

SERVICES AGREEMENT
BETWEEN THE CITY OF RIALTO AND
LYNN MERRILL AND ASSOCIATES, INC.

THIS SERVICES AGREEMENT (herein "Agreement") is made and entered into this 28th day of June, 2016 by and between the City of Rialto, a municipal corporation ("City"), and Lynn Merrill and Associates, Inc., a California corporation ("Consultant"). City and Consultant are sometimes individually referred to as "Party" or collectively as "Parties".

RECITALS

A. City has sought, by issuance of a Request for Proposal or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

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

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

D. 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.

In compliance with all terms and conditions of this Agreement, Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. 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 first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

This Agreement shall include the Request for Proposal or Invitation for Bids ("Contract Documents"), and the Scope of Services shall include Consultant's scope of work or Consultant's accepted bid proposal ("Accepted Bid"). The Contract Documents and Accepted Bid shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Contract Documents, Accepted Bid, 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.

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.

Contractor 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 do not apply to this Agreement because the Agreement does not involve any services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder. Contractor 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, 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 Contract Sum for the actual cost of the extra work or change, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or an amount not to exceed a total contract sum of Fifteen Thousand Dollars (\$15,000), whichever is less, or any increase in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. Payment for additional services rendered by Consultant under this Agreement 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.

1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed the three year total of Four Hundred Five Thousand, Nine Hundred Eighty-two Thousand Dollars and fifty cents (\$405,982.50) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9.

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.

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.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively, pursuant to Section 1.9.

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.

The initial term of this agreement shall be for three years, to commence on July 1, 2016, and terminate on June 30, 2019. The City shall have two (2) successive option to extend the initial contract term by one (1) additional year for each option, which when exercised by the City shall bind the Contractor for each additional one (1) year term. Specifically, each of said options may be exercised by the City, in its sole discretion, as follows:

- a) The first optional extension will be for twelve (12) months from July 1, 2019, through June 30, 2020.
- b) The second optional extension will be for twelve (12) months from July 1, 2020, through June 30, 2021.

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: NPDES Support Services.

Lynn Merrill
(Name)

Principle/Program Manager
(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 Administrator or other such person designated by the City Administrator. 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 Administrator, 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.

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 Liquidated Damages

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, Consultant and its sureties shall be liable for and shall pay to City the sum of Zero Dollars (\$0.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

7.9 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.

7.10 Attorneys' Fees.

If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

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. 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.

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, 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, 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 Administrator Tel: (909) 820-2525 Fax: (909) 820-2527
With copy to:	Aleshire & Wynder, LLP 18881 Von Karman Ave., Suite 1700 Irvine, CA 92612 Attn: Fred Galante, City Attorney Tel: (949) 223-1170 Fax: (949) 223-1180
If to Consultant:	Lynn Merrill and Associates, Inc. 256 Cajon Street, Suite C Redlands, CA 92373 Attn: Lynn Merrill Tel: (909) 894-4425

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 Council. 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 this Agreement on the date and year first-above written.

CITY:

CITY OF RIALTO, a municipal corporation

By: _____
Deborah Robertson, Mayor

ATTEST:

By: _____
Barbara A. McGee, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Fred Galante, City Attorney

CONSULTANT:

LYNN MERRILL AND ASSOCIATES

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Two signatures are required if a corporation.

VENDOR

By Lynn Merrill and Associates, a California corporation
Firm/Company Name

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

(This Agreement must be signed in the above space by one of the following: Chairman of the Board, President or any Vice President)

(This Agreement must be signed in the above space by one of the following: Secretary, Chief Financial Officer or any Assistant Treasurer)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of _____)

State of _____)

County of _____) ss

County of _____) ss

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

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

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

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

WITNESS my hand and official seal.

WITNESS my hand and official seal.

Notary
Signature:

Notary
Signature:

Notary Seal:

Notary Seal:

EXHIBIT “A”

SCOPE OF SERVICES

I. Consultant will perform the following Services:

A. DESIGN AND DEVELOPMENT PROCESS NPDES/WQMP SUPPORT

Overall, the City relies on a combination of internal staff and external consultants to support the design and development process within the City. On a typical Public Works project, the City staff will define out the project under the Capital Improvement Program, and, through the Request for Proposal process, obtain the services of a qualified engineering design firm that will prepare the standards and specifications for the project. Once the standards and specifications for a project design are completed, the project is then assembled into a Request for Bid document that may incorporate various NPDES/WQMP elements into the project. These may typically include the requirement for the contractor responsible for building the project to prepare the various NPDES documents for the City, including but not limited to, the SWPPP and/or WQMP. A separate outside vendor provides construction management and inspection support, including inspections required under both the County of San Bernardino permit as well as the Statewide General Construction Permit.

Under the current practices and processes used by the City, our role is to provide the appropriate level of support to the development process as is necessary to move the project forward. This effort includes reviewing and revising the boilerplate language in Capital Improvement Programs in order to ensure that the most current NPDES requirements are being included into the Request for Bid specifications.

The following sections describe in further details our experiences and approaches to each item:

1. **DEVELOPMENT PROCESS** – Under our existing contract with the City of Rialto, we provide technical assistance to the City as appropriate to the process. In most cases, we work with the Public Works engineering staff in addressing the subtle issues associated with each project. For example, we assisted the city on a proposed apartment complex that was concerned that a WQMP may be required although the site just met the minimum threshold requirement for the preparation of a WQMP. By looking at the site with the engineering staff, we were able to determine that the proposed site conditions of approval could be written in such a manner that would integrate Low Impact Development (LID) features into the project such as drainage swales and permeable concrete which would reduce the impacted square footage to below the WQMP threshold. In this example, we met the spirit of the program, while reducing a cost to the developer by not requiring the actual preparation of a WQMP, yet conditioned the project to include LID features.

2. **DEVELOPMENT REVIEW** – As requested by the City, we routinely have assisted in reviewing various projects in order to ensure that LID principles are incorporated. Recently, the City updated its landscape design standards and requested that we participate in the update process. We were able to offer several recommendations that not only integrated LID principles into common area landscape designs, but also addressed issues relating to water conservation and run-off.
3. **TECHNICAL CONSULTATION** – Currently, the City's WQMP process requires the submission of an initial WQMP at the time that plans are submitted to the Development Department. The WQMP is then forwarded to a third party (Lockwood Engineering) who coordinates with the developer in order to process the initial WQMP into a final WQMP which is then forwarded to the City by cover memo. Once the WQMP is returned to the City's staff, it is then incorporated into the development files, and the maintenance agreement is recorded. Our firm will then field check the WQMP, assist the city in obtaining the certificate of operation from the developer, and log the WQMP into the County of San Bernardino's MS4 Database for future inspections. During the process, and especially on City projects in which the maintenance of any Best Management Practices (BMPs) will be the future responsibility of the City, we will review the proposed BMPs in order to ensure that these are cost-effective for the City to maintain. In some cases, the designers of the BMPs do not take into consideration the costs for on-going maintenance by city staff, and may incorporate BMPs that are technologically advanced, but require expensive periodic maintenance by City field crews.
4. **SWPPP/WQMP PREPARATION AND REVIEW** – Generally, the City mandates that the preparation of SWPPPs and WQMPs on City projects are part of the Request for Bid process, and become the responsibility of the contractor building the project. Our role is to coordinate with the Construction Management company to ensure that the SWPPP is completed per specification, and that we review the SWPPP for adequacy and thoroughness. We provide comments back to the project's Qualified Stormwater Designer for incorporation or revision, and then handle the submission of the SWPPP into the State SMARTS database, working with the Public Works Director to prepare the Notice of Intent (NOI) and execute the Legally Responsible Party (LRP). We then work with all the parties as appropriate in order to ensure that inspections are completed as required, that the annual report is completed if necessary and that the Notice of Termination (NOT) is filed with the Regional Board. While our staff over the last five years has not had to prepare either a SWPPP or WQMP for a project, both Mr. Turner and Mrs. Gabaldon have extensive experience in both areas, and would be available to the City to perform these tasks.
5. **OTHER NECESSARY TASKS** – Our firm has assisted the City on CIP projects over the last three years as requested, including assisting in preparation of staff reports, coordinating various documents from various parties and other efforts necessary to support the City. We routinely attend the CIP Status meeting in order

to ensure active involvement in the CIP project processes, and provide assistance to the various engineering staff as needed.

B. NPDES PROGRAM ADMINISTRATION AND REPRESENTATION

Program Administration and Representation encompasses the following eleven listed subtasks. In all cases, work plan and methodology will be relational to the activity undertaken for the City. Typically, we will meet to discuss the task or effort with the City staff in order to ensure that we have a full understanding of the problem statement, the issues or concerns that need to be addressed and the desired outcomes. Based on this discussion, we then prepare a “draft proposal” which outlines the tasks we believe are necessary to accomplish the project as defined. We further provide an estimate of the labor types, costs and timelines and present this back to the City for review and comment. Upon receipt of comments and clarifications from the City, we then prepare a final proposal which guides our efforts. Under most of the tasks listed, our work will be ongoing and proportionate to both the City’s needs at the time and the available budgets. We try to minimize excessive use of staff time in order to conserve the City’s budgets, while trying to identify through our meetings and overall experiences with the NPDES programs region-wide, what is the most cost effective response to each need. We expect to assign Mr. Lynn Merrill, Principal in Charge to conduct these activities for the city.

The following sections describe in further details our experiences and approaches to each item:

1. **MEETINGS** - Our firm currently represents the City of Rialto on the San Bernardino County NPDES General Meeting, the Fiscal Subcommittee and the Comprehensive Bacteria Reduction Program Committee. Over the last five years, we have attended over 70 different Permittee/Co-Permittee Meetings. In addition, we routinely attend the Middle Santa Ana River TMDL task force meetings as well as the Basin Monitoring Task Force Meetings. Over the last five years, we have attended approximately 50 meetings, representing the City of Rialto on these various regional meetings as appropriate. We believe that we have achieved a 95% attendance level in both the Program wide meetings and the Regional Task Force meetings. We have attended the Santa Ana Regional Water Quality Control Board meetings as necessary, and when agenda items of impact to the City are being considered, offering as appropriate, expert testimony as needed. During the next two years, these meetings will focus more on the renewal of the San Bernardino County NPDES permit, which may have significant cost elements depending on revisions to the permit that are proposed by the Regional Board. Our effort during these meetings will be to ensure that the City’s best interests are aggressively represented.
2. **ADMINISTRATION** – During the last five years, we have prepared the annual reports for the City, ensuring that data input into the San Bernardino MS4 Database is accurate and reflects the City’s achievements in meeting the requirements of the Permit. We have provided budget information and analysis to

the City during this period, and expect to continue to provide policy analysis to the City. Typical issues that we have addressed for the City include developing a CBRP documentation program that includes daily photographs of the Cactus channel in order to build a record that the city's main drainage channel does not regularly discharge to the Santa Ana River, a key compliance element under the CBRP. By building this daily record, we are building evidence to support the removal of the City of Rialto from further CBRP program compliance.

3. **LIAISON** – We are regularly in contact with the Public Works Department via email, telecom and weekly meeting attendance. Currently, we attend the weekly Capital Improvement Program status meetings, currently held each Thursday afternoon. At the same time, we routinely interact with the Department's Senior Administrative Analyst, the Principal Engineers and the Public Works Director, providing updates to various tasks and efforts, and receiving information regarding any projects or issues of concern. An example of this type of liaison recently occurred at an industrial facility in south Rialto. We received a report of illicit discharges and during our investigations; we provided timely updates to the Public Works Director regarding the status and resolution of the issues. This allowed the Public Works Director to accurately report outcomes to the City Administrator.
4. **GRANT APPLICATION** – Our staff have successfully applied for various grant opportunities as they relate to water conservation, stormwater and energy conservation. We routinely review Grants.Gov website in order to identify any potential granting opportunities for the city as it relates to water, waste water and water conservation activities. For example, we successfully obtained nearly \$725,000 in water conservation grants for the City of San Jacinto to remove turf and renovate several park locations, including four which were upgraded to stormwater basins with drought tolerant landscaping. For the cities of Rialto and Grand Terrace, we successfully applied for and administered grant applications under the Energy Efficiency and Conservation Block Grant program. We assisted the City of San Jacinto in applying for a grant through the Santa Ana Watershed Protection Authority for a water conservation based water rate study. We are skilled at drafting grant applications, and in administering the grant programs if successful in our application.
5. **FEE STUDIES** – Our work effort includes the development of User Fee studies in order to allow our clients to recover the costs for various mandated programs, including the NPDES Commercial, Restaurant and Industrial Inspection program. We successfully developed the Inspection Fee program for the City of Rialto, including preparation of the cost analysis, proposed ordinances and resolutions, and made presentations relating to the proposed fee to both the Utility Commission and City Council. In the next period, we are proposing to revisit the Inspection Fee program, and are proposing to revise the existing fees that were adopted in 2014 to detach them from the business license process and to create a stand-alone fee for each inspection, based on the classification (Industrial/Commercial/Restaurant) and the priority (High/Medium/Low). Because of numerous issues relating to

obtaining business license data from the existing software, and the fact that existing inspection fee doesn't more closely relate to the act of inspection, we believe that this change will ensure a more streamlined fee process for the City. It will result in a cost per inspection approach based on the actual inspection when conducted.

6. **TECHNICAL ANALYSIS** – Because of the breadth and depth of experience of our staff, including backgrounds in science, geology, public policy and operations, we are able to provide a complete analysis of the various “on-the-ground” effects of the various TMDLs and regional programs. For example, we were able to successfully redirect the efforts to install a Hypolimnic Oxygenation System (HOS) in Canyon Lake by repeatedly reviewing the technical studies and calling into question the accuracy of the existing modeling. As a result of our efforts, additional modeling showed that the HOS system would not have achieved the desired results, ultimately saving the permittees in the San Jacinto River watershed significant costs over the next two decades. Because of our public policy background, we are able to prepare succinct briefings to various individuals and groups relating to the impacts and value of various TMDL approaches. As an example, we were retained by the County of San Bernardino to prepare a briefing for the Chief Administrative Officer and Board of Supervisors relating to the impacts of the proposed two-county MS4 permit previously proposed by the Santa Ana Regional Water Quality Control Board.
7. **LOCAL IMPLEMENTATION PLAN** – Our firm originally prepared the City's first LIP in 2011, and have periodically reviewed and revised it over the last five years. The most recent review and revision occurred in July 2015. We conduct these reviews each year, and incorporate both external regulatory changes that impact how the City must comply with the NPDES program, as well as internal staffing and process changes. We propose to continue conducting these LIP reviews and revisions as needed under the new contract.
8. **ORDINANCE REVISION** – Once the new permit is adopted, expected in mid to late 2017, we will conduct an in-depth review of the City's existing program to incorporate any changes that may result from the new permits. We routinely review the ordinance each year to ensure that it still meets both the letter and spirit of the law; however, we refrain from too frequent updates, since such effort generate political considerations for the Council. Our effort will include providing updated language that reflects the current state of the NPDES program, as well as incorporating both the statewide General Construction Permit as well as the statewide Industrial General Permit. Our effort will also include updating the inspection program to reflect best practices relating to commercial, industrial and restaurant inspections.
9. **NPDES INSPECTION FEE** – Since 2014, we have been responsible for the administration and processing of the City's NPDES Inspection Fee program. Originally the inspection fee program was to be linked with the business license

software; however, due to various technical issues, the business license software was not able to accommodate the fee process, resulting in the Inspection Fees having to be handled by Public Works separately. While our previous efforts focused on creating inspection programs that relied on the business license program, our current approach supports a “pay-as-inspected” format which directly ties the inspection fee to the act of inspection. This approach is much fairer to the businesses and more easily administered by the City. Using the City’s existing business license list, we will perform grid evaluations of all businesses to determine whether they should be subject to the Inspection program, and at what priority. We will also, during these field reconnaissance, determine if any businesses are operating without the appropriate business license.

- a. **GIS MAPPING OF NPDES INSPECTION FEES** - One of the critical issues facing the City regarding both the business license system and the NPDES Inspection Fees is confirming that all businesses that are located in the field have city business licenses and that all businesses that are subject to the inspection program are identified and inspected. In order to address both of these issues, we are proposing to develop a GIS based system which will allow the integration of data from both the business license list and the NPDES inspection list to physically map these on a single GIS layer. This approach will allow us to visually determine on a map layer where business licenses are actually located, and to determine if any businesses that may be subject to the NPDES program are being missed due to mis-coding of business license data. This will then allow us to ensure that both business license fees and NPDES inspection fees are being collected to the maximum extent.

10. WATER CONSERVATION COORDINATION – Our firm currently works closely with Rialto Water Services and Veolia as it relates to the Fats, Oils and Greases Program. One of our technical staff has been assisting the City in developing water conservation based processes since September 2015, and our inspection staff routinely looks for irrigation run-off and other water waste during our routine inspections. In order to maximize the value of our inspection activities, we began distributing water conservation information to the business community in order to assist the City’s outreach efforts.

11. OTHER ACTIVITIES – Because of the range of technical support within our team, we will be able to provide other assistance to the City as requested.

C. INSPECTION PROGRAM

The NPDES Inspection Program consists of three major segments. The Commercial, Industrial and Restaurant Inspection Program focuses on businesses and their practices as it relates to potential storm water pollution. The Post Construction BMP Inspection Program involves on-going inspection of previously installed Best Management Practices on developed sites. The Construction Inspection Program focuses on the activities at

active and dormant construction sites, subject to coverage under the Statewide General Construction Permit.

COMMERCIAL /INDUSTRIAL / RESTAURANTS - The Commercial and Restaurant Program is the largest segment of inspections that should be performed within the City on an annual basis. These inspections involved reviewing the business' operating and housekeeping practices, and include methods for cleaning their facilities and premises, storage of hazardous or potentially hazardous materials, disposal practices and other business specific activities. In 2013 as a result of the 2012 EPA/Regional Board Audit, the City amended our company's contract to include conducting these inspections, and since 2013, we estimate that we have conducted over ***700 commercial and restaurant inspections within the City of Rialto and approximately 380 industrial inspections.*** Originally, while we used hard copy forms, we are transitioning to tablet technology which allows us to use a fillable PDF specifically designed for the City of Rialto program (See Appendix). The form can be completed by the inspector, signed by the inspectee, saved and emailed to both the inspectee as well as the City for their records. In the event that an inspectee does not have email, our inspectors are equipped with mobile printers in their vehicles which allow a hard copy to be printed and delivered to the inspectee.

The Industrial Inspection Program is governed by the Statewide Industrial General Permit, and is ultimately administered by the respective regional boards. The City of Rialto is required to conduct initial inspections to determine if the targeted industry has filed a Notice of Intent for coverage under the statewide permit, and has prepared and uploaded all relevant documents to the SMARTS database. While industrial activities are determined by SIC Codes listed in the Statewide Permit, what we have discovered through our inspection work is that many small businesses may be subject to coverage under this permit. While we perform the required inspections, we also provide technical assistance to these small businesses that may not be completely aware of their duties under the IGP. Our effort is to seek compliance not enforcement, so our staff will provide guidance relating to completion of Notice of Non Applicability (NONA) or None Exposure Certifications (NEC) as appropriate for the business. Since many are unfamiliar with the Standard Industrial Code (SIC) and may not have the correct SIC code, we work to assist them in correcting that.

In all cases, our approach for inspections is straight forward. We visit each business subject to inspections, introduce ourselves and explain the purpose of the inspection. We then conduct the inspection with the business' representative in order to identify and review all documents and functions. Upon completion of the inspection, we explain any corrections or violations that were noted and provide a reasonable time to correct these, and then ask the business representative to sign the inspection form signifying receipt of the inspection. We further provide any educational materials as appropriate to the business.

If a Notice of Correction is issued, we schedule a follow-up inspection in the agreed to time frame in order to confirm that the corrections have been made. The follow-up inspection is also signed by the business representative. In the event that the corrections

have not been completed, we determine what additional time may be needed to complete the corrections, especially if they may involve structural components such as covers or containment structures. If warranted, additional follow-ups are scheduled. In the event that we believe that the business is stonewalling the process, we will secure assistance from Code Enforcement and take other actions as appropriate.

Inspections are completed in the field, and are electronically sent to our NPDES Inspector II for review, processing and distribution to the inspectees. The electronic inspection forms are then forwarded to the Administrative Assistant I located within our office, who inputs these into the San Bernardino County MS4 Database system. The electronic forms are then compiled as appropriate, assigned to an electronic file for easy data retrieval, and subsequently forwarded to the City for electronic archiving.

POST CONSTRUCTION BMPS - Post Construction BMPs are generally required to be certified by either the City or the developer as to functionality upon completion of construction and acceptance by the City. These are typically shown as part of the grading plan and Water Quality Management Plans (WQMP). A maintenance agreement is generally part of the adoption of the WQMP by the City, and provides for the City to access these facilities for inspections, and in the worst case, maintenance of the installed BMPs. These BMPs should be periodically inspected by the City. We propose to assign our Senior Supervising Inspector, or our Senior Consultant, Cynthia Gabaldon to perform these efforts. Our firm will typically review the WQMP and grading plans for each site, prior to conducting an inspection. The inspector shall identify the current owners of the site, and determine responsibility for the maintenance of each BMP. The inspector shall make contact with the property management of the identified site, and arrange to conduct the inspection. During the inspection, the inspector will note the existing condition of each BMP on site, take appropriate photographs, and determine if maintenance or repairs may be needed. These are documented in an inspection form and are provided to the property manager or operator. Follow-up inspections may be warranted as appropriate. All inspections are done on tablets which allow the forms to be emailed or printed.

CONSTRUCTION SITES - Construction sites are inspected on a frequency based on threat to the watershed. Construction sites must have coverage under a Notice of Intent filed in the SMARTS system as required by the Statewide General Construction Permit. Inspections may be established on a once per wet-season, once per quarter or other frequency based on the sites potential for releases. We propose to assign our Senior Supervising Inspector to conduct these inspections for the City. Our inspectors will obtain a list of current public and private construction sites on a monthly basis from the City. Each site will be reviewed to determine if it should be covered under the Statewide Permit, and if so, whether a NOI and SWPPP have been submitted through the SMARTS system. The inspector will then conduct the inspection as appropriate by visiting the site, meeting with site supervisory staff, reviewing the SWPPP to ensure it is on site and current, and field checking to make sure that all BMPs are in place, in good repair and appear functional. If any issues are identified, the inspector shall contact the sites' QSP/QSD to discuss their concerns. A copy of the inspection form shall be completed electronically and shall be emailed or printed at the time of inspection. Any issues needing correction

shall be scheduled for follow-up inspection and confirmation that the correction was completed. Any items which may rise to the level of a Notice of Violation, shall be referred to the City for direction as appropriate. In the event that a violation is determined to be severe, the City may issue stop work, and may notify the Regional Board for follow-up. Inspections are input into the San Bernardino County MS4 Database by the Administrative Assistant I as they are completed.

D. TRAINING

There are a variety of training programs available to the City, and our responsibility is to make sure that the City's staff takes advantage of these opportunities. The San Bernardino County NPDES Program has developed a variety of training materials that are available to the City of Rialto, and our focus in the future will be to ensure that more field training sessions will be conducted. Recently the County of San Bernardino program was subject to a Regional Board audit, and in a round-table session with the co-permittees, it became apparent that a greater emphasis on training need to be on-going and continuous. As such, our company will work with the other co-permittees in developing and implementing training programs that help staff to integrate NPDES into their daily work ethic, as opposed to simply conducting training in response to audits or other scrutiny.

In addition to using available packaged training from the Principal Permittee, our firm also provides an annual two-hour training session with Rialto engineering and planning staff to update them on various issues such as hydrologic modifications, WQMP management and other topics relating to the NPDES program. This training is designed to provide senior staff a "state-of-the-program" assessment and reinforcement of the various aspects of the NPDES Program as it relates to the planning, development, construction and acceptance of both private and public construction projects. Our staff documents this training and inputs all training records into the MS4 Database as necessary.

Cynthia Gabaldon is a registered trainer of record for both the General Construction Permit and the Industrial General Permit. If the City desires, she is available to provide training under the Qualified Stormwater Practitioner (QSP) or Qualified Stormwater Developer (QSD) categories which may allow designated staff members to secure those certifications in the future and upon completion of all additional requirements. Other topics of interest or concern can also be developed in consultation with the City and based on their needs.

EXHIBIT "B"

SPECIAL REQUIREMENTS

(Superseding Contract Standard Language)

Not Applicable

EXHIBIT "C"

SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks at the following rates:

FULLY BURDENED LABOR RATE SCHEDULE

LABOR CATEGORY	FY16-17	FY17-18	FY18-19
PRINCIPAL IN CHARGE	\$ 120.75	\$ 123.77	\$ 126.86
SENIOR CONSULTANT / PRINCIPAL ENGINEER	\$ 126.79	\$ 129.96	\$ 133.21
SENIOR CONSULTANT / PROGRAM MANAGER	\$ 115.00	\$ 117.88	\$ 120.82
SENIOR SUPERVISING INSPECTOR	\$ 97.50	\$ 99.94	\$ 102.44
NPDES INSPECTOR III	\$ 78.00	\$ 79.95	\$ 81.95
NPDES INSPECTOR II	\$ 42.50	\$ 43.56	\$ 44.65
ENVIRONMENTAL TECHNICIAN	\$ 42.50	\$ 43.56	\$ 44.65
NPDES INSPECTOR I	\$ 40.25	\$ 41.26	\$ 42.29
ADMINISTRATIVE ASSISTANT II	\$ 31.05	\$ 31.83	\$ 32.62
ADMINISTRATIVE ASSISTANT I	\$ 25.30	\$ 25.93	\$ 26.58
Mileage (At IRS Published Rates)	\$ 0.540	\$ 0.55	\$ 0.57
Mark-Up Percentage on Outside Services:	8.500%	8.500%	8.500%
Reimbursables (Travel and Reproduction) at actual cost.			

All Labor Rates are listed fully burdened as presented. Labor rates are escalated at 2.5% per year for FY2017-18, and FY2018-19; actual rates shall be escalated based on first year hourly rates and cost-of-living adjustment, if any, based on Consumer Price Index (CPI) for All Urban Consumers for Los Angeles-Riverside-Orange County California as set forth on Page 1 of the Addendum. We will agree to accept the lower of either the CPI rate or our escalated rates above for FY2017-18 and FY2018-19.

II. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

- V. The total compensation for the Services shall not exceed the three year contract amount of \$405,982.50 as provided in Section 2.1 of this Agreement.**
- VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.**

EXHIBIT “D”

SCHEDULE OF PERFORMANCE

- I. Consultant shall perform all Services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer and the City Attorney’s office.**

Because of the variety of activities undertaken, a classic timeline would not be possible to provide. Under our current efforts, a typical schedule of activities for the year that we have previously performed for the City of Rialto is as follows:

ACTIVITY	FREQUENCY	DURATION
Attend SB County NPDES General Meetings	Monthly – 12 times per year.	2 to 3 hours.
Attend SB County NPDES Subcommittee Meetings	Fiscal – quarterly or as-called CBRP – as-called. <u>MS4 Database</u> – monthly or as-called Training – monthly. <u>Public Education</u> - monthly	2 to 3 hours.
Attend City of Rialto CIP Status Meeting	Weekly	2 hours
Attend Middle Santa Ana TMDL Task Force Meeting	Quarterly	4 to 5 hours.
Attend Basin Monitoring Task Force Meeting	Monthly	2 to 4 hours
Attend Emerging Constituents Meeting	As called	2 to 4 hours.
Training Sessions – County Sponsored	As scheduled -	2 to 4 hours.
Training Sessions – Annual City Briefing	Annually	2 to 3 hours
Training Session – city staff	As scheduled	30 minutes to 4 hours.
Status Meeting with City Liaison	Weekly	30 minutes to 1 hour.
Commercial/ Restaurant/ Industrial Inspections – High Priority – 300 per year.	Annually	30 minutes to 1.5 hours.
Commercial / Restaurant/ Industrial Inspections – Medium Priority 100 per year.	Every two years per business	30 minutes to 1.5 hours.
Commercial / Restaurant / Industrial Inspections – Low priority – 25 per year	Every five years per business	15 minutes to 30 minutes.
SWPPP CIP Projects	Per Capital Improvement Project	4 to 10 hours depending on project complexity.
Local Implementation Plan	Review Annually	10 to 30 hours, depending on needed updates.
Ordinances	Review Annually	10 to 30 hours, depending on needed updates
Inspection Fee Administration	Monthly	4 to 8 hours, depending on number of inspections conducted.