



## Legislation Details (With Text)

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**File created:** 2/19/2015      **In control:** City Council  
**On agenda:** 3/10/2015      **Final action:**  
**Title:** Request City Council to Authorize the Release of Request for Proposals No. 15-055 for "On-Call" Inspection Services Associated with Private Land Development Projects.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** [RFP 15-055 On Call Inspection Services Associated with Private Land Development](#)

Date	Ver.	Action By	Action	Result
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For City Council Meeting of March 10, 2015

TO: Honorable Mayor and City Council

APPROVAL: Michael E. Story, City Administrator

FROM: Robb R. Steel, Assistant CA/Development Services Director

Request City Council to Authorize the Release of Request for Proposals No. 15-055 for "On-Call" Inspection Services Associated with Private Land Development Projects.

### **BACKGROUND:**

One of the important functions of the Public Works Department is to perform inspections related to City-approved private land development projects. In private land development projects, subsequent to the entitlement process, an owner or developer will engage its own engineering consultant to prepare the required improvement plans for on-site rough grading, precise grading/paving, on-site or off-site storm drainage improvements, public street improvements, traffic signal installation and other associated work. The City Engineer has the legal responsibility to review and approve these improvement plans, and to ensure that construction of the on-site and off-site improvements meets City standards, and completed in compliance with the City-approved plans.

### **ANALYSIS/DISCUSSION:**

Due to the number of Private Land Development Projects, the Public Works Department has an ongoing need for on-call professional assistance. Staff prepared a Request for Proposals No. 15-055 (the "RFP") to solicit proposals from professional firms to provide professional services for "On-Call" Inspection Services Associated with Private Land Development Projects to the City. The RFP is included as **Attachment 1**.

The RFP identifies the following schedule for the process to select a consulting firm:

Notice requesting Proposals posted and issued . . . . . Thursday, March 12, 2015

Deadline for receipt of Questions . . . . . Monday, April 6, 2015, 3:00 P.M.  
**Deadline for receipt of Proposals . . . . . Monday, April 13, 2015, 3:00 P.M.**  
Short List/Interviews/Technical & Cost Proposals . . . . . to be determined  
Contract awarded by City Council . . . . . to be determined

The RFP will be advertised in the San Bernardino County Sun newspaper, posted on the City's website and distributed to various plan rooms throughout Southern California.

**ENVIRONMENTAL IMPACT:**

The requested City Council action is not a "Project" as defined by the California Environmental Quality Act (CEQA). Pursuant to Section 15378(a), a "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. According to Section 15378(b), a Project does not include: (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

**GENERAL PLAN CONSISTENCY:**

This action is consistent with Guiding Principle 3A in the General Plan:

*Our City government will lead by example, and will operate in an open, transparent, and responsive manner that meets the needs of the citizens and is a good place to do business.*

**LEGAL REVIEW:**

The City Attorney has reviewed and approved the staff report and RFP No. 15-055.

**FINANCIAL IMPACT:**

Limited costs are associated with the release of the RFP, generally less than \$500 associated with publication of the Notice in local newspapers.

For Private Land Development Projects, the City will collect construction inspection fees from a developer sufficient to cover the inspection fees to be paid to the consultant. Upon receipt of payment from a developer, construction inspection revenues will be recognized in the General Fund Engineering Land Development Revenue Account No. 010-400-7262-7613, which will offset the expenditure for inspection services to be paid from the General Fund Engineering Land Development Account No. 010-500-7262-2011. The budget for the services will be included in the FY2015-2016 budget process.

**RECOMMENDATION:**

Staff recommends that the City Council approve Request for Proposals No. 15-055 for "On-Call" Inspection Services Associated with Private Land Development Projects and authorize its release to the public.



**CITY OF RIALTO, CA**  
**NOTICE FOR REQUEST FOR PROPOSALS (RFP) #15-055**  
**“ON-CALL” INSPECTION SERVICES FOR PRIVATE LAND DEVELOPMENT PROJECTS**

**NOTICE IS HEREBY GIVEN** that the City of Rialto is requesting proposals from qualified professional firms to provide the City with “on-call” construction management and inspection services associated with various private land development projects within the City of Rialto, (hereinafter the “Project”).

**PROJECT LOCATION:** Various locations within the City of Rialto.

**SCOPE OF SERVICES:** The scope of work will consist of providing “on-call” inspection services associated with private land development projects within the City of Rialto.

**OBTAINING RFP DOCUMENTS AND ADDENDA:** The RFP document may be downloaded via the internet at [www.rialtoca.gov](http://www.rialtoca.gov) (from the main page look for “Featured Resources” on the right hand side, go to “Bids/Proposals”), or at [www.rialtoca.gov/1458\\_1534.php](http://www.rialtoca.gov/1458_1534.php). Alternatively, you may contact the Purchasing Division at (909) 820-2539 or e-mail [purchasing@rialtoca.gov](mailto:purchasing@rialtoca.gov). Upon downloading the RFP via the internet, contact the Public Works Department, by e-mail at [bidinfo@rialtoca.gov](mailto:bidinfo@rialtoca.gov), or by phone at (909) 421-4999, to register as a firm interested in this project. Failure to register may result in not receiving addenda to the RFP.

**EVALUATION OF PROPOSALS AND AWARD OF CONTRACT:** This solicitation has been developed in the Request for Proposals (RFP) format. Accordingly, firms should take note that multiple factors as identified in the RFP will be considered by the Evaluation Committee to determine which proposal best meets the requirements set forth in the RFP document. **PRICE IS NOT EVALUATED AS PART OF THE EVALUATION CRITERIA.** The City reserves the right to negotiate the terms and conditions of any resulting contract. Final contract award, if any, will be made by the Rialto City Council, at which time, price may be a criteria in the evaluation. The selected firm will be required to comply with all insurance and license requirements of the City.

**DEADLINE:** All proposals must be received in the Purchasing Division, 249 S. Willow Ave., Rialto, CA, 92376 by **3:00 P.M., MONDAY, APRIL 13, 2015**. The receiving time in the Purchasing Division will be the governing time for acceptability of Proposals. Telegraphic and telephonic Proposals will not be accepted. Reference the RFP document for additional dates and deadlines. Late proposals will not be accepted and shall be returned unopened.

**PROPOSALS TO REMAIN OPEN:** The Proposer shall guarantee that all contents of their proposal shall be valid for a period of 120 calendar days from the due date of proposals.

Hector Gonzalez, P.E.  
Associate Civil Engineer  
March 11, 2015



**CITY OF RIALTO, CA  
REQUEST FOR PROPOSALS (RFP) 15-055  
“ON-CALL” INSPECTION SERVICES  
ASSOCIATED WITH PRIVATE LAND DEVELOPMENT PROJECTS**

Requests for Proposals (RFP #15-055), for “on-call” inspection services associated with private land development within the City of Rialto, (hereinafter the “RFP”) will be received at the City of Rialto Purchasing Division, 249 S. Willow Ave., Rialto, CA, 92376, until **3:00 P.M., MONDAY, APRIL 13, 2015**. It is the responsibility of the Proposer to see that any proposal sent through the mail, or any other delivery method, shall have sufficient time to be received by this specified date and time. The receiving time in the Purchasing Division will be the governing time for acceptability of submitted Proposals. Telegraphic, telephonic, faxed or emailed Proposals will not be accepted. Late Proposals will be returned unopened. Failure to register as a Respondent to this RFP process per the instructions in the Notice Inviting Requests for Proposals (under “Obtaining RFP Documents”) may result in not receiving Addenda or other important information pertaining to this process. Failure to acknowledge Addenda may render a proposal as being non-responsive. We **strongly advise** that interested firms officially register per the instructions.

**1. PURPOSE AND SCHEDULE:**

The City of Rialto is requesting proposals from qualified professional firms to provide the City with “on-call” inspection services associated with private land development projects, (hereinafter the “Project”). The selected firm will be expected to provide various professional services as necessary to provide inspection services for a variety of projects for the City.

**SCHEDULE:**

Notice requesting Proposals posted and issued ..... Thursday, March 12, 2015  
Deadline for receipt of Questions ..... Monday, April 6, 2015, 3:00 P.M.  
**Deadline for receipt of Proposals ..... Monday, April 13, 2015, 3:00 P.M.**  
Short List / Interviews/Technical & Cost Proposals ..... to be determined  
Contract awarded by City Council ..... to be determined

***NOTE: There will NOT be a pre-proposal conference for this procurement.***

***\*Dates above are subject to change.***

## **2. BACKGROUND:**

The City of Rialto currently performs inspections with staff, however, in anticipation of increased development occurring within the City of Rialto; it is the City's intention to secure an "on-call" construction inspection firm. The selected Consultant will provide necessary independent construction review and inspection of on-site and off-site improvements associated with private land development projects. The City intends to award one contract for "on-call" inspection services with an initial term of three years, with two one-year extensions upon approval of the City Engineer and mutual consent of the selected Consultant, for a total maximum term of five years.

The Public Works Department will be coordinating all public works inspections and work assigned through the resulting contract.

The fees currently charged by the City of Rialto for on-site and off-site public works inspections associated with private land development projects is related to the value of the work in accordance with the following formula:

### On-site

Under \$25,000: 6% of Valuation of Improvements

\$25,000 - \$100,000: \$1,981.70 + 4 % of Valuation over \$25,000

Over \$100,000: \$5,866.60 + 3 % of Valuation over \$100,000

### Off-site

Under \$25,000: 6% of Valuation of Improvements

\$25,000 - \$100,000: \$1,759.30 + 4 % of Valuation over \$25,000

Over \$100,000: \$5,208.00 + 3 % of Valuation over \$100,000

## **3. SCOPE OF WORK:**

The selected Consultant shall provide professional services for inspections related to various private land development projects. Appropriate inspection services shall be provided for review and approval of on-site and off-site improvements associated with private land development projects, including, but not limited to the following tasks: rough grading, street, sewer, water, storm drain, precise grading/paving, traffic signal, and traffic striping/signage.

The selected Consultant shall ensure all required improvements are constructed to appropriate standards and in accordance with the approved plans for the project. Construction management services associated with private land development projects shall be provided to the extent that changes to the approved plans are requested by the developer/owner and require review and approval by the City Engineer. Coordination of materials testing and inspection services shall also be provided with all costs associated with materials testing/inspection paid for by the developer or project owner.

The selected Consultant shall provide first class as-needed construction management and inspection services associated with various projects, including: street improvements, storm drainage improvements, traffic improvements, and facilities construction. More specifically, construction management services shall include, but are not limited to:

### Pre-Construction Phase:

1. Maintain a project schedule based on anticipated completion of construction.

### Construction Phase

1. Attend Pre-Construction meeting with general contractor and project stakeholders and present special concerns if any.
2. Provide and maintain sufficient field personnel to administer and manage construction contract.
3. Attend progress meetings to discuss contract issues, procedures, progress, problems, submittals, deficiencies and schedules.
4. Assist City in reviewing services of other consultants (geotechnical, NPDES, materials testing, deputy inspection, special laboratory testing, etc.) that may be hired or selected for the project.
5. Maintain a complete project filing system.
6. Photograph prior, during, and after construction.
7. Interpret plans, specifications and regulations and ensure that contractors are following the approved plans. Provide inspections to ensure projects are constructed according to project specifications.
8. Direct and notify construction contractors about non-compliance and correct compliance problems as soon as they are discovered.
9. Maintain daily diaries showing site and weather conditions; traffic control measures taken by contractors; labor, equipment and materials used; quantity of work performed; and major incidents/safety violations. Daily diaries shall be submitted to City upon project completion.
10. Review soil compaction and materials testing certifications of compliance (COC). Coordinate with City's Acceptance Testing (AT) and Independent Assurance Program (IAP) testing firms regarding quality of work completed as it relates to off-site Public Improvements.
11. Ensure that contractors do not install materials without approved material testing certifications. Any failed tests shall be reported and direct contractor to take correction measures to achieve compliance.
12. Monitor contractors' utility coordination to minimize utility conflict delays and potential need for utility relocations.
13. Attend progress meetings to communicate, coordinate and resolve any issues or problems that may arise at the job site.
14. Coordinate with contractor access to adjacent businesses/residents during construction. Coordinate mitigation of construction impacts with contractor, City and other agencies.
15. Provide inspection of street lighting, traffic control, channelization, and all other traffic-related work.
16. Observe construction safety, public safety and convenience, and report discovered problems to City.
17. Monitor compliance with the City's National Pollutant Discharge Elimination System (NPDES) Permits and requirements. Monitor compliance with all other local, state, and federal laws and regulations.
18. The selected Consultant shall ensure approved Water Quality Management Plans (a "WQMP") are implemented accordingly. The selected Consultant shall verify the developer/owner has obtained clearance under the Statewide General Permit (currently: Board Order 2009-0009-DWQ General Permit No. CAS000002), and has been issued a Waste Discharge Identification Number (WDID#). The selected Consultant shall also confirm that all land development construction activities within the City of Rialto conform to requirements identified in the City's current National Pollutant Discharge Elimination System ("NPDES") Permit (currently: Board Order No. R8-2010-0036, NPDES No. CAS 618036). The selected Consultant shall review installation of all required storm water pollution control measures identified on the approved WQMP.
19. Coordinate submittal of as-built plans to City upon project completion.
20. Evaluate completion of work, prepare preliminary and final punch list and follow through with contractor until completion of all punch list items and compliance with conditions of approval for project.

21. Upon project completion, conduct final inspection and close-out encroachment and construction/excavation permits.

#### Post-Construction Phase

1. Conduct final inspection/walk through with City staff, maintenance/service personnel and project architect/design consultant.
2. Secure and transmit required guarantees, certifications, affidavits, leases, easement deeds, operating & maintenance manuals, warranties and other documents as stipulated in project conditions of approval.
3. Deliver project files to City.

**Special Note:** It is the City Engineer's preference that the selected Consultant utilize existing office space in the Public Works Department office located at 335 West Rialto Avenue to maintain an office presence, with part-time attendance by the assigned Inspector(s). Throughout the assignment, the selected Consultant shall be expected to be available to meet, as necessary, with the Public Works Department to discuss assigned projects, review permits, and other requirements. Fees for the Consultant's time required to meet with City staff shall be included in the inspection fees charged by the Consultant. These fees will not be separately paid for outside of required inspections.

#### **4. PROPOSAL REQUIREMENTS:**

##### **General Requirements:**

The firm's proposal should describe the methodology to be used to accomplish each of the project tasks. The proposal should also describe the work which shall be necessary in order to satisfactorily complete the task requirements.

Please note: this RFP cannot identify each specific, individual task required to successfully and completely implement these services. The City of Rialto relies on the professionalism and competence of the selected firm to be knowledgeable of the general areas identified in the scope of work and to include in its proposal all required tasks and subtasks, personnel commitments, man-hours, direct and indirect costs, etc. The City of Rialto will not approve addenda to the selected firm's agreement which do not involve a substantial change from the general scope of work identified in this RFP.

The proposal shall include the following relevant information:

- A discussion of previous on-call private land development inspection services experience.
- A discussion of experience with municipal government, private development, and civil engineering.
- A listing of the specific individuals who will be assigned to provide the requested services, including their experience and professional qualifications.
- A statement regarding the availability of qualified staff to provide required services.
- A discussion of, and response to, the following question:

What change, if any, would you suggest to the inspection permit fee to ensure all costs associated with on-call land development inspection services are adequately covered through permits issued to developers/owners?

**5. SELECTION PROCESS:** The City of Rialto is utilizing a Qualifications Based Selection process to select a firm to provide the services requested by this RFP. The City shall review the proposals submitted in reply to this RFP, and a limited number of firms may be invited to make a formal presentation at a future date. The format, selection criteria and date of the presentation will be established at the time of short listing. Preparation of proposals in reply to this RFP, and participation in any future presentation is at the sole expense of the firms responding to this RFP.

**6. PROPOSAL EVALUATION CRITERIA:** This solicitation has been developed in the "Request for Proposals" (RFP) format. Accordingly, firms should take note that the City will consider multiple criteria in selecting the most qualified firm. Consistent with Federal, State and local laws for the acquisition of professional services, price is **NOT** an evaluation criteria. Cost proposals submitted in separate sealed envelopes are not opened, nor considered during proposal evaluations. Upon selection of the most qualified firm, the associated cost proposal will be used as a basis for contract negotiations. A contract shall be negotiated on the basis of the submitted Cost Proposal, and in consideration of reasonable and mutually agreed project costs and time requirements. Should successful negotiations not occur with the highest ranked firm, the City may, at its sole discretion, choose to enter into negotiations with the second highest ranked firm, and so on.

**PRIOR CITY WORK:** If your firm has prior experience working with the City **DO NOT** assume this prior work is known to the evaluation committee. All firms are evaluated solely on the information contained in their proposal, information obtained from references, and presentations if requested. All proposals must be prepared as if the evaluation committee has no knowledge of the firm, their qualifications or past projects.

An Evaluation Committee, using the following evaluation criteria for this RFP, will evaluate all responsive proposals to this RFP. The Evaluation Committee may request, if desired by City, formal presentations/interviews from short listed firms at a future date of which the format and presentation evaluation criteria shall be provided at the time of short listing. **Participation in any phase of this RFP process, including the interview phase if conducted, is at the sole expense of the firms replying to this RFP.** The City shall NOT be responsible for any costs incurred by any firm in response to, or participation in, this RFP.

Firms are requested to submit their proposals so that they correspond to and are identified with the following specific evaluation criteria:

**A. Project Understanding (25 POINTS):**

The firm's proposal adequately demonstrates an understanding of the Project and familiarity with public works construction issues within the Inland Empire; familiarity with "on-call" land development inspection services for a municipal government.

**Note:** Firms should not simply restate the information contained in this RFP; this evaluation criteria requires that the proposal identify "critical issues" to the Project, identify an approach to resolving any critical issues, and otherwise provide additional information regarding the Project which supports the firm's ability to perform if selected.

**B. Scope of Work (25 POINTS):**

Proposed scope of work, including the expected time commitment of key personnel, and their technical approach to land development inspection services.

**C. Staff Qualifications (25 POINTS):**



Qualifications of the staff assigned to manage and provide services related to the Project; and familiarity with construction issues within the Inland Empire; experience with “on-call” land development inspection services for a municipal government.

**Note:** This evaluation criteria requires that the proposal identify specific staff experience with “on-call” land development inspection services. Relevant experience must be demonstrated.

**D. Firm Qualifications (25 POINTS):**

Past experience with “on-call” land development inspection services for a municipal government.

**7. PROPOSAL CONTENTS:** Firms are requested to format their proposals so that responses correspond directly to, and are identified with, the specific evaluation criteria stated in Section 6 above. **The proposals must be in an 8 ½ X 11 format, may be no more than a total of forty (40) pages (sheets of paper, double sided is OK),** including an organization chart, staff resumes and appendices, and cover letter. **NOTE:** Dividers, attachments included in this RFP to be submitted with the proposal, and Addenda acknowledgments do NOT count toward the 40 page limit. Interested firms shall **submit EIGHT (8) copies (one marked “Original” plus seven copies)** of its proposal by the deadline.

All proposals shall be sealed within one package and be clearly marked, “**RFP #15-055, REQUESTS FOR PROPOSALS FOR “ON-CALL” INSPECTION SERVICES FOR PRIVATE LAND DEVELOPMENT PROJECTS**” Within the sealed proposal package, the Cost Proposal shall be in a separately sealed envelope. **Proposals not meeting the above criteria may be found to be non-responsive.**

Each proposal package must include two separately sealed envelopes.

**Envelope #1, clearly marked “Work Proposal”, shall include the following items:**

- Completed Signature authorization and Addenda Acknowledgment (see **Attachment A**)
- Completed Debarment and Suspension Certificate (see **Attachment B**)
- Technical proposal – describe in detail your approach and understanding of all necessary tasks and steps involved in the project; include a list of deliverables
- Related Experience; include relevant experience date, name of agency, and reference name/contact information
- A compact disc (“CD”) containing the **Work Proposal** in both Microsoft Word (\*.doc) and Adobe Acrobat (\*.pdf) formats

**Envelope #2, clearly marked “Cost Proposal”, shall include the following item:**

- Cost proposal – provide a Cost Proposal that identifies the proposed fixed rates for review of all related plan check items; provide a schedule of hourly rates for various staff assigned to perform related services.
- **Do NOT include Attachments “A” or “B” in the Cost Proposal envelope.** Attachments “A” and “B” are to be included in Envelope #1, “Work Proposal”.

At a minimum, firms must provide the information identified below. All such information shall be presented in a format that directly corresponds to the numbering scheme identified here.

**SECTION A: PROJECT UNDERSTANDING**

**A.1** Without reciting the information regarding the Project verbatim as contained in this RFP, convey an understanding of the intent of the Project and an understanding of the City's expectations upon implementation of the Project.

**A.2** Identify "key" or "critical" issues that may be encountered on the Project based on the firm's prior experiences; provide steps to be taken to ensure the issues do not affect the successful delivery of the Project.

## **SECTION B: SCOPE OF WORK**

**B.1** Provide a detailed scope of work identifying all tasks and sub-tasks required to successfully perform inspection services for the construction phase of various land development Project. The outline of tasks and sub-tasks must be thorough and complete, and will be used as the scope of work included in the selected firm's contract.

**B.2** Identify how the firm will propose to budget and allocate resources to various private land development projects.

## **SECTION C: STAFF QUALIFICATIONS**

**C.1** List the name and qualifications of the key staff/team members that will be assigned to the Project. Provide detailed qualifications of the Project Manager that will be assigned to the Project.

**C.2** List specific and relevant experience for the key staff/team members assigned to the Project with "on-call" land development inspection services for a municipal government. Detailed project information, including dates project started and completed, local agency contact information, and other appropriate supporting information shall be provided.

**C.3** Explain the Project Manager's past experience with resolving disputes between the assigned Inspector and contractors. What is the firm's philosophy for minimizing the frequency of any disputes?

## **SECTION D: FIRM QUALIFICATIONS**

**D.1** List the firm's complete name, type of firm (individual, partnership, corporation or other), telephone number, FAX number, contact person and E-mail address. If a corporation, indicate the state the corporation was organized under.

**D.2** List the name and title of the firm's principal officers with the authority to bind your company in a contractual agreement.

**D.3** Describe the firm's background and qualifications in the type of effort that this project will require, specifically identifying experience with "on-call" land development inspection services for a municipal government.

**D.4** Indicate the name of any sub-consultant firms that will be utilized to make up your team. Describe each sub-consultant's background and specific expertise that they bring to the Project.

**D.5** Identify any prior local experience providing "on-call" land development inspection services to municipal governments.

**D.6** Specifically explain why the firm is the most qualified firm to provide “on-call” land development inspection services to the City of Rialto.

**DEADLINE FOR SUBMISSION OF PROPOSALS:** All proposals must be received in the City of Rialto, Division of Procurement and Contracting by **3:00 P.M., MONDAY, APRIL 6, 2015.** Proof of receipt before the deadline is a City of Rialto, Purchasing Division time/date stamp. It is the responsibility of the firms replying to this RFP to see that any proposal sent through the mail, or via any other delivery method, shall have sufficient time to be received by the Purchasing Division prior to the proposal due date and time. Late proposals will be returned to the firm unopened. **Proposals shall be clearly marked and identified and must be submitted to:**

City of Rialto  
Purchasing Division  
249 S. Willow Ave.  
Rialto, CA 92376  
**Attn: William Jernigan, Purchasing Manager**

**QUESTIONS:** Firms, their representatives, agents or anyone else acting on their behalf are specifically directed **NOT** to contact any city employee, commission member, committee member, council member, or other agency employee or associate for any purpose related to this RFP other than as directed below. **Contact with anyone other than as directed below may be cause for rejection of a proposal.**

Any questions, technical or otherwise, pertaining to this RFP **must be submitted IN WRITING and directed ONLY to:**

City of Rialto Public Works Department  
335 W. Rialto Ave.  
Rialto, CA 92376  
**via FAX (909) 421-7210**  
or via **EMAIL:** [bidinfo@rialtoca.gov](mailto:bidinfo@rialtoca.gov)

Interpretations or clarifications considered necessary in response to such questions will be resolved by the issuance of formal Addenda to the RFP. **The deadline for all questions is 3:00 P.M., Monday, April 6, 2015.** Questions received after this date and time may not be answered. Only questions that have been resolved by formal written Addenda via the Purchasing Division will be binding. Oral and other interpretations or clarifications will be without legal or contractual effect.

**FORM OF AGREEMENT:** The selected firm will be required to enter into a contractual agreement, inclusive of insurance requirements, with the City of Rialto in accordance with the standard Professional Services Agreement (see **Attachment 1**). Requested changes to the Professional Services Agreement may not be approved, and the selected firm must ensure that the attached document will be executed.

Failure or refusal to enter into an Agreement or to conform to any of the stipulated requirements in connection therewith shall be just cause for an annulment of the award.

**AWARD OF CONTRACT:** It is the City's intent to award a contract to the firm that can provide all of the services identified in the RFP document. ***However, the City reserves the right to award a contract to multiple Respondents or to a single Respondent, or to make no award, whichever is in the best interest of the City.*** It is anticipated that award of the contract will occur at the next regularly scheduled City Council meeting after the evaluation committee has made its final selection of the firm to be recommended for award and a contract

has been negotiated and agendized for consideration. The decision of the City Council will be final.

**RESPONSIBILITY OF PROPOSER:** All firms responding to this RFP shall be responsible. If it is found that a firm is irresponsible (e.g., has not paid taxes, is not a legal entity, submitted an RFP without an authorized signature, falsified any information in the proposal package, etc.), the proposal shall be rejected.

**PUBLIC RECORD:** All documents submitted in response to this solicitation will become the property of the City of Rialto and are subject to the California Code Section 6250 et seq., commonly known as the Public Records Act. Information contained in the documents, or any other materials associated with the solicitation, may be made public after the review process has been completed, negotiations have concluded and a recommendation for award has been officially agendized for City Council consideration, and/or following award of contract to a specific firm, if any, by the City Council.

**COST RELATED TO PROPOSAL PREPARATION:** The City will NOT be responsible for any costs incurred by any firm responding to this RFP in the preparation of their proposal or participation in any presentation if requested, development of any technical proposal if requested, or any other aspects of the entire RFP process.

**BUSINESS LICENSE:** The selected firm will be required to be licensed in accordance with Title 5 of the City of Rialto Municipal Code, entitled "Business Licenses and Regulations".

**PROPOSAL INFORMALITIES OR DEFECTS:** The City of Rialto reserves the right to waive any informality or technical defect in a proposal and to accept or reject, in whole or in part, any or all proposals and to seek new RFP's, as best serves the interests of the City.

**INVESTIGATIONS:** The City reserves the right to make such investigations as it deems necessary to determine the ability of the firms responding to this RFP to perform the Work and the firm shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any proposal if the evidence submitted by or investigation of such firm fails to satisfy the City that such firm is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated therein.

**PROPOSALS TO REMAIN OPEN:** The Proposer shall guarantee that all contents of their proposal shall be valid for a period of 120 calendar days from the due date of proposals.

**SIGNED PROPOSAL AND EXCEPTIONS:** Submission of a signed proposal will be interpreted to mean that the firm responding to this RFP has hereby agreed to all the terms and conditions set forth in all of the sheets which make up this Request for Proposals, and any attached sample agreement. **Exceptions to any of the language in either the RFP documents or attached sample agreement, including the insurance requirements, must be included in the proposal and clearly defined.** Exceptions to the City's RFP document or standard boilerplate language, insurance requirements, terms or conditions may be considered in the evaluation process; however, the City makes no guarantee that any exceptions will be approved.

**ATTACHMENT "A"**

**\*NOTE: THIS FORM MUST BE COMPLETED AND INCLUDED INSIDE ENVELOPE #1, "WORK PROPOSAL"\***

**REQUESTS FOR PROPOSALS (RFP) # 15-055  
"ON-CALL" INSPECTION SERVICES  
ASSOCIATED WITH PRIVATE LAND DEVELOPMENT PROJECTS  
SIGNATURE AUTHORIZATION**

PROPOSER: \_\_\_\_\_

- A. I hereby certify that I have the authority to submit this Proposal to the City of Rialto for the above listed individual or company. I certify that I have the authority to bind myself/this company in a contract should I be successful in my proposal.

\_\_\_\_\_  
SIGNATURE

- B. The following information relates to the legal contractor listed above, whether an individual or a company. Place check marks as appropriate:

1. If successful, the contract language should refer to me/my company as:

\_\_\_\_ An individual;  
\_\_\_\_ A partnership, Partners' names: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_ A company;  
\_\_\_\_ A corporation

2. My tax identification number is: \_\_\_\_\_

**ADDENDA ACKNOWLEDGMENT:**

Acknowledgment of Receipt of any Addenda issued by the City for this RFP is required by including the acknowledgment with your proposal. Failure to acknowledge the Addenda issued may result in your proposal being deemed non-responsive.

**In the space provided below, please acknowledge receipt of each Addenda:**

**Addendum(s) # \_\_\_\_\_ is/are hereby acknowledged.**

The "Business Concerns Information" sheet shall be included as part of Attachment "A".

### Attachment "A" - Business Concerns Information

The Proposer shall furnish the following information. Additional sheets may be attached, if necessary.

- (1) Name: \_\_\_\_\_
- (2) Address: \_\_\_\_\_
- (3) Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_
- (4) E-Mail: \_\_\_\_\_
- (5) Type of Firm: (Check all that apply)  
\_\_\_\_\_ Individual \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation  
\_\_\_\_\_ Minority Business Enterprise (MBE) \_\_\_\_\_ Women Business Enterprise (WBE)  
\_\_\_\_\_ Small Disadvantaged Business (SDB) \_\_\_\_\_ Veteran Owned Business  
\_\_\_\_\_ Disabled Veteran Owned Business \_\_\_\_\_ Other
- (6) Business License: \_\_\_\_\_ Yes \_\_\_\_\_ No License Number: \_\_\_\_\_
- (7) Tax Identification Number: \_\_\_\_\_
- (8) Contractors License: State: \_\_\_\_\_ License No. : \_\_\_\_\_ Classification(s) \_\_\_\_\_
- (9) Names and Titles of all members of the firm:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (10) Number of years as a contractor in construction work of the type: \_\_\_\_\_
- (11) Three (3) projects of this type recently completed:  
Type of project: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_  
Owner: \_\_\_\_\_ Phone: \_\_\_\_\_  
Type of project: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_  
Owner: \_\_\_\_\_ Phone: \_\_\_\_\_  
Type of project: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_  
Owner: \_\_\_\_\_ Phone: \_\_\_\_\_
- (12) Person who inspected the site of the proposed work for your firm:  
Name: \_\_\_\_\_ Date of Inspection: \_\_\_\_\_

## ATTACHMENT "B"

**\*NOTE: THIS FORM MUST BE COMPLETED AND INCLUDED INSIDE ENVELOPE #1, "WORK PROPOSAL"\***

**REQUESTS FOR PROPOSALS (RFP) # 15-055  
"ON-CALL" INSPECTION SERVICES  
ASSOCIATED WITH PRIVATE LAND DEVELOPMENT PROJECTS**

### **DEBARMENT AND SUSPENSION CERTIFICATION**

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The Consultant, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, and manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining Proposer responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions.

Consultant Name: \_\_\_\_\_

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name & Title)

**ATTACHMENT 1**  
**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

**COPY OF CITY'S SAMPLE PROFESSIONAL SERVICES AGREEMENT  
FOLLOWS THIS PAGE**



**ATTACHMENT 1  
SAMPLE PROFESSIONAL SERVICES AGREEMENT**

**\*\*\*\*\*SAMPLE CONTRACT\*\*\*\*\*  
SERVICES AGREEMENT**

**BETWEEN THE CITY OF RIALTO AND  
(NAME OF VENDOR)**

THIS SERVICES AGREEMENT (herein "Agreement") is made and entered into this (Date) day of (Month), 2015 by and between the City of Rialto, a municipal corporation ("City"), and (Vendor Name), a (State) ("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

## **ATTACHMENT 1**

### **SAMPLE PROFESSIONAL SERVICES AGREEMENT**

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

**ATTACHMENT 1**  
**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

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),

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**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

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 (Dollar Amount Written Out) Dollars (\$\_\_\_\_\_) (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

## **ATTACHMENT 1**

### **SAMPLE PROFESSIONAL SERVICES AGREEMENT**

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)

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**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

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.**

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

**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:

\_\_\_\_\_

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

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### **SAMPLE PROFESSIONAL SERVICES AGREEMENT**

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.**

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### **SAMPLE PROFESSIONAL SERVICES AGREEMENT**

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.



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(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

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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

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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

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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

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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.**

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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

## ATTACHMENT 1 SAMPLE PROFESSIONAL SERVICES AGREEMENT

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 (Written Out Dollar Amount) (\$\_\_\_\_\_) 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

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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.**



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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

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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:           (NAME)  
                                  (Address)  
                                  Tel:  
                                  Fax:

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With copy to: (NAME)  
(Address)  
Tel:  
Fax:

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

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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]**

DRAFT

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SAMPLE PROFESSIONAL SERVICES AGREEMENT**

**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

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

**ATTEST:**

\_\_\_\_\_  
Barbara A. McGee, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

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

**CONSULTANT:**

**(CONSULTANT NAME)**

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

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

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

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

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SAMPLE PROFESSIONAL SERVICES AGREEMENT**

**EXHIBIT "A"**

**SCOPE OF SERVICES**

- I. Consultant will perform the following Services:**
- A.
  - B.
  - C.
- II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
- A.
  - B.
  - C.
- III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:**
- A.
  - B.
  - C.
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**
- V. Consultant will utilize the following personnel to accomplish the Services:**
- A.
  - B.
  - C.

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**EXHIBIT “B”**

**SPECIAL REQUIREMENTS**

**(Superseding Contract Standard Language)**

DRAFT

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**EXHIBIT "C"**

**SCHEDULE OF COMPENSATION**

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

**RATE TIME SUB-BUDGET**

<b>A.</b>	_____	_____	_____	_____
<b>B.</b>	_____	_____	_____	_____
<b>C.</b>	_____	_____	_____	_____
<b>D.</b>	_____	_____	_____	_____

- II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**
- III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.9.**
- IV. 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 \$\_\_\_\_\_ 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.**
- II. Consultant shall deliver the following tangible work products to the City by the following dates.**
  - A.**
  - B.**
  - C.**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**