157 Concrete Shrinkage (Set of 3)	SET	$ 350.00
C174 Handling Charge Cylinders Not Broken/Hold	EACH	$ 35.00
C192 Concrete Trial Batch w/ Lab Testing	EACH	$ 1,100.00
C469 Modulus of Elasticity	EACH	$ 150.00
C495 Comp. Strength - Lightweight Concrete Fill	EACH	$ 45.00
Handling Charge - Beams Not Broken/Hold	EACH	$ 75.00
C496 Tensile Strength, Splitting	EACH	$ 75.00
C567 Unit Weight (Hardened Lightweight Concrete)	EACH	$ 50.00
C1140 Shotcrete Panel Test	EACH	$ 300.00
Core Trimming (In Laboratory)	EACH	$ 55.00

LAB TESTING - ASPHALT	UNIT	RATE
D1188 Core Density Parafilm Coated	EACH	$ 85.00
D1560 Stabilometer - HVEEM	EACH	$ 290.00
D1561 Max Density - HVEEM	EACH	$ 195.00
D2172 Asphalt Content by Solvents	EACH	$ 250.00
D3910 Wet Track Abrasion	EACH	$ 195.00
D5444 Gradation of Extracted Agg	EACH	$ 275.00
D6307 Asphalt Content by Ignition	EACH	$ 245.00
D6926 Max Density - Marshall	EACH	$ 295.00

MTGL HOURLY RATE SCHEDULE
CITY OF RIALTO RFP #22-051
ON-CALL GEOTECHNICAL SERVICES

LAB TESTING - ASPHALT continued	UNIT	RATE
D6927 Stability and Flow - Marshall	EACH	$ 375.00
T209/D2041 Theoretical Maximum Density	EACH	$ 150.00
T324 Hamburg Wheel	EACH	$ 1,000.00
CT 370 Moisture Content	EACH	$ 70.00

LAB TESTING - MASONRY	UNIT	RATE
C109 Mortar - 2" Cube Compressive Strength	EACH	$ 40.00
C140 Block - Compressive Strength	EACH	$ 75.00
C140 Block - Moisture & Absorption	EACH	$ 80.00
C140 Block - Unit Weight & Measurements	EACH	$ 275.00
C426 Block - Linear Shrinkage	EACH	$ 180.00
C780 Mortar (2" x 4") Cylinders Comp. Strength	EACH	$ 35.00
C1019 Grout Prisms - Compressive Strength	EACH	$ 35.00
Handling Charge (Cylinders/Cubes/Prisms) Not Broken/Holds	EACH	$ 75.00
C1314 CMU Grouted Prisms Comp. Strength (< 8" x 8" x 16")	EACH	$ 180.00
C1314 CMU Grouted Prisms Comp. Strength (> 8" x 8" x 16")	EACH	$ 245.00
C67 Brick - Boil	EACH	$ 90.00
C67 Brick - Compressive Strength	EACH	$ 50.00
C67 Brick - Moisture & Absorption	EACH	$ 85.00

LAB TESTING - STEEL	UNIT	RATE
Weld:Macroetch/Fracture/Bend Test	EACH	QUOTE
A325 High Strength Bolt, Nut & Washer Conformance (Per Assembly)	EACH	$ 180.00
A370 Brinell & Rockwell Hardness Test	EACH	$ 80.00
A370 Nelson Stud Tensile	EACH	$ 195.00
A370 Rebar Bend & Tensile Test No. 11 Bar & Smaller	EACH	$ 45.00
A615/706 Bend Test No. 11 Bar and Smaller	EACH	$ 60.00
A615/706 Tensile No. 11 Bar and Smaller	EACH	$ 65.00
A615/706 Tensile No. 14 Bar and Larger	EACH	QUOTE
A416 Prestressing Wire, Tension	EACH	$ 170.00
Sample Preparation (Cutting)	EACH	$ 80.00
A416 Prestressing Cable (7 Wire) Yield & Tensile	EACH	$ 170.00
E605 Fireproofing Unit Weight	EACH	$ 60.00

EQUIPMENT CHARGES	UNIT	RATE
Air Meter	DAY	$ 30.00
Dye Penetrant Equipment	DAY	$ 50.00
Emissivity Test Kit	EACH	$ 50.00
Ground Rod Equipment	DAY	$ 50.00
Jacking Assembly	DAY	$ 65.00
Magnetic Particle Equipment	DAY	$ 50.00
Nuclear Density Gauge	DAY	$ 70.00
Pachometer	DAY	$ 55.00
Sand Cone Kit	DAY	$ 50.00
Schmidt Hammer	DAY	$ 45.00
Skidmore-Wilhelm Bolt Cell	DAY	$ 65.00
Torque Wrench	DAY	$ 50.00
Ultrasonic Equipment	DAY	$ 45.00
Outside Services		Cost +20%

Basis of Charges and Contract Terms

The charges for services and General Terms and Conditions set forth below will govern the provision of services and will constitute the contract terms between the Owner or Owner's Representative (Client) and MTGL, Inc unless the Client and MTGL, Inc. have executed a written contract with respect to such services, in which case the terms and provisions of the written contract shall supersede.

Minimum Field Hourly Charges

For Field Technicians, Special Inspectors or any on-site (field) materials testing services:

4 hours: 4-hour minimum charge up to the first four hours of work.
8 hours: 8-hour minimum charge for over four hours of work, up to eight hours.
Project time accrued includes portal to portal travel time.

Scheduling & Cancellations

• A 24-hour notice is required when scheduling an inspection or technician.

• A two-hour show -up charge will be applied to any service canceled the same day of service.

• Verbal request will be considered authorization to perform billable work. Client shall designate member(s) of staff who have authority to request services and notify MTGL in writing of their authorized representative. Otherwise all service requests are billable.

Overtime Rates

• Work performed in excess of 8 hours per day and / or up to eight (8) hours on Saturdays will be billed at 1.5 times the unit rate.

• Work performed on Sunday, recognized holidays, or in excess of eight (8) hours on Saturdays will be billed at 2.0 times the unit rate.

• A 20% surcharge will be applied for laboratory tests performed on a Saturday or Sunday.

• Work performed by field or laboratory staff outside of normal business hours (5:00 AM - 5:00 PM) will be subject to the above overtime rates.

Administrative Charges

• All admintstrative costs including report distribution are billed at 5% of the monthly invoice total.

• Certified payroll requests will have a processing fee applied for each project, billed at $95 per payroll week.

Anticipated Costs

• MTGL estimates a budget to assist the client with code required inspections and testing based upon information provided by the client. MTGL's ability to perform within the estimated budget relies heavily on the accuracy of the information provided, as well as the cooperation of client's management staff.

• Project actual budget totals may vary. Estimated budget hours are based upon 40 hours a week, 8 hours a day, Monday-Friday. Client shall monitor the percentage of work remaining to assure inspections and testing is not greater than the estimated budget and adjusts the contractor's labor and scheduling to maintain the work completion schedule.

• Client recognizes and agrees that any "anticipated costs," "budget estimates," or the like that may be prepared by MTGL are NOT "guaranteed maximums," "lump sums;" or "not-to-exceed totals". Client will be invoiced for all work performed and only for work performed based on MTGL's working conditions and hours as an attachment to their contract.

• Additionally, any weekly overtime hours, Saturday or Sunday, double shift, and/or night shift differential for shop steel inspection are NOT included in MTGL's proposal.

Reimbursable Expenses & Outside Services

• Heavy equipment, subcontractor fees and expenses, supplemental insurance, travel, shipping, outside reproduction, and other reimbursable expenses will be invoiced at cost plus 20%.

• Outside services will be billed at cost plus 20% unless billed directly to and paid for by Client.

Travel Charges & Mileage

• For projects outside a 50-mile radius from the nearest MTGL facility, $0.58 per excess mile to and from the project will be charged for inspectors and technicians.

• When project related equipment is required to be transported to and from the project site, time and mileage for inspectors and field technicians will be billed on a portal to portal basis.

• For all projects, $0.58 per mile rate and applicable travel time will be charged portal to portal for engineers, consultants, and supervisors from the laboratory to the project site and return.

Laboratory Testing

• A 2-hour minimum material sample pick-up charge with an hourly rate of $50 will be billed in addition to the prices quoted for testing.

• Quoted laboratory test rates assume samples are free of hazardous materials. Handling and testing of samples containing hazardous materials will include additional costs.

Weekend Sample Pick-Ups

In order to be in strict conformance with testing standards, it may be required that weekend pick-ups be performed (e.g. concrete specimens cast on Friday must be picked up during weekend to be in conformance with ASTM C31 requiring specimens to be moved to their final curing location within 48 hours of casting.) Applicable charges for weekend work will apply when this is required. Should these charges not be authorized then MTGL will not be held responsible for any negative consequences for non-conformance .

Terms of Payment

• Invoices for all services willl be submitted monthly. These invoices are due in full upon presentation to client. Invoices outstanding over 45 days are considered past due and will be subject to a finance charge of 1.5% of the unpaid balance each month.

• All invoice errors or necessary corrections shall be brought to the attention of MTGL within 30 days of receipt of invoice. Thereafter, customer, acknowledges invoices are correct and valid.

• MTGL reserves the right to terminate its services to a customer without notice if all invoices are not current. Upon such termination of services, the entire amount accrued for all services performed shall immediately become due and payable. Customer waives any and all claims against MTGL, its subsidiaries, affiliates. servants and agents for termination of work on account of these terms.

• In the event of any litigation arising from or related to any agreement to provide services whether verbal or written, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time. court costs, attorney fees and all other related expenses in such litigation. Additionally, in the event of a non- adjudicative settlement of litigation between the parties or a resolution of dispute by arbitration, that same process shall determine the prevailing party.

Prevailing Wage

Please note that all inspector and technician rates will increase every July 1, with the State of California Prevailing Wage increases.

Our professional engineering, geology, and inspection services are performed in accordance with the current standards of practice in the industry. No other warranty or representation, express or implied, is made or intended.

EXHIBIT D

FEDERAL CONTRACT TERMS, CONDITIONS, AND REGULATIONS

As used in this Exhibit F, this Agreement may be referred to as the "contract," and Consultant may be referred to as "contractor." In performing its Work under the Contract, Contractor must conform to all applicable federal, state, and local codes, laws, ordinances, rules and regulations, which will have full force and effect as though printed in full in the Contract. In addition to the terms, conditions, performance obligations, and other requirements set forth in the Contract, Contractor must comply with the following federal contract terms, conditions, and regulations, which are incorporated by reference in the Contract:

1. **Equal Employment Opportunity**. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

   41 CFR 60–1.4(b) provides:

   > The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction Work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:
   >
   > During the performance of this contract, the contractor agrees as follows:
   >
   > (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action will include, but not be limited to the following:
   >
   > Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in

conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision will not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of Workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or Workers' representatives of the contractor's commitments under this section, and must post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of

September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction Work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in Work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has

been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. **Davis–Bacon Act, as amended (40 U.S.C. 3141–3148)**. When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non– Federal entities must include a provision for compliance with the Davis–Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non–Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non–Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti–Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public Work, to give up any part of the compensation to which he or she is otherwise entitled. The non–Federal entity must report all suspected or reported violations to the Federal awarding agency.

3. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708)**. Where applicable, all contracts awarded by the non–Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard Work week of 40 hours. Work in excess of the standard Work week is permissible provided that the Worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours Worked in excess of 40 hours in the Work week. The requirements of 40 U.S.C. 3704 are applicable to construction Work and provide that no laborer or mechanic must be required to Work in surroundings or under Working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. **Rights to Inventions Made Under a Contract or Agreement**. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research Work under that "funding agreement," the

recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. **Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended**. Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non–Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

6. **Debarment and Suspension (Executive Orders 12549 and 12689)**. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

7. **Byrd Anti–Lobbying Amendment (31 U.S.C. 1352)**. Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non–Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non–Federal award.

8. **2 CFR § 200.322 Procurement of Recovered Materials**. .A non–Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

9. **Certification for Contracts, Grants, Loans, and Cooperative Agreements**. The parties to this Contract agree to comply with the provisions of 43 CFR 18, New Restrictions on Lobbying, including the following certification requirements:

   In accordance with 43 C.F.R. § Part. 18, Appendix A, each of the parties to this Contract certifies, to the best of his or her knowledge and belief, that:

   (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the parties, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

   (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the parties must complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

   (3) The parties must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients must certify and disclose accordingly.

   This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification must be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

10. **Executive Order 13513 of October 1, 2009, Federal Leadership On Reducing Text Messaging While Driving.** Text Messaging While Driving by Government Contractors, Subcontractors, and Recipients and Subrecipients. Each Federal agency, in procurement contracts, grants, and cooperative agreements, and other grants to the extent authorized by applicable statutory authority, entered into after the date of this order, must encourage contractors, subcontractors, and recipients and subrecipients to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or GOV, or while driving POV when on official Government business or when performing any Work for or on behalf of the Government. Agencies should also encourage Federal contractors, subcontractors,

and grant recipients and subrecipients as described in this section to conduct initiatives of the type described in section 3(a) of this order.

11. **Drug-Free Workplace (2 CFR §182 and §1401)**. The Department of the Interior regulations at 2 CFR 1401—Government-wide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as amended) are hereby incorporated by reference and made a part of this Contract. By entering into this Contract, the Contractor agrees to comply with 2 CFR 182.

12. **Copeland Anti-Kickback Act (18 U.S.C. 874)**. Contractor agrees to comply with the Copeland Anti-Kickback Act as supplemented by Department of Labor regulations (29 CFR part 5).