



City of Rialto  
Purchasing Division

Purchasing Manager: William Jernigan  
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Email: [procurement@rialtoca.gov](mailto:procurement@rialtoca.gov)

**REQUEST FOR PROPOSAL #18-056**  
**Production of Community Magazine**

**Closing Date: XXXX XX, 2017, 4:00 P.M.**

|             |  |
|-------------|--|
| RFP Number: | 18-056                                 |
| Due Date:   | XXXX XX, 2017                          |
| Time:       | 4:00 P.M.                              |
| Project:    | Production of<br>Community<br>Magazine |

The prospective supplier shall submit a fully executed sealed proposal, to be received no later than 4:00 P.M., Thursday, XXXX XX, 2017. Sealed proposals shall be submitted to:

City of Rialto  
Purchasing Division  
249 S. Willow Avenue  
Rialto, CA 92376  
Attn: William Jernigan, CMP, CPPO

**NOTE:** Proposers are required to submit one (1) original RFP signed in ink, one (1) hard copy of the RFP, and one (1) electronic media version (CD or USB Flash Drive) copy of the RFP. Original and copies should be identified as such. Failure to provide copies may result in disqualification.

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
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CITY OF RIALTO  
STATE OF CALIFORNIA  
NOTICE INVITING SEALED PROPOSALS

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NOTICE IS HEREBY GIVEN by the City of Rialto Purchasing Division will be accepting sealed proposals for the following: **Design and/or printing of the Rialto Progress Community Magazine.**

Proposals must be received by Thursday, XXXX XX, 2017 at 4:00 P.M., in the Purchasing Office, 249 S. Willow Ave. (City Yard) Rialto, California 92376

No proposals shall be considered unless it is made on the proposal form furnished by the City of Rialto and is made in accordance with the provisions of the Request for Proposal. All proposals must be labeled RFP 18-056 Production of the Community Magazine the proposal price must be firm for ninety (90) days from date of the proposal opening in order to permit staff evaluation and City Council award. The City of Rialto City Council reserves the right to reject any or all proposals in whole or in part and may waive any irregularities or informality in any proposal to the extent permitted by law and when the public interest will be served thereby.

No oral interpretations will be made to any proposer as the meaning of the contract documents. Requests for an interpretation shall be made in writing and delivered to the Agency at least 5 days before the time announced for opening the proposals. Interpretations will be in the form of an addendum to the contract documents and, when issued, will be sent as promptly as is practical to all parties to whom the contract documents have been issued. All addenda shall be included in the contract when submitting the proposal.

The City Offices are closed every Friday and the following Holidays: New Year's Day, Martin Luther King Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Eve, and Christmas.

Proposal packages are available online at [www.rialtoca.gov](http://www.rialtoca.gov). For additional information please direct questions to [procurement@rialtoca.gov](mailto:procurement@rialtoca.gov).

(s) William Jernigan  
Purchasing Manager  
City of Rialto

Publish:  
Provide proof of publication

**CITY OF RIALTO**  
**REQUEST FOR PROPOSAL #18-056**  
**OVERVIEW & BACKGROUND**

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The City of Rialto was founded in 1887 and incorporated in 1911. The City operates as a general law City with a City Council-City Administrator form of government. Five (5) Council members serve four (4) year, overlapping terms, with elections held every two (2) years. The Council meets on the second and fourth Tuesday of every month. Municipal services are provided by the City's approximately 320 full-time benefited employees (as of May 31, 2017).

Rialto is an ethnically diverse and progressive community, which boasts several unique community assets including its own Police and Fire Departments, a City owned Racquet and Fitness Center, Performing Arts Theater, a Community Center and Senior Center. Rialto is conveniently located to various recreational pursuits from the mountains, beaches and desert.

The City of Rialto lies in the west portion of the San Bernardino Valley, due west of the County Seat. Rialto is sixty miles east of Los Angeles and 103 miles north of San Diego. Rialto is proud to be a City of commercial, residential, educational, cultural and industrial growth.

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
SCOPE OF WORK- **OPTION A**

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The City of Rialto is interested in awarding a professional services agreement for a qualified **Contract Graphic Designer** to assist in the graphic design of the Rialto Progress Community Magazine.

The Magazine is published three (3) times a year: Winter, Summer, and Fall. Each publication averages 80 pages and is distributed by United States Postal Service (USPS). There is a 4 page glossy cover/back that is a part of the 80 page average. All pages are to be full color.

**SPECIFICATIONS:**

Full Color

Size: 8.375 x 10.875"

80# Gloss Book # 3 = 116.63 gsm (grams per square meter)

50# Gloss Book = 75.2 gsm (grams per square meter)

1. The City of Rialto is a Windows Operating System (OS) based organization. Magazine files must be saved in a compatible format. All graphics are preferably to be in a vector artwork format. If artwork is a photo/image, it is to be medium - high resolution (200 dpi minimum). Do not embed graphic/photo files into the documents. Cover design/artwork should always include high resolution photography (large format with at least 300 dpi). If Contract Designer works on an iOS platform, the brochure files must include fonts (Open or TrueType faces) and links that are compatible with Windows OS environment as well.
2. Contract Graphic Designer must have a selection of stock photo files and art available for use at no extra cost. The City desires ethnic diversity in the use of photos and art. If there is an extra cost, please reflect that in your proposal pricing. Digital photos will be provided for some programs to incorporate into the magazine. All photos must be full color prints.
3. Contract Graphic Designer will consult with staff to design layouts of publication based on past issues and general direction provided by the Rialto Community Services staff. Layout is completed using desktop publishing techniques. Color separation and a printer-ready disk/file is to be prepared for the printer.
4. An established production schedule will be put in place. The Contract Graphic Designer will confer with City staff to walk through each page and submit a minimum of three working drafts prior to the final product. City staff will submit hard and electronic copies to designer as required. All Drafts are submitted back in PDF files for proofing and correction, until the magazine is approved for print.
5. Magazine files will be provided to the City's staff and provide PDF files for City website posting once design is completed. Magazine Web PDFs must be saved as separate sections in their respective magazine category and be optimized for web (saved with links intact and at a reduced file size).

6. Project dates: Contract Graphic Designer usually has about **7 weeks** to complete the Rialto Community Progress Magazine with a proofing and production schedule to be mutually agreed upon with City staff in advance. Note: Time is of the essence, flexibility and responsiveness is of the utmost importance.

7. Describe any additional services you can provide which have not been listed in the scope of work in exceptions or clarifications.

**CITY OF RIALTO**  
**REQUEST FOR PROPOSAL #18-056**  
**SCOPE OF WORK- OPTION B**

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The City of Rialto is interested in awarding a professional services agreement for **printing, production and saturation distribution** of the Rialto Progress Community Magazine.

The Magazine is published three (3) times a year: Winter, Summer, Fall. Each publication averages 80 pages and is distributed by United States Postal Service (USPS). There is a 4 page glossy cover/back that is a part of the 80 page average. All pages are to be full color.

**SPECIFICATIONS FOR PRINT:**

Full Color

Size: 8.375 x 10.875"

80# Gloss Book # 3 = 116.63 gsm (grams per square meter)

50# Gloss Book = 75.2 gsm (grams per square meter)

Saddle Stitch

1. Print production will be required 3 times per year: Winter, Summer and Fall.  
33,000 each production period: 3,000 delivered to the City and 30,000 saturation distribution to Rialto residents via the USPS.
2. Files will be delivered by the designer via FTP (file transfer protocol). A full color folded and trimmed accurate color proof must be provided and approved by City staff prior to printing.
3. Project dates: The City schedule allows for **two weeks** from the day final artwork is released, to delivery to the USPS and City facilities. The printing of the magazine must be high quality, have accurate color, good registration, clean pages (no ghosting, dirt marks or spots), sharp images and type.
4. The City will pay postage by check payable to USPS once an estimate is provided. Note: a postal permit is held with San Bernardino County USPS.
5. Describe any additional services you can provide which have not been listed in the scope of work in exceptions or clarifications.

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The annual City Calendar shall be printed and inserted into the Winter edition magazine. The City Calendar should be printed, stapled (individually from the magazine), inserted into the center of the magazine and shrink-wrapped for distribution purposes as described above.

Quantity: 33,000

Full color

Size: 8.375 x 10.875"

4 page Cover- 80# Gloss Book #3, 4/4

60 page text: 50# Gloss Book, 4/4

Saddle Stitch

Calendar Insert:

16 pages s/c

1 hole drill- center

80 lb. matte book, 4/4

Saddle Stitch on 10.875"

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
ADDITIONAL PROPOSAL DETAILS

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**Bidders are invited to bid on OPTION A, OPTION B or both OPTION A & B. The City of Rialto reserves the right to award these options to multiple vendors or a whole to a single vendor. We will evaluate all proposals and award this contract to the highest ranked competitively-priced and qualified Proposer. Although price is of prime consideration, it is not the sole determining factor. The City reserves the right to select the appropriate firm based on the most qualified proposal, as is in the best interest of the City of Rialto.**

#### QUALIFICATIONS

Contract Graphic Designer should have a minimum of 3 years professional design experience. Designer must be comfortable working with long documents and style sheets within Adobe InDesign. An Associate degree/certification in graphic design or related field is preferred.

#### SUBMISSION REQUIREMENTS

1. A resume or statement of qualifications;
2. Examples of work or ability to view an on-line portfolio;
3. Three to five professional references;
4. A fee schedule including hourly rates, miscellaneous fees and other anticipated expenses;
5. All forms in this RFP are required.

#### SELECTION AND EVALUATION CRITERIA

1. Proposer's qualifications, experience, including references and samples, reflecting diversity; capability of design, campaign and marketing skills; quality of work; and understanding of the subject material to create suitable campaign plans and materials;
2. Proposer's capability to perform the work within the time specified on a variety of projects at a time;
3. Cost to the city;
4. Quality and completeness of proposal.

#### ADDITIONAL INFORMATION

1. The initial proposal shall be for a term of one (1) year, and shall include a renewal option of three (3) additional one year periods based on satisfactory performance. Maximum term will be four years. Pricing shall be firm and fixed for the term of the initial one year Professional Services Agreement. Any inflationary changes to cost must be proposed in writing to the City of Rialto Purchasing Division at the time of renewal and accepted by the City in writing.



2. Supplier will provide all personnel, equipment, supplies and transportation necessary to perform graphic design services and/or printing, production and saturation distribution as outlined in the scope of work. If additional items are needed, include all appropriate pricing details.
3. The City of Rialto reserves the right to evaluate the production of any or all of the Magazines, and to rescind the award if quality, value and performance do not meet the satisfaction of the City.
4. All quotations should include state sales tax if required, itemized separately. Please make sure that pricing for each element of service that you provide is included.
5. The current publication can be viewed on the City of Rialto website <http://yourrialto.com/?p=3826> although there may be layout and formatting changes at any time.

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
BID RESPONSE SHEET – **OPTION A**

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**OPTION A:**

Graphic design cost to consult, design, layout, & produce as per specifications:

Winter: 80 pages \$\_\_\_\_\_ per page, Sub-Total Price: \$\_\_\_\_\_

Additional Misc. Design Production Cost for Winter/Spring: \_\_\_\_\_

**Total Price per Season: Winter, 80 pages, \$\_\_\_\_\_ (No sales tax included)**

Calendar: 16 pages \$\_\_\_\_\_ per page, Sub-Total Price: \$\_\_\_\_\_

Additional Misc. Design Production Cost for City Calendar: \_\_\_\_\_

**Total Price for Calendar: 16 pages, \$\_\_\_\_\_ (No sales tax included)**

Summer: 80 pages \$\_\_\_\_\_ per page, Sub-Total Price: \$\_\_\_\_\_

Additional Misc. Design Production Cost for Summer: \_\_\_\_\_

**Total Price per Season: Spring, 80 pages, \$\_\_\_\_\_ (No sales tax included)**

Fall: 80 pages \$\_\_\_\_\_ per page, Sub-Total Price: \$\_\_\_\_\_

Additional Misc. Design Production Cost for Fall: \_\_\_\_\_

**Total Price per Season: Summer, 80 pages, \$\_\_\_\_\_ (No sales tax included)**

Maximum completion or Delivery Time \_\_\_\_\_ Days from receipt of purchase order or notice to proceed.

Bidding Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Exceptions or Clarifications: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CITY OF RIALTO  
REQUEST FOR PROPOSAL #17-041  
BID RESPONSE SHEET – **OPTION B**

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**OPTION B:**

Cost for printing, production and saturation distribution as per specifications:

|                 |          |
|-----------------|----------|
| Winter Edition  | \$ _____ |
| Annual Calendar | \$ _____ |
| Spring Edition  | \$ _____ |
| Fall Edition    | \$ _____ |

Maximum completion or delivery time \_\_\_\_\_ days from receipt of digital file and final approval.

(No Sales Tax included)

Bidding Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Exceptions or Clarifications: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
DIVERSITY BUSINESS STATEMENT

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The City of Rialto encourages the maximum participation by small business, Veteran- Owned small business (VOSB), Service-Disabled Veteran owned small business (SDVOSBC), HUBZone small business, Small Disadvantaged business (SDB/DBE), and Women-Owned small businesses (WOSB).

It is the policy of City of Rialto, to conduct business with the above stated businesses whenever possible to the maximum extent that is feasible.

The City of Rialto shall, within the limits of state statutes and regulations, pursue the award of a fair share of all contracts with minority businesses and shall encourage and assist minority businesses in the methods of conducting business with the City of Rialto.

## Small 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: \_\_\_\_\_

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
LOCAL BUSINESS PREFERENCE

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- A. All notices inviting Proposals or requests for proposal issued by the City shall state that the City applies a local business preference and that qualified local businesses may submit an application for a local business preference together with its PROPOSAL or proposal except for notices inviting Proposals for public projects as defined in Public Contract Code Section 20171.
- B. Qualified local businesses may submit an application for a local business preference on the form prepared by the purchasing manager. The application shall require the business, or agent thereof, to submit the following notarized information on the attached form under penalty of perjury:
1. Its qualifying office, place of business or distribution point within the City and the time it has been located at such location;
  2. The total number of its employees as of the date of the application with adequate proof as determined by the purchasing manager;
  3. The number of employees that reside in the city and the time they have resided in the city with adequate proof as determined by the purchasing manager;
  4. Its consent to permit the city to reduce its original PROPOSAL pursuant to this chapter not to exceed five percent of its original PROPOSAL; and
  5. All such other information reasonably necessary for the purchasing manager to provide information to the city council in order to determine the applicability of this chapter to award a contract for any public project, purchase or service.

*(Ord. No. 1496, § 1, 12-13-11)*



# Certification

I certify that my company meets all of the following qualifications to be eligible for the local vendor preference:

(1). That *my company* maintains an office within the legally defined boundaries of the City of Rialto and have a majority of full time employees, chief officers, and managers regularly conducting work and business from these offices.

(2). That *my company* has held a valid City of Rialto Business License for a consecutive period of at least two (2) years prior to the date for application for certification.

I make this certification with the full knowledge that should any information provided prove to be false, that *my company* could be excluded from bidding on City of Rialto requirements for a period of two (2) years.

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

Address: \_\_\_\_\_

Type of Products or Services: \_\_\_\_\_

Business License Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Total number of employees \_\_\_\_\_ Total number of employee that reside in the City \_\_\_\_\_

Pursuant to Chapter 2.47 of the Rialto, California Municipal Code I consent to permit the City to reduce my original proposal amount, not to exceed five percent of the original PROPOSAL #18-056 XXXXXXXXXX: Yes \_\_\_\_\_ No \_\_\_\_\_

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Printed Name

*To be completed by Authorized City of Rialto Representative:*

Vendor Certified: \_\_\_\_\_ Date: \_\_\_\_\_



CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
NEPOTISM POLICY

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2.48.145. Disclosures required by persons contracting with the City.

All persons or business entities supplying any goods or services to the city, whether through an application or proposal, shall disclose in such application or proposal whether such person, entity or representatives or officers of the business entity is financially interested or related to any officer or employee of the city by blood or marriage within the third degree which would subject such officer or employee to the prohibition of California Government Sections 87100 et. seq., Fair Political Practices Commission Regulation section 18702, or Government Code Section 1090, as such provisions may be amended from time-to-time. To this end, any such application or request for proposals shall prominently provide the following disclosure:

By submitting [this application/a proposal], or supplying any goods or services to the city, the [applicant/vendor/contractor/consultant] hereby attests under penalty of perjury, personally or on behalf of the entity [submitting this application/a proposal or supplying any goods or services to the city], as well the entity’s officers, representatives and the undersigned, that it/they have no financial interests, as such term is defined in California Government Sections 87100 et. seq., Fair Political Practices Commission Regulation section 18702, or Government Code Section 1090, whether written or verbal, with any City of Rialto elected or appointed official or employee, except as specifically disclosed immediately below:

**Vendor/Contractor/Consultant:** \_\_\_\_\_

| City of Rialto Official/<br>Employee Name(s) | The nature of the relationship with<br>the person listed is |
|--|---|
| _____  | _____   |
| _____  | _____   |
| _____  | _____   |

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

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

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

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
DISCLOSURE OF PROPOSAL CONTENTS

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The proposals may be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret. The cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an offeror has made a written request for confidentiality, the Purchasing Manager shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

**CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
PROPOSER SIGNATURE DECLARATION**

The undersigned hereby offers and agrees to furnish the goods and services in compliance with all the service level requirements, instructions, specifications, and any amendments contained in this RFP document and any written exceptions in the offer accepted by the City.

This proposal is genuine, and not sham or collusive, nor made in the interest or on behalf of any person not herein named; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a sham proposal, or any other person, firm or corporation to refrain from submitting a proposal; and the Proposer has not in any manner sought by collusion to secure for themselves an advantage over any other Proposer.

Each proposal must be signed on behalf of the Proposer by an officer authorized to bind the Proposer to the proposal. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and I agree to the terms and conditions in this proposal.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Title

\_\_\_\_\_  
City of Rialto License Number

\_\_\_\_\_  
Date

The Proposer hereby acknowledges receipt of and agrees this submittal is based on the RFP and the following addenda. Failure to indicate receipt of addenda may result in the Proposer being rejected as non-responsive.

ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_ ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_

ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_ ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_

(If additional addenda are issued, attach a complete listing of these addenda when submitting this PROPOSAL.)

No PROPOSAL

In order to help us improve our internal processes and become a better customer, if you are not submitting a PROPOSAL, please state the reason(s) why and return this page to the Purchasing Manager.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
STATEMENT OF REFERENCES**

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List and describe fully the last four contracts performed by your firm which demonstrate your ability to complete the work included with the scope of the specifications. Attach additional pages if required. The City reserves the right to contact each of the references listed for additional information regarding your firm's qualifications.

**Reference No. 1**

Customer Name: \_\_\_\_\_  
Contact Individual: \_\_\_\_\_ Phone No: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_ Year: \_\_\_\_\_  
Description of work done: \_\_\_\_\_

**Reference No. 2**

Customer Name: \_\_\_\_\_  
Contact Individual: \_\_\_\_\_ Phone No: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_ Year: \_\_\_\_\_  
Description of work done: \_\_\_\_\_

**Reference No. 3**

Customer Name: \_\_\_\_\_  
Contact Individual: \_\_\_\_\_ Phone No: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_ Year: \_\_\_\_\_  
Description of work done: \_\_\_\_\_

**Reference No. 4**

Customer Name: \_\_\_\_\_  
Contact Individual: \_\_\_\_\_ Phone No: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_ Year: \_\_\_\_\_  
Description of work done: \_\_\_\_\_

**Please list all City of Rialto projects completed with in the last five (5) years.**

Project Name: \_\_\_\_\_  
Contact Individual: \_\_\_\_\_ Phone No: \_\_\_\_\_  
Project Location: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_ Year: \_\_\_\_\_  
Description of work done: \_\_\_\_\_

## CITY OF RIALTO REQUEST FOR PROPOSAL #18-056 GENERAL INFORMATION

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The City of Rialto has outlined the requirements herein in as much detail as is currently known. Please provide any exceptions, additional information, or suggestions that will aid in the City's selection process (attachments are acceptable).

The City reserves the right to negotiate terms and specifications/scope of work with the highest ranked competitively priced and qualified proposal. If an agreement cannot be negotiated the City reserves the right to negotiate with any other finalist.

Any evidence of agreement or collusion among Proposers acting illegally to restrain freedom of competition by agreement to propose a fixed price, or otherwise, will render the proposal of such Proposers void.

Proposer shall identify those services (if any) that will be outsourced to a subconsultant or sub-proposer. The prime Proposer will be responsible for verifying the qualifications and validity of all licenses or permits for any outsourced work to subconsultants. The prime Consultant is also responsible for paying its employees and any subconsultants the prime Consultant hires.

This RFP does not obligate the City to accept or contract for any expressed or implied services.

The City reserves the right to request any Proposer submitting a proposal to clarify its proposal or to supply additional material deemed necessary to assist in the selection process.

All submitted proposals and information included therein or attached thereto shall become public record upon contract award.

The City reserves the right to cancel this solicitation at any time.

The City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.

Questions and comments regarding this solicitation must be submitted in writing, either by mail, delivery, facsimile, or email address to:

|  |                                    |
|--|------------------------------------|
| <b>Mail:</b> City of Rialto<br>Rialto              | <b>Delivery:</b> City of<br>Rialto |
| <b>FAX:</b> (909) 820-2600<br>Procurement Division | Procurement Division               |

Any questions relating to this Request for proposal must be received at least 5 City business days prior to closing date, any questions received after this deadline will not be addressed.

The City Offices are closed every Friday and the following Holidays: New Year's Day, Martin Luther King Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Eve, and Christmas.

The questioner's company name, address, phone and fax number, and contact person must be included with the questions or comments. All answers, if any, made by the City will be sent in writing to all known proposal holders and posted to the City's website.

Proposers, 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 any other agency employee or associate for any propose related to this entire RFP process other than as directed above. Contact with anyone other than as directed above may be cause for rejection of proposal.

**CITY OF RIALTO**  
**REQUEST FOR PROPOSAL #18-056**  
**GENERAL TERMS AND CONDITIONS – RFP**

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**Definition of Terms**

The following terms used in the RFP documents shall be construed as follows:

1. “City” shall mean the City of Rialto.
2. “Consultant/ Proposer/Contractor” shall mean the individual, partnership, corporation or other entity to which this agreement is awarded.
3. “Supplier/ Proposer/Consultant” shall be considered synonymous with term “proposer”.
4. “Contract/agreement” shall be considered synonymous with term “contract”.
5. “Evaluation Committee” is an independent committee established by the City to review, evaluate, and score the Proposals, and to recommend award to the Proposer that submitted the proposal determined by the committee to be in the best interest of the City.
6. “May” indicates something that is not mandatory, but permissible.
7. “Must/Shall” indicates a mandatory requirement. A proposal that fails to meet a mandatory requirement will be deemed non-responsive, and not be considered for award.
8. “Proposer” shall mean the person or firm making the offer.
9. “PROPOSAL” shall be the offer presented by the Proposer.
10. “RFP” shall be the acronym for Request for proposal.
11. “Should” indicates something that is recommended, but not mandatory. Failure to do what “should” be done will not result in rejection of your proposal.
12. “Submittal Deadline” shall be the date and time on or before all Proposals must be submitted.
13. “Successful Proposer” shall be the person, consultant, or firm to whom the award is made.

**City Business License**

Proposer shall secure, at the proposer’s own cost, the appropriate business license from the City prior to beginning any work or delivering any equipment or material to be furnished under this specification and proposal. This must be initiated within six City working days after notification of award.

**Consultant’s Address and Legal Services**

The address given in the proposal shall be considered the legal address of the Proposer and shall be changed only by written or electronic notice to the City. The Proposer shall supply an address to which certified mail can be delivered. The delivery of any communication to the Proposer personally, or to such address, or the depositing in the United States Mail, registered or certified with postage prepaid, addressed to the Proposer at such address, shall constitute a legal service thereof.

**Cost of Preparing Proposal**

Any and all costs incurred responding to this RFP, conducting demonstrations or any other related activities, shall be borne by the proposer and the City shall not be liable for any of these costs.

**Informed Proposer**

Proposers are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting Proposals. Failure to do so will be at proposer’s own risk and they cannot secure relief on the plea of error.

**Proposal Errors**

Proposer is liable for all errors or omissions incurred by Proposer in proposal. Proposer will not be allowed to alter proposal documents after the due date for proposal submission.

The City reserves the right to make corrections due to errors identified in proposal by the City or the proposer. This type of correction or amendment will only be allowed for errors as typing, transposition or any other obvious error. Any changes will be date and time stamped and attached to proposal. All changes must be coordinated in writing with, authorized by and made by the Purchasing Manager.

**Waiver of Minor Administrative Irregularities**

The City reserves the right, at its sole discretion, to waive minor administrative irregularities contained in any proposal.

**Rejection of Proposal**

The City reserves the right, as the interest of the City requires, to reject any or all proposal, to waive any minor informality in proposal received, to reject any unapproved alternate proposal(s), and reserves the right to reject the proposal of any Proposer who has previously failed to perform competently in any prior business relationship with the City.

The rejection of any or all proposal shall not render the City liable for costs or damages.

**Proposal Format and Submittal**

All proposal must be submitted in writing on the enclosed Request for proposal documents. Proposal accepted by the City in writing constitute a legally binding contract offer. All materials submitted shall become a part of the proposal. Proposals are required to submit one (1) original RFP signed in ink, one (1) hard copies of the RFP, and one (1) electronic media version copy of the RFP. Original and copies should be identified as such. Written proposal must be presented in a sealed package. Proposer must enter the proposal number, title, and Proposer's name on the outside of the package. Sealed proposals are to be delivered to the address listed in this RFP no later than the stated proposal opening date and time.

Proposer shall complete and return all applicable documents including forms, specifications, drawings, schematic diagrams, and any technical and/or illustrative literature. The Purchasing Manager may deem a Proposer non-responsive if the Proposer fails to provide all required documentation and copies. Proposal must be signed by a duly authorized officer eligible to sign contract documents for the proposer. Consortiums, joint ventures, or teams submitting Proposals will not be considered responsive unless it is established that all contractual responsibility rests solely with one Proposer or one legal entity. The proposal must identify the responsible entity.

Proposal shall be based only on the material contained in the RFP, pre-proposal conference responses, amendments, addenda and other material published by the City relating to the RFP. The Proposer shall disregard any previous draft material and oral representations which may have been obtained from the Proposer.

Proposal that are unnecessarily elaborate beyond what is sufficient to present a complete and effective proposal are not desired.



The information requested and the manners of submission are essential to permit prompt evaluation of all proposals on a fair and uniform basis. Accordingly, the City reserves the right to declare as non-responsive and reject any Proposals in which information requested is not furnished or where direct or complete answers are not provided.

The Proposer shall not change any wording in the RFP or associated documents. Any explanation or alternative offer shall be submitted in a letter attached to the front of the proposal documents. Alternatives that do not substantially meet the City's requirements cannot be considered. Proposals offered subject to conditions or limitations may be rejected as non-responsive.

### **Submitting Proposals**

- a) Submittal Deadline: Proposals must arrive in the Purchasing Office by the submittal deadline shown in these specifications or subsequent addenda. Proposals may be submitted by hand, by courier, or any other method specified herein.
- b) Responsibility: Proposers are solely responsible for ensuring that their Proposals are received by the City in accordance with the solicitation requirements, before submittal deadline, and at the place specified. The City shall not be responsible for any delays in mail, or by common carriers, or by transmission errors, or delays, or mistaken delivery. Delivery of Proposals shall be made at the office specified in the Request for Proposals. Deliveries made before the submittal deadline, but to the wrong City office will be considered non-responsive unless re-delivery is made to the office specified before the submittal deadline.
- c) Extension of Submittal Deadline: The City reserves the right to extend the submittal deadline when it is in the best interest of the City.
- d) Addendums: All addendums will be posted on The City of Rialto website at [www.rialtoca.gov](http://www.rialtoca.gov) under Featured Resources proposal /proposals. Suppliers are encouraged to check the website periodically for updates.
- e) Email/Facsimile Transmissions: Proposals may NOT be submitted by email or facsimile, unless otherwise specified herein.
- f) Forms: To be considered for award, each proposal shall be made on forms furnished by the City.
- g) Late Proposals: The submittal deadline IS FIRM. Proposals will NOT be accepted after the submittal deadline and will be returned to the Proposer unopened.
- h) Signature: To be considered for award, each proposal shall be signed by an authorized representative of the Proposer.
- i) Sealed Proposals: Proposals MUST BE sealed upon submittal (e.g., envelope, package, box, etc.)

### **Proposals Property of City/Proprietary Proposal Material**

All Proposals submitted in response to this RFP shall become the property of the City of Rialto, and subject to the State of California Public Records Act. Proposers must identify all copyrighted material, trade secrets or other proprietary information that the Proposer claims are exempt from the California Public Records Act (California Government Code Section 6350 et seq). Sections claimed to be exempt for public disclosure should be clearly identified as such.

In the event a Proposer claims such an exemption, the Proposer is required to state in the PROPOSAL the following: "The Proposer will indemnify the City and its officers, employees and agents, and hold them harmless from any claim or liability and defend any action brought against them for their refusal to disclose copyrighted material, trade secrets or other proprietary information to any person making a request thereof."

Failure to identify sections exempt from disclosure and to include such a statement shall constitute a waiver of a Proposer's right to exemption from this disclosure.

### **Proposal Acceptance Period**

Unless otherwise stated, Proposals shall be irrevocable for a period of 90 days following the PROPOSAL opening date.

### **Multiple Proposals**

Proposers interested in submitting more than one proposal may do so, providing each proposal stands alone and independently complies with the instructions, conditions, and specifications of the RFP.

### **California State Board of Equalization Permit**

Proposer shall enter the company's State of California Board of Equalization permit number on the PROPOSAL form. If the company does not have this permit, the Proposer shall sign the proposal form declaring that the company has no California sales tax permit.

### **Applicable Laws**

Selected Proposer is required to comply with all existing State, Federal, and Local laws. If Proposer outsources any work or job to a sub-Proposer, it will be the prime Proposer's responsibility to ensure that all sub-Proposers meet the requirements as stated in this RFP.

### **Withdrawal of PROPOSAL**

Proposer may withdraw proposal in writing at any time prior to the specified proposal due date and time. Faxed withdrawals will be accepted. A written request signed by an authorized representative of the Proposer must be submitted to the Purchasing Manager or appropriate email sent to [procurement@rialtoca.gov](mailto:procurement@rialtoca.gov). After withdrawing a previously submitted proposal, the Proposer may submit another proposal at any time up to the proposal closing date and time.

Proposer agrees that failure on its part to list all cost components related to the service will not be accepted by the City as an acceptable justification to re-quote the proposal. Proposer acknowledges that the original proposal and costs provided stand. However, Proposer has the option of withdrawing a proposal at any time until closing date and time of RFP.

### **Selection of Best Overall Value to the City of Rialto**

A final contract will be awarded to the highest ranked competitively priced and qualified Proposer. Although price is of prime consideration, it is not the sole determining factor. The City reserves the right to select the appropriate firm based on the most qualified proposal. The determination of the most qualified and most competitively priced proposal may involve all or some of the following factors: price, thoroughness of the proposal package, previous experience and performance; conformity to specifications; financial ability to fulfill the contract; ability to meet Specifications/Scope of Work; terms of payment; compatibility, as required; number of sub-Proposers the main Proposer may need to employ for outsourced work; other costs; and other objective and accountable factors which are reasonable. The City reserves the right to select a Proposer to perform all of the work identified in the RFP, or only selected portions based on price and/or other factors.

**Proposal Protests**

All protests concerning the award, evaluation, recommendation or other aspect of the selection/proposal process must be made in writing, signed by an individual authorized to bind the Proposer contractually and financially, and contain a statement of the reason(s) for the protest; citing the law, rule, regulation or procedures on which the protest is based. The protester must provide facts and evidence to support the claim.

All protests must be mailed to:

City of Rialto  
Purchasing Division  
150 S. Palm Avenue  
Rialto, CA 92376  
Attn: Purchasing Manager

All protests must be received by the Purchasing Manager as soon as possible and will be addressed in writing within 5 City business days.

**Execution of Notice of Award**

A response to this RFP is an offer to contract with the City based upon the terms, conditions, service level agreements, and specifications contained in the RFP.

A contract will be formed when the Purchasing Manager awards the contract to the selected proposer(s).

Any contract made pursuant to this RFP, and any negotiated amendments to it must be accepted in writing by the proposer. If, for any reason proposer should fail to accept in writing, any conduct by proposer which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by proposer of the contract and all of its terms and conditions. Any terms offered in proposer's acceptance of City's contract which add to, vary from or conflict with the terms herein are hereby objected to. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may hereafter be modified only by written change order executed by the authorized representatives of both parties.

The foregoing should not be interpreted to prohibit either party from proposing additional contract terms and conditions during negotiations of the final contract.

If the contract negotiation period exceeds thirty (30) days or if the selected proposer fails to execute contract within five (5) business days of delivery of it, the City may elect to cancel the award and award the contract to the next highest ranked proposer.

**Modifications/Change Orders/Amendments**

Any adjustments, alterations, additions, deletions, or modifications in the terms and/or conditions of resultant agreement must be made by written change order approved by the Purchasing Manager, and the Contractor.

The City shall neither pay for nor be obligated to accept any modifications performed by consultant without a written change order.

**Contract Administrator and Duties**

The Contract Administrator, or designee, will audit the billings, approve changes to the agreement and generally be responsible for overseeing the execution and ongoing administration of the agreement. In lieu of a Contract Administrator, the Purchasing Manager will act as the Contract Administrator.

**Prime Consultant**

The proposer who becomes the Consultant upon award of the contract by the Purchasing Manager must be the prime consultant performing the primary functions of the contract. If any portion of the contract is to be subcontracted, it must be clearly set forth in the proposal document as to what part(s) are to be subcontracted, the reasons for the subcontracting, and a listing of subconsultants. Acceptance or rejection of a proposer's request to use subconsultants is at the sole discretion of the City. The City reserves the right to reject any proposal to function as the prime consultant on the awarded contract. When approved, the subconsultant(s) shall agree to and be bound by all terms, conditions and specifications of the awarded contract and the proposer shall be responsible for proper performance of the contract by the subconsultant.

**Subconsultant**

With prior approval of the City, the consultant may enter into subcontracts and joint participation agreements with others for the performance of portions of resultant agreement. The consultant shall at all times be responsible for the acts and errors or omissions of its subconsultants or joint participants and persons directly or indirectly employed by them. Nothing in this contract shall constitute any contractual relationship between any others and the City or any obligation on the part of the City to pay, or to be responsible for the payment of any sums to the subconsultants.

The provisions of resultant agreement shall apply to all subconsultants in the same manner as to the consultant. In particular, the City will not pay, even indirectly, the fees and expenses of a subconsultant which do not conform to the limitations and documentation requirements of resultant agreement.

**Copies of Subconsultant Agreements**

Upon written request from the City, the Consultant shall supply the City with subconsultant agreements.

**Record and Audit Rights**

The consultant shall maintain records and books of account showing all costs and expenses incurred by the consultant for the contract. The City shall have the right, upon reasonable notice, to audit the books, records, documents, and other evidence and the accounting procedures and practices, where needed, to verify the costs and expenses claimed. The City retains this right for at least three years after final payment and until all disputes, appeals, litigation, or claims have been resolved. This right to audit shall also include inspection at reasonable times of the consultant's office or facilities which are engaged in the performance of the contract. In addition, the consultant shall, at no cost or expense to the City, furnish reasonable facilities and assistance for such an audit.

Upon request, consultant shall also provide copies of documents applicable to this contract.

The audit findings shall, to the extent allowed by law, be treated by the City as confidential.

**Permits/License**

It is the responsibility of the Proposer to provide any permits/licenses which may be required of Local, State, or Federal regulations at no cost to the City.

**Most Favored Public Entity Pricing**

The prices charged against resultant contract shall not exceed those charged any other government agency. A current price list must be available in the Proposer's local office at all times for audit by the City.

**Price Changes**

Prices quoted shall remain unchanged for the duration of the resultant agreement, unless agreed upon by both parties.

### **Cooperative Purchasing**

The City desires that the prices, terms, and conditions contained in any agreement resulting from this RFP shall be offered to any other government agency. The proposer shall state in the proposal if willing to allow such cooperative purchasing. Any resulting cooperative purchasing shall be between the consultant and governmental agency desiring such cooperative purchasing, as long as specifications are similar and the agreements are reached within a year of original proposal.

### **Hold Harmless Clause**

The Proposer shall, during the terms of the contract including any warranty period, indemnify, defend, and hold harmless the City, its officials, employees, agents, and representatives thereof from all suits, actions, or claims of any kind, including attorney's fees, brought on account of any personal injuries, damages or violations of rights sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the consultant or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulations or decree. The Proposer agrees that this clause shall include claims involving infringement of patent or copyright.

### **Safety**

All Consultant and subconsultants performing services for the City are required and shall comply with all Occupational and Health Administration (OSHA), State and County Safety and Occupational Health Standards, and any other applicable rules and regulations. Also all Consultants and subconsultants shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.

### **Severability**

In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding, and in full force and effect.

### **Non-Collusion Affidavit**

Proposer shall declare that the only persons or parties interested in the proposal as principals are those named therein; that no officer, agent, or employee of the City of Rialto is personally interested, directly or indirectly, in the proposal; that the proposal is made without connection to any other individual, firm, or corporation making a proposal for the same work; and that the proposal is in all respects fair and without collusion or fraud. The Non-Collusion Affidavit shall be executed and submitted with the proposal.

### **Workman's Compensation Certificate**

Section 3700 of the State Labor Code requires that every employer shall secure the payment compensation by either being insured against liability to pay compensation with one or more insurers or by securing a certificate of consent to self-insure from the State Director of Industrial Relations.

In accordance with this section and with Section 1861 of the State Labor Code, the consultant shall sign a Compensation Insurance Certificate which is included with the Contract Agreement, and submit same to City of Rialto along with the other required contract documents, prior to performing any work. Reimbursement for this requirement shall be considered as included in the various items of work.

### **Insurance**

Prior to the commencement of any services hereunder, Proposer shall provide to the City certificates of insurance with the City named as additional insured. Such policies shall be subject to approval by the City and shall require thirty days notice to the City before any cancellation. Failure to furnish such evidence, if required, may be considered a default of the contract.

- (1) Workers' compensation insurance covering all employees of the Consultant, in a minimum amount of \$1 million per accident, effective per the laws of the State of California;
- (2) Commercial general liability insurance covering third party liability risks, including without limitation contractual liability, in a minimum amount of \$1 million combined single limit per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate shall apply separately to this project, or the general aggregate limit shall be twice the occurrence limit;
- (3) Commercial auto liability and property insurance covering any owned and rented vehicles of Consultant in a minimum amount of \$1 million combined single limit per accident for bodily injury and property damage;
- (4) Professional Liability in a minimum amount of \$1 million per incident.

### **Termination**

Subject to the provisions below, the contract may be terminated by the City upon thirty (30) days advance written notice to the other party; but if any work or service thereunder is in progress, but not completed as of the date of termination, then this contract may be extended upon written approval of the City until said work or services are completed and accepted.

#### **a. Termination for Convenience**

In the event that this contract is terminated or cancelled upon request, and for the convenience of the City, without the required thirty (30) days advanced written notice, then the City shall negotiate reasonable termination costs, if applicable.

#### **b. Termination for Cause**

Termination by the City for cause, default or negligence on the part of the firm shall be excluded from the foregoing provision; termination costs, if any shall not apply. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.

#### **c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years**

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled and the consultant shall be reimbursed for the reasonable value of any non-recurring costs incurred, but not amortized in the price of the supplies or services delivered under the contract.

### **Contractual Disputes**

The Consultant shall give written notice to the Purchasing Manager of his intent to file a claim for money, or other relief at the time of the occurrence, or the beginning of the work upon which the claim is to be based.

The written claim shall be submitted to the Purchasing Manager no later than sixty (60) days after final payment. If the claim is not disposed of by agreement, the Purchasing Manager shall reduce his/her decision to writing and mail or otherwise forward a copy thereof to the Consultant within thirty (30) days of receipt of the claim.

The Purchasing Manager's decision shall be final unless the Consultant appeals within thirty (30) days by submitting a written letter of appeal to the City Administrator, or designee. The City Administrator shall render a decision within sixty (60) days of receipt of the appeal.

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
PROPOSERS BACKGROUND INFORMATION

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Proposers Information

Proposer's Contact Name:

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Contact Title:

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Mailing Address:

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Location of Business  
(if different from mailing address):

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Telephone Number:

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Pager Number:

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24 Hour Tel. Number:

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Fax Number:

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E-Mail Address:

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Remittance Address:  
(if different from mailing address):

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Number of Years in Business:

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Applicable State of California License #(s):

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Expiration Date(s):

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Proposer's Dunn and Bradstreet  
'DUNNS: NUMBER:

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### **Customer References**

The proposer must submit a minimum of four (4) non-proposer owned customer references whose services have been provided for or used by the proposer within the last twenty-four (24) months. Services provided to these customers must be of comparable size and similar in scope to the City's requirements within this proposal.

Include the following for each reference:

Company Name:  
 Name of Contact:  
 Title of Contact:  
 Address:  
 Telephone number of Contact:  
 Dates and types of service(s) provided

The City may, at its option, contact other known proposer's customers for references.

### **Business Organization**

Proposer shall provide an overview of the entity submitting this RFP including the following information:

Brief history and description of entity;  
 Date entity was established and location of entity when established;  
 Location of headquarters;  
 Total number of employees;  
 Organization chart indicating the positions and names of the core management team which will undertake this project;  
 Resumes for all core team members.

### **Proposed Subconsultant Information**

If applicable to the proposal, the following information must be provided for each proposed subconsultant. Attach and submit this information with this proposal. If subconsultants will not be utilized, so indicate.

Subconsultant's name, mailing address, phone number  
 Subconsultant's contact name, title, phone number  
 Subconsultant's status as a minority/woman owned business enterprise, if applicable  
 Subconsultant's City of Rialto business License  
 Description of work to be subcontracted  
 Reason(s) for subcontracting  
 Percentage of total contract to be subcontracted



# CITY OF RIALTO REQUEST FOR PROPOSAL #18-056 PROPOSER'S DECLARATION

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Proposal Date: \_\_\_\_\_, 2017

To the Honorable Mayor and City Council From:

\_\_\_\_\_  
Contractor

The undersigned, as Proposer, declares that he has carefully examined the locations of the proposed work described, examined the Agreement and read the Instructions to Proposers and is familiar with all proposal requirements, and hereby proposes and agrees, if the proposal is accepted, to complete the said maintenance in accordance with the Agreement Documents, as defined in the General Provisions, in the time stated herein, for the prices set forth in the following schedule:

Said amount to include and cover all taxes, the furnishing of all materials, the performing of all the labor requisite and the providing of all necessary machinery, tools, apparatus and other means of construction; also, the performance and completion of all the work in the manner set forth, described and shown in the Specifications or on the drawings for the work.

The Proposer to whom the contract (s) is awarded agrees to enter into an agreement with the City, and to commence work within fifteen (15) working days from the date of execution thereof, and to diligently prosecute the work to completion as set forth in the agreement after the execution of the agreement and the date of issuance of a Notice to Proceed.

The City Offices are closed every Friday and the following Holidays: New Year's Day, Martin Luther King Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Eve, and Christmas.

All proposals are to be computed on the basis of the given Estimated Type of Work, as indicated in this proposal. In case of a discrepancy between words and figures, the words shall prevail. In case of a discrepancy between unit prices and the extension thereof, the unit price shall prevail and proposals will be computed as indicated above and compared on the basis of correct totals.

The estimated quantities of work indicated in this proposal are approximate only, being given solely as a basis for comparison of proposals. The City does not expressly nor by implication agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any item or portions of the works as may be deemed expedient by the Contract Administrator.

It is understood by the Proposer that the City of Rialto has the right to reject this proposal or to award an agreement to the undersigned at the prices stipulated. If the proposal is rejected, then the enclosed check or proposal bond shall be returned to the undersigned within thirty-days (30) days from the date thereof. If the proposal is accepted and the work is awarded and the terms supplied by the Purchasing Manager within fifteen (15) days such further time as may be granted by the City Council, then said check shall be cashed or said bond declared forfeit and an amount equal to the difference between the lowest Proposer who will execute an agreement shall be paid into the treasury of the City of Rialto as liquidated damages for the failure of the undersigned to comply with the terms of this proposal.

Licensed in accordance with an act providing for the registration of Contractor's License No. \_\_\_\_\_, classification, **XXXX**. In executing this proposal the Proposer certified being properly licensed to do the work.

Signature of Proposer

\_\_\_\_\_  
\_\_\_\_\_

If an individual, so state. If a firm or co-partnership, state the firm name and give the names of all individual co-partners composing the firm, i.e., president, secretary, treasurer and manager, thereof.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_ Business Address

\_\_\_\_\_ Telephone Number

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
STATEMENT OF PROPOSER'S QUALIFICATIONS

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STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_

I am the of \_\_\_\_\_, the  
Proposer herein. I have read the foregoing statement and know the contents thereof; and I certify that the  
same is true of my own knowledge, except as to those matters which are therein stated upon my information or  
belief, and as to those matters I believe it to be true.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California  
(date) (place)

I declare, under penalty of perjury, that the foregoing is true and correct.

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Title

**CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
PROPOSER'S BOND**

KNOW ALL MEN BY THESE PRESENT,

That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety,

are held and firmly bound unto the City of Rialto in the sum of TEN PERCENT (10%) of the total amount of the proposal of the principal, to be paid to the said City or its certain attorney, its successors and assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

In no case shall the liability of the surety hereunder exceed the sum of \$ \_\_\_\_\_.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That whereas the principal has submitted the above mentioned proposal to the City of Rialto for certain maintenance specifically described as follows, for which proposals are to be opened, no later than XX XX, 2017 at X:00 P.M. for: XXXXXX. The undersigned Proposer hereby proposes to furnish all labor, materials, equipment, tools and services necessary to perform all work required in the specifications for either or both of the proposals .

NOW, THEREFORE, if the aforesaid principal is awarded the contract and within the time and manner required under the specifications after the prescribed forms are presented to him for signature, enters into a written contract in the prescribed form in accordance with the proposal, and files the two bonds with the City of Rialto. One to guarantee faithful performance and the other to guarantee payment for labor and materials as required by law, then this obligee and judgment is recovered; the surety shall pay all costs incurred by the obligee in such suit including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

PRINCIPAL

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

SURETY

\_\_\_\_\_  
(SEAL)

ADDRESS

NOTE: Signatures of those executing for the surety must be properly acknowledged (notarized). Attach Power of Attorney.

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
PERFORMANCE BOND CERTIFICATION

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Offeror must provide written evidence from an authorized bonding company of their ability to provide an acceptable performance (surety) bond.

NOW, THEREFORE, if the aforesaid principal is awarded the contract, and, within the time and manner required under the specifications, after the prescribed forms are presented to him for signature, enters into a written contract, in the prescribed form, in accordance with the proposal, and files the bonds with the City of Rialto, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligee and judgment is recovered, the surety shall pay all costs incurred by the obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

PRINCIPAL

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

SURETY

\_\_\_\_\_  
(SEAL)

ADDRESS

NOTE: Signatures of those executing for the surety must be properly acknowledged (notarized). Attach Power of Attorney.

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
WORKERS' COMPENSATION INSURANCE CERTIFICATION

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The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

*I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.*

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

By

\_\_\_\_\_  
(Contractor)

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

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

ATTEST:

By

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

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

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
MINIMUM WAGE STATEMENT

---

This contract will be awarded as a cost-savings contract under the provisions of Government Code Section 19130(a). In accordance with those provisions, the salary rate to be paid to individuals performing the requested services as described under this contract should be an amount calculated NOT to "significantly undercut" the State pay rate and shall not be less than the industry rate for San Bernardino County. In the event that this salary rate does significantly undercut the State pay rate or the industry rate for San Bernardino County. THE PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE.

A Proposer on this contract must complete the "Minimum Wage Statement" below and return this sheet with his/her proposal.

---

MINIMUM WAGE STATEMENT

I hereby certify that the minimum wage to be paid to all individuals performing the requested services as described under this contract will not less than \$\_\_\_\_\_ per hour.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Date Signed

**CITY OF RIALTO**  
**REQUEST FOR PROPOSAL #18-056**  
**STATEMENT OF PROPOSER'S PAST CONTRACT DISQUALIFICATIONS**

---

Pursuant to Section 10162 of the Public Contract Code the Proposer shall state whether such Proposer, any officer or employee of such Proposer who has a proprietary interest in such Proposer has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a Federal, State or Local Government Project because of a violation of law or a safety regulation; and if so, explain the circumstances.

If the Proposer has had a contract terminated for default, all such incidents must be described. Termination for default is defined as notice to stop performance due to the Proposer's non-performance or poor performance and the issue was either no litigated; or litigated and such litigation determined the Proposer to be in default. Submit full details of all termination(s) for default experienced by the Proposer including the other party's name, address and telephone number. Present the Proposer's position on the matter. The City will evaluate the facts and may, at its sole discretion, reject the Proposer's proposal if the fact discovered indicates the completion of a contract resulting from the RFP may be jeopardized by selection of the Proposer.

If no such termination for default has been experienced by the Proposer in the past five years, so indicate.

1. Do you have any disqualification, removal, etc., as described in the above paragraph to declare?  
Yes ☐ No ☐
2. If yes, explain the circumstances. Attach additional pages if necessary.

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Executed on \_\_\_\_\_ at \_\_\_\_\_, California.

**I declare, under penalty of perjury, that the foregoing is true and correct.**

---

Signature of Authorized Representative

---

Printed Name

---

Title

---

Company Name

---

Date Signed



CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
PROPOSER'S STATEMENT OF SUBCONSULTANTS

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Without exception, the proposer is required to state the name and address of each subconsultant and the portion of the work which each will do as required by Section 2-3, "Subcontracts", of the Standard Specifications and in conformance with Public Contracts Code, Section 4100 to 4113, inclusive.

Without limiting the generality of the foregoing, any consultant making a Proposal or offer to perform the work shall set forth in the Proposal:

- (a) The name and the location of the place of business of each subconsultant who will perform work or labor or render service to the prime consultant in or about the construction of the work or improvement, or a subconsultant licensed by the State of California who, under subcontract to the prime consultant, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the prime consultant's total Proposal: and
- (b) The portion of the work which will be done by each subconsultant.  
The prime consultant shall list only one subconsultant for each Portion.

The undersigned submits herewith a list of subconsultants in conformance with the foregoing:

| <u>Name Under Which<br/>Subconsultant is<br/>Licensed</u> | <u>License<br/>No. &amp; Class</u> | <u>Business Address</u> | <u>Specific Description of<br/>Subcontract and Portion of<br/>the Work to be Done</u> |
|---|------------------------------------|-------------------------|---|
| _____   | _____                              | _____                   | _____   |
| _____   | _____                              | _____                   | _____   |
| _____   | _____                              | _____                   | _____   |
| _____   | _____                              | _____                   | _____   |

\_\_\_\_\_  
Signature(s) of Proposer      Date

\_\_\_\_\_  
Signature(s) of Proposer      Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
CERTIFICATION OF NON-DISCRIMINATION BY CONTRACTORS

---

As suppliers of goods or services to the City of Rialto, the firm listed certified that it does not discriminate in its employment with regard age, handicap, race, color, religion, sex, or national origin; that it is in compliance with all federal, state, local directives, and executive orders regarding non-discrimination in employment; and that it agrees to demonstrate positively and aggressively the principle of equal employment opportunity in employment. Every bidder in violation of this section is subject to all penalties imposed for violation of Chapter 1 of Part VII, Division 2 of the Labor Code, in accordance with the provisions of Section 1753 thereof.

We agree specifically:

1. To establish or observe employment policies which affirmatively promote opportunities for minority persons at all job levels.
2. To communicate this policy to all persons concerned, including all company employees, outside recruiting services, especially those serving minority communities, and to the minority communities at large.
3. To take affirmative steps to hire minority employees within the company.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Date Signed

Please include any additional information available regarding equal opportunity employment programs now in effect within your company.

**CITY OF RIALTO  
REQUEST FOR PROPOSAL #18-056  
NON-COLLUSION AFFIDAVIT**

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The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

**OATH AND AFFIRMATION**

**I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Name of Organization)

\_\_\_\_\_  
(Title of Person Signing)

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

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )

) ss

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature

My Commission Expires: \_\_\_\_\_

**CITY OF RIALTO  
PROFESSIONAL SERVICES AGREEMENT  
FOR  
[NAME OF PROGRAM AND/OR SERVICES]  
CITY PROJECT NO. 18-056**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective this XXth day of MONTH, 2017, by and between the CITY OF RIALTO, a California municipal corporation, (hereinafter referred to as "City") and [COMPANY NAME], Inc., a [STATE] corporation, (hereinafter referred to as "Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties."

**RECITALS**

- A. City has determined that there is a need for a [SERVICE OR PROJECT], (hereinafter the "Project").
- B. Consultant has submitted to City a proposal to provide professional [SERVICE] services for the Project pursuant to the terms of this Agreement.
- C. Consultant is qualified by virtue of its experience, training, education, reputation, and expertise to provide these services and has agreed to provide such services as provided herein.
- D. City desires to retain Consultant to provide such professional services.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1.0 SERVICES OF CONTRACTOR**

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Consultant agrees to perform the professional services set forth in the Scope of Services described in Exhibit "A," which is attached hereto and is incorporated herein by reference (hereinafter referred to as the "Scope of Services"). As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and professional services and that Consultant is experienced in performing the Scope of Services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the Scope of Services required hereunder. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized as high quality among well-qualified and experienced professionals performing similar work under similar circumstances.

**1.2 Contract Documents.** The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Scope of Services; (3) the City's Request for Proposals; and, (4) the Consultant's signed, original proposal submitted to the City ("Consultant's Proposal"), (collectively referred to as the "Contract Documents"). The City's Request for Proposals and the Consultant's Proposal, which are both attached as Exhibits "B" and "C", respectively, are incorporated by reference

and are made a part of this Agreement. The Scope of Services shall include the Consultant's Proposal. All provisions of the Scope of Services, the City's Request for Proposals and the Consultant's Proposal shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the provisions of the Scope of Services (Exhibit "A"); (2nd) the provisions of the City's Request for Proposal (Exhibit "B"); (3rd) the terms of this Agreement; and, (4th) the provisions of the Consultant's Proposal (Exhibit "C").

**1.3 Compliance with Law.** Consultant warrants that all Services rendered hereunder shall be performed in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

**1.4 Licenses, Permits, Fees and Assessments.** Consultant represents and warrants to City that it has obtained all licenses (including a City Business License), permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Scope of Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Consultant to perform the Scope of Services under 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 Scope of Services required by this Agreement, and shall indemnify, defend, and hold harmless 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 (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the Services should be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services hereunder. Should the Consultant discover any latent or unknown conditions that will materially affect the performance of the Services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City.

**1.6 Care of Work.** Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to any site where the Scope of Services are performed 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 Scope of Services by the City, except such losses or damages as may be caused by City's own negligence.

**1.7 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.

**1.8 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 such Work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Maximum Contract Amount or \$XX,000, whichever is less, may be approved by the City Administrator, or his designee, as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the Rialto City Council. It is expressly understood by Consultant that the provisions of this section shall not apply to the services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or materials required to complete any work or service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

## **2.0 COMPENSATION**

**2.1 Maximum Contract Amount.** For the Services rendered pursuant to this Agreement, Consultant shall be compensated by City in accordance with the Schedule of Compensation, which is attached hereto as Exhibit "D" and is incorporated herein by reference, but not exceeding the maximum contract amount of [CONTRACT AMOUNT] Dollars, (\$XXX,XXX) (hereinafter referred to as the "Maximum Contract Amount"), except as may be provided pursuant to Section 1.8 above. The method of compensation shall be as set forth in Exhibit "D." Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the Contract Officer designated pursuant to Section 4.2 and will only be approved if such expenses are also specified in the Schedule of Compensation. The Maximum Contract Amount shall include the attendance of Consultant at all Project meetings reasonably deemed necessary by the City. Consultant shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Consultant hereby acknowledges that it accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Consultant anticipates, that Consultant shall not be entitled to additional compensation therefore, and that the provisions of Section 1.8 shall not be applicable to the services identified in the Scope of Services. The maximum amount of city's payment obligation under this section is the amount specified herein. If the City's maximum payment obligation is reached before the Consultant's Services under this Agreement are completed, consultant shall nevertheless complete the Work without liability on the City's part for further payment beyond the Maximum Contract Amount.

**2.2 Method of Payment.** Unless some other method of payment is specified in the Schedule of Compensation (Exhibit "D"), in any month in which Consultant wishes to receive payment, no later than the tenth (10) working day of such month, Consultant shall submit to the City, in a form approved by the Contract Officer, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Consultant and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the

City. City shall use reasonable efforts to make payments to Consultant within thirty (30) days after receipt of the invoice or a soon thereafter as is reasonably practical. There shall be a maximum of one payment per month.

**2.3 Changes in Scope.** In the event any change or changes in the Scope of Services is requested by the City or Consultant, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional professional fees. An amendment shall be entered into: (a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

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

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

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

**3.2 Schedule of Performance.** Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed given by the City, and shall perform all Services within the time period(s) established in the Schedule of Performance, which is attached hereto as Exhibit "E" and is incorporated herein by reference. When requested by Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer, but such extensions shall not exceed one hundred eighty (180) days cumulatively; however, the City shall not be obligated to grant such an extension.

**3.3 Force Majeure.** The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Administrator in writing of the causes of the delay. The City Administrator shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Administrator such delay is justified. The City Administrator'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 as provided elsewhere in this Agreement, this Agreement shall commence upon the effective date of this Agreement and continue in full force and effect until completion of the Services, as provided in the Schedule of Performance (Exhibit "E") and pursuant to Section 3.2 above, unless extended by mutual written agreement of the Parties.

**3.5 Termination Prior to Expiration of Term.** City may terminate this Agreement for its convenience at any time, without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Where termination is due to the fault of Consultant and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon such notice, City shall pay Consultant for Services performed through the date of termination. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless stated otherwise in the notice or by written authorization of the Contract Officer. After such notice, Consultant shall have no further claims against the City under this Agreement. Upon termination of the Agreement under this section, Consultant shall submit to the City an invoice for work and services performed prior to the date of termination. Consultant may terminate this Agreement, with or without cause, upon sixty (60) days written notice to the City, except that where termination is due to material default by the City, the period of notice may be such shorter time as the Consultant may determine.

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

**4.1 Representative of Consultant.** The following representative of Consultant is hereby designated as being the main point of contact of Consultant authorized to act in its behalf with respect to the Services to be performed under this Agreement and make all decisions in connection therewith: **[CONTACT NAME]**. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing representative is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing representative shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services performed hereunder. The foregoing representative may not be changed by Consultant without prior written approval of the Contract Officer.

**4.2 Contract Officer.** The Contract Officer shall be such person as may be designated by the City Administrator of City, and is subject to change by the City Administrator. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept fully 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 to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

**4.3 Prohibition Against Subcontracting or Assignments.** The experience, knowledge, capability, expertise, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by



operation of law, without the prior written consent of City. Consultant shall not contract with any other entity to perform the Services required under this Agreement without the prior written consent of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Scope of Services will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant. 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 consent 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 Consultant or any surety of Consultant from any liability hereunder without the express written consent of City.

#### **4.4 Independent Contractor.**

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. 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 pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for professional fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of the Scope of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing the Scope of Services hereunder.

## **5. INSURANCE**

**5.1 Types of Insurance.** Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, the insurance described herein for the duration of this Agreement, including any extension thereof, or as otherwise specified herein, against claims which may arise from or in connection with the performance of the Scope of Services hereunder by Consultant, its agents, representatives, or employees. In the event the City Administrator determines that the Scope of Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Administrator or his designee. Consultant shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein. Except as otherwise authorized below for professional liability (errors and omissions) insurance, all insurance provided pursuant to this Agreement shall be on an occurrence basis. The minimum amount of insurance required hereunder shall be as follows:

A. Errors and Omissions Insurance. Consultant shall obtain and maintain in full force and effect throughout the term of this Agreement, standard industry form professional liability (errors and omissions) insurance coverage in an amount of not less than one million dollars (\$1,000,000.00) per occurrence and two-million dollars (\$2,000,000.00) annual aggregate, in accordance with the provisions of this section.

(1) Consultant shall either: (a) certify in writing to the City that Consultant is unaware of any professional liability claims made against Consultant and is unaware of any facts which may lead to such a claim against Consultant; or (b) if Consultant does not provide the certification pursuant to (a), Consultant shall procure from the professional liability insurer an endorsement providing that the required limits of the policy shall apply separately to claims arising from errors and omissions in the rendition of services pursuant to this Agreement.

(2) If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City Administrator.

(3) In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall immediately be obtained to ensure coverage during the entire course of performing the Services under the terms of this Agreement.

B. Workers' Compensation Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, workers' compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Consultant agrees to waive and obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy

against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies. If Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

C. Commercial General Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

D. Business Automobile Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of one million dollars (\$1,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased, and hired cars.

E. Employer Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of employer liability insurance written on a per occurrence basis with a policy limit of at least one million dollars (\$1,000,000.00) for bodily injury or disease.

**5.2 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City Administrator prior to commencing any work or services under this Agreement. Consultant guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured retentions in excess of \$10,000, and the City Administrator may require evidence of pending claims and claims history as well as evidence of Consultant's ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of \$10,000.

**5.3 Other Insurance Requirements.** The following provisions shall apply to the insurance policies required of Consultant pursuant to this Agreement:

5.3.1 For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects City and its officers, council members, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

5.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.

5.3.3 All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its

operations shall limit the application of such insurance coverage.

- 5.3.4 None of the insurance coverages required herein will be in compliance with these requirements if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Administrator and approved in writing.
- 5.3.5 Consultant agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.
- 5.3.6 Consultant agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.
- 5.3.7 Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights hereunder in this or any other regard.
- 5.3.8 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Agreement applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.
- 5.3.9 Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- 5.3.10 The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.

5.3.11 Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the Scope of Services performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.

5.3.12 Consultant agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages resulting from the Consultant's activities or the activities of any person or person for which the Consultant is otherwise responsible.

**5.4 Sufficiency of Insurers.** Insurance required herein shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless such requirements are waived in writing by the City Administrator or his designee due to unique circumstances.

**5.5 Verification of Coverage.** Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Rialto or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Rialto, its officials, employees, and agents are named as an additional insured..." ("as respects City of Rialto Contract No.\_\_\_\_" or "for any and all work performed with the City" may be included in this statement).*

2. *"This General Liability insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Rialto Contract No.\_\_\_\_" or "for any and all work performed with the City" may be included in this statement).*

3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named."* Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Rialto shall be named the certificate holder on the policies. All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Consultant's obligation to provide them.

## **6. INDEMNIFICATION**

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its officers, council members, officials, employees, agents and volunteers and all other public agencies whose approval of the Project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders, and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless, or willful performance of or failure to perform any term, provision, covenant, or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the sole negligence or willful misconduct of the City, its officers, council members, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs, and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant shall defend with legal counsel reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim "may arise out of, pertain to, or relate to Indemnified Claims" shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the Parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness, or willful misconduct of Consultant to any extent, then City shall reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs, and expenses that were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an

action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

## **7. REPORTS AND RECORDS**

**7.1 Accounting Records.** Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

**7.2 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 the Scope of 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 Scope of 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 such 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.

**7.3 Ownership of Documents.** All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly 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 of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and the City shall indemnify the Consultant for all damages resulting therefrom. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. Consultant shall ensure that all its subcontractors shall provide for assignment to City of 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.

**7.4 Release of Documents.** All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization.

**7.5 Audit and Inspection of Records.** After receipt of reasonable notice and during the regular business hours of City, Consultant shall provide City, or other agents of City, such access to

Consultant's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Consultant's performance under this Agreement. Consultant shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

## **8. ENFORCEMENT OF AGREEMENT**

**8.1 California Law and Venue.** This Agreement shall be construed and interpreted both as to validity and as to performance of the Parties in accordance with the laws of the State of California.

**8.2 Interpretation.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.



**8.3 Interpretation.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

**8.4 Default of Consultant.**

A. Consultant's failure to comply with any provision of this Agreement shall constitute a default.

B. If the City Administrator, or his designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Consultant in writing of such default. Consultant shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 3.5.

C. 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 8.4B, take over the Scope of Services 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 Scope of Services required hereunder exceeds the Maximum Contract Amount (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. The withholding or failure to withhold payments to Consultant shall not limit Consultant's liability for completion of the Services as provided herein.

**8.5 Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

**8.6 Rights and Remedies 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.

**8.7 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.

**8.8 Attorney Fees.** In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

## **9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

**9.1 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.

**9.2 Conflict of Interest.** 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/she is, directly or indirectly, interested in violation of any state statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

**9.3 Covenant Against Discrimination.** In connection with its performance under this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, or national origin. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## 10. MISCELLANEOUS PROVISIONS

### 10.1 Patent and Copyright Infringement.

A. To the fullest extent permissible under law, and in lieu of any other warranty by City or Consultant against patent or copyright infringement, statutory or otherwise, it is agreed that Consultant shall defend at its expense any claim or suit against City on account of any allegation that any item furnished under this Agreement, or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and Consultant shall pay all costs and damages finally awarded in any such suit or claim, provided that Consultant is promptly notified in writing of the suit or claim and given authority, information and assistance at Consultant's expense for the defense of same. However, Consultant will not indemnify City if the suit or claim results from: (1) City's alteration of a deliverable, such that City's alteration of such deliverable created the infringement upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by Consultant when it is such use in combination which infringes upon an existing U.S. letters patent or copyright.

B. Consultant shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof, Consultant shall not be obligated to indemnify City under any settlement made without Consultant's consent or in the event City fails to cooperate in the defense of any suit or claim, provided, however, that such defense shall be at Consultant's expense. If the use or sale of such item is enjoined as a result of the suit or claim, Consultant, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

**10.2 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) five (5) 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:

To City:

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

To Consultant:

[COMPANY NAME]  
Attention: [CONTACT PERSON]  
ADDRESS

CITY, CA ZIP CODE

Telephone: (XXX) X18-056X

Facsimile: (XXX) X18-056X

**10.3 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

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

**10.5 Successors in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

**10.6 Third Party Beneficiary.** Except as may be expressly provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

**10.7 Recitals.** The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

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

***[SIGNATURES ON FOLLOWING PAGE]***

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

**CITY OF RIALTO, CALIFORNIA**

**APPROVED BY THE CITY COUNCIL:**

By \_\_\_\_\_  
Deborah Robertson  
Mayor

Date \_\_\_\_\_

Agreement No. \_\_\_\_\_

**ATTEST:**

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

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
Fred Galante, Esq.  
City Attorney

**RECOMMENDED:**

By \_\_\_\_\_  
Marcus L. Fuller  
Public Works Director/City Engineer

## CONSULTANT

By: [COMPANY NAME], a [STATE] corporation  
Firm/Company Name

By: \_\_\_\_\_  
Signature (notarized)

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

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

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

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss

On \_\_\_\_\_  
before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Notary Signature:

Notary Seal:

By: \_\_\_\_\_  
Signature (notarized)

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

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

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

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss

On \_\_\_\_\_  
before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Notary Signature:

Notary Seal:

**EXHIBIT “A”  
SCOPE OF SERVICES**

**General Scope of Services**

[GENERAL DESCRIPTION OF SERVICES]

**City Required Scope of Work**

[CITY REQUIRED SCOPE OF WORK]

**Consultant's Technical Scope of Work**

CONSULTANT'S SCOPE OF WORK – LISTED BY SPECIFIC TASK]

**END OF EXHIBIT “A”**

**EXHIBIT “B”  
CITY’S REQUEST FOR PROPOSALS**

**REQUEST FOR PROPOSALS (RFP) 14-XXX  
[TITLE OF RFP]  
FOLLOWS THIS PAGE**



**EXHIBIT "C"**  
**CONSULTANT'S PROPOSAL**

**CONSULTANT'S PROPOSAL FOLLOWS THIS PAGE**

**EXHIBIT “E”  
SCHEDULE OF COMPENSATION**

Tasks listed below are identical to tasks identified in Exhibit A of this Agreement. Payments to Consultant shall be made no more frequently than monthly, and shall be based on lump sum costs per task item of work as indicated herein. Lump sum payments shall be made to Consultant based upon completion of tasks, or pro-rata portions thereof noted below, to a maximum of 75% of the lump sum task item fee until completion of such task item as determined by the Contract Officer. Each request for payment shall contain Consultant’s statement of the work or tasks completed or portion performed, with supporting documentation. The determination of payment due shall be made based upon the reasonable judgment of the Contract Officer.

|                                | <u>Task Total<br/>Lump Sum</u> |
|--------------------------------|--------------------------------|
| Task 1 –                       | \$ XX,XXX                      |
| Task 2 –                       | \$ XX,XXX                      |
| Task 3 –                       | \$ XX,XXX                      |
| Task 4 –                       | \$ XX,XXX                      |
| Task 5 –                       | \$ XX,XXX                      |
| Task 6 –                       | \$ XX,XXX                      |
| Task 7 –                       | \$ XX,XXX                      |
| Task 8 –                       | \$ XX,XXX                      |
| Task 9 –                       | \$ XX,XXX                      |
| Task 10 –                      | \$ XX,XXX                      |
| <b>GRAND TOTAL OF CONTRACT</b> | <b>\$XXX,XXX</b>               |

(Note, reimbursable expenses are inclusive of lump sum task fees).

**END OF EXHIBIT “D”**

**EXHIBIT “E”  
SCHEDULE OF COMPENSATION**

City and Consultant hereby mutually agree that the nature of the scope of services associated with this Contract, and the requirement to coordinate and obtain approvals by the various Committees, Commissions and City Council, may cause the term of this contract to exceed initial project schedule estimates. However, Consultant will endeavor to complete the scope of services within the time estimate of twelve (12) months originally identified in its Proposal.

**END OF EXHIBIT “E”**

DRAFT