

SERVICES AGREEMENT
BETWEEN THE CITY OF RIALTO AND
KOA CORPORATION

THIS SERVICES AGREEMENT (herein "Agreement") is made and entered into this 23rd day of January, 2018, by and between the CITY OF RIALTO, a California municipal corporation ("City"), and KOA Corporation, a California corporation ("Consultant"). City and Consultant are sometimes individually referred to as "Party" or collectively as "Parties".

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Consultant shall perform the work or services set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference. Consultant warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any federal, state, or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

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

2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of Thirty-Four Thousand One Hundred Ninety Seven Dollars and 98 Cents (\$34,197.98) ("Contract Sum").

2.2 Invoices. Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such extra work or change may be undertaken unless a written order is first given by the Contract Officer to the Consultant, describing in detail the extra work or change and the reason(s) therefor and incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work or change, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum but not exceeding a total contract amount of Five Thousand Dollars (\$5,000), or any increase in the time to perform of up to ninety (90) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

No claim for an adjustment in the contract amount or time for performance shall be valid unless the procedures established in this Section are followed.

2.4 Prevailing Wages. It is the understanding of the City and Consultant that the California Prevailing Wage laws do not apply to this Agreement because the Agreement does not involve any services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder.

3. PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding ninety (90) days cumulatively, pursuant to Section 2.3.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer shall extend the time for performance in accordance with the procedures set forth in Section 2.3. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

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

4. COORDINATION OF WORK

4.1 Representative of Consultant. Ming Guan, Project Manager, is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work and services specified herein and to make all decisions in connection therewith. All personnel of Consultant and any authorized agents shall be under the exclusive direction of the representative of Consultant. Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, and shall keep City informed of any changes. In the event that City, in its sole discretion, at any time during the term of this Agreement,

desires to reassign any staff or subcontractor of Consultant, Consultant shall, immediately upon a Reassign Notice from City of such desire of City, reassign such persons or persons.

4.2 Contract Officer. Robert Eisenbeisz is hereby designated as being the representative the City authorized to act on its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Contract Officer"). The City Administrator shall have the right to designate another Contract Officer by providing written notice to Consultant.

4.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees, and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury, and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for both the Consultant and the City against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by

the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including “any auto” and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant’s profession. This coverage may be written on a “claims made” basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant’s services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

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

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

5.2 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees, and agents as additional insureds, and any insurance maintained by City or its officers, employees, or agents shall apply in excess of, and not contribute with, Consultant’s insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees, and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any

failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide, or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

5.3 Indemnification. To the full extent provided by law, Consultant agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorney's fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the negligent performance of the work or services of Consultant, its officers, agents, employees, agents, subcontractors, or invitees, provided for herein ("indemnitors"), arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the sole negligence or willful misconduct of the City.

6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records. Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

6.3 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the Contract Officer.

(b) Consultant shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives the City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify the City should Consultant be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. The City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with the City and to provide the City with the opportunity to review any response to discovery requests provided by Consultant.

6.4 Ownership of Documents. All studies, surveys, data, notes, computer files, reports, records, drawings, specifications, maps, designs, photographs, documents and other materials (the “documents and materials”) prepared by Consultant in the performance of this Agreement shall be the property of the City and shall be delivered to the 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 the City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Moreover, Consultant with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California.

7.2 Disputes; Default. In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances

warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall proceed with payment on the invoices only when the default is cured. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

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

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

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

8. MISCELLANEOUS

8.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, or other protected class.

8.2 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 City or for any amount, which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.3 Facilities and Equipment. Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desks, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing of City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet, or other communication charges, vehicles, and reproduction facilities.

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

8.5 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party shall be in writing and shall be personally delivered, sent by pre-paid First Class U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:.

If to City: City of Rialto
 150 S. Palm Ave.

Rialto, CA 92376
Attn: City Administrator
Tel: (909) 820-2525
Fax: (909) 820-2527

With copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612
Attn: Fred Galante, City Attorney
Tel: (949) 223-1170
Fax: (949) 223-1180

If to Consultant: Ming Guan
3190 C Shelby Street
Ontario, CA 91764
Tel: (909) 890-9693
Fax: (909) 890-9694

With copy to: City of Rialto-Public Works
335 W. Rialto Avenue
Rialto, CA
Tel: (909) 820-2602
Fax: (909) 421-7210

8.6 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.7 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

8.8 Waiver. No delay or omission in the exercise of any right or remedy by any party shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default

must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.9 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment.

8.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

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

8.12 Rebates, Kickbacks or Other unlawful consideration. CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF RIALTO, a municipal corporation

By: _____
Robb Steel, Interim City Administrator

ATTEST:

By: _____
Barbara A. McGee, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Fred Galante, City Attorney

CONSULTANT:

KOA CORPORATION

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Two signatures are required if a corporation.

EXHIBIT “A”

SCOPE OF SERVICES

PHASE 1: PRELIMINARY DESIGN DRAWINGS, COST ESTIMATES & ENVIRONMENTAL CLEARANCE

Task 1 - Project Management and Administration

The KOA team will meet with the City to establish the design parameters for this project. KOA will also meet with the City and identify all applicable agencies with authority over any particular aspects of the project. KOA will develop a list and contact information. KOA will coordinate with each agency and determine permits or project specifications that are required. KOA will serve as the main coordinator and liaison between the City and agencies.

Under the project management task, KOA will be responsible for maintaining contact with the City's Project Manager to keep him/her informed of the developments on the project. It is anticipated that monthly PDT meetings will be held until the final completion of the project. The following specific subtasks will be performed:

- 1) Management of project team including sub-consultant*
- 2) Attend Project Start-up Meeting, Development and Agreement on Design Standards*
- 3) Conduct PDT Meetings including Preparing Agenda and Meeting Minutes*
- 4) Submitting of Monthly Progress Reports and Invoices including Updating Schedules*
- 5) Quality Control of Submittals*

Deliverables:

- Meeting agendas, attendance rosters, and minutes
- Detailed project schedule
- Monthly project reports

Task 2 - Data Review, Field Review and Base Mapping

Under this main task, the following subtasks will be performed. KOA team will photograph the entire project area for our use during design, review, and as a pre-construction record. We can utilize our aerial camera (“drone”) to obtain aerial imagery where beneficial.

The KOA team will obtain the available “As-Built” files. We will review the available data, proposed work, and develop a specific list of additional field data required for the project. The as-built information will also be field verified, as necessary, and the plans will be updated accordingly.

Upon completion of the field review, KOA will use all the data collected to prepare accurate base plans. The base plans will be prepared using record as-builts and measurements taken from our field review. For a project of this nature, it is more time and cost effective for our engineers to verify and measure the existing improvements at all the project locations than to provide a topographic survey by a licensed surveyor. Project base maps will be prepared at a

scale of 1"=40'. Once the base plan is completed, we will begin preparing the preliminary design plan, cost estimates and draft specifications for submittal to the City. Subtasks include:

- 1) *Obtain and Review Existing Documents and Reports*
- 2) *Preparation of Base Map**

*Due to budget constraints, it is assumed that topographic survey will not be needed for this Class II Bike Lane improvement project. If topographic surveying is required, it will be performed as an optional task.

Task 3 - Environmental Document

Both state and federal environmental documentation will be required to satisfy the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), in compliance with Caltrans' Local Assistance Program. Projects that receive federal funding and are included in the Federal Statewide Transportation Improvement Plan (FSTIP) are required to complete a Caltrans Preliminary Environmental Study (PES) form which will recommend the appropriate NEPA documentation. It is assumed that the recommended document will be a NEPA Categorical Exclusion (CE). The CEQA Lead Agency will be the City of Rialto. CEQA documentation will consist of at CEQA Categorical Exemption (CE). ECORP will prepare the CEs. The KOA team will assist the City in preparation of PES, NEPA and CEQA forms. Subtasks are as follow:

- 1) *Preliminary Environmental Study (PES)*

As part of KOA's team, ECORP will prepare the PES form for the proposed project. The PES form will be used to consult with Caltrans/FHWA to determine the appropriate NEPA document for the project (in this case, a CE).

- 2) *NEPA Categorical Exclusion and CEQA Categorical Exemption **

NEPA Categorical Exclusion. ECORP will prepare a Draft CE checklist form in the most recent Caltrans format included in Caltrans' Standard Environmental Reference (SER), Chapter 30 – Categorical Exclusions. ECORP will also review the HSIP and FSTIP while preparing the CE. The Draft CE Checklist will be provided to the City for review. ECORP will make any revisions to the CE Checklist and provide a Revised Draft CE Checklist to the City for submittal to Caltrans. After Caltrans review, ECORP will revise the document and provide the final document to the City for submittal to Caltrans.

CEQA Categorical Exemption. After an initial review, it appears that the proposed project is likely exempt from CEQA under Class 1: minor alteration of existing facilities (CEQA Guidelines Section 15301) or Class 2: replacement or reconstruction (CEQA Guidelines Section 15302). ECORP will prepare the Exemption Form from Appendix E of the CEQA Guidelines. This form will be filed at the County Clerk's office and the State Clearinghouse. A receipt of filing will be obtained from both of these entities.

*This scope of work and cost estimate assumes one round of comments and responses for each version of the document (Draft and Revised Draft) and that no additional analysis or technical studies are required to respond to comments.

Deliverables:

- PES Form; NEPA Categorical Exclusion Form; CEQA Categorical Exemption (CE) Form

Task 4 - Preliminary Design Plans (35% Plans)

KOA will develop preliminary plans, and hold a workshop with City staff to review and modify as needed. Preliminary design plans will focus on issues that require general agreement before proceeding with detailed design work. These will be resolved during the preliminary phase of the project. KOA will review and refine the conceptual plan and preliminary alignment plan for the proposed improvements; and identify associated impacts and costs. The preliminary design plan will include existing right-of-way, curbs, striping and marking, and As-Built data. Additional subtasks for this task will include:

- 1) *Prepare Preliminary Design Plan (35%)*
- 2) *Prepare Preliminary Cost Estimates*

Deliverables:

- Four (4) full-size copies of plan submittals at 35%; Cost Estimates at 35%

PHASE II - FINAL PLANS, SPECIFICATIONS & ESTIMATES

Task 5 - Prepare Interim and Final Plans, Specifications and Estimate

KOA will prepare and assemble a set of drawings for this project in a bid package format for City review, in accordance with the City of Rialto Standards. These plans will be prepared in 60%, 90%, 100% and Final Stages. The plan will be assembled after individual tasks are completed as defined in the tasks above. Other plans not noted in the tasks will be completed under this task. These plans include Vicinity Map, Roadway Sections, etc. Plans include:

- Street Improvement Plans
- Signing and Striping Plans
- Traffic Signal Plans
- Flashing Beacon Plans

All approved plans will be provided to the City on compact disk in AutoCAD, as well as on “D” size Mylar. Specifications documents, including technical specifications, will be provided on digital medium disks in Microsoft Word format. The Engineers Estimate will be provided in Excel format. Specific sub-tasks include:

- 1) *Specifications and Special Provisions and Engineers Estimate*
- 2) *2nd Review 60% Submittal*
- 3) *3rd Review 90% Submittal*
- 4) *Final 100% Review and Submittal*

Deliverables:

- Four (4) full-size copies of plan submittals at 60%, 90%, and 100% completion milestones

- Cost estimates at 60%, 90%, and 100% completion milestones
- Project specifications at 90% and 100% completion milestones
- One full-size signed Mylar of approved 100% plan set
- Electronic files at every milestone
- One CD containing final signed plans (PDF and Autocad format), specifications, and estimate

Task 6 – Caltrans and Federal Forms

KOA will prepare all federal and Caltrans required forms and documents required for project approval. Specific forms will include environmental clearance, right-of-way certification, and the Request for Authorization to Proceed with Construction (E-76). KOA will assist the City to secure all required Caltrans' approvals.

Upon completion of design, KOA will prepare the RFACON for submittal to Caltrans. Work includes the following:

- Prepare the Request for Authorization (LAPM Exhibit 3-D)
- Data Sheets (LAPM Exhibit 3-E)
- Preliminary Estimate of Cost (LAPM Exhibit 12-A)
- Finance Letter (LAPM Exhibit 15-N)
- PS&E Certification (LAPM Exhibit 12-C)
- PS&E Checklist (LAPM Exhibit 12-D)
- Local Agency Construction Contract Administration Checklist (LAPM Exhibit 15 -A)
- Local Programs Agreement Checklist (LAPM Exhibit 4-A)

Subtasks include:

- 1) *Prepare the Request for Authorization for Construction (RFACON)*

Deliverables:

- Caltrans RFACON submittal package

PHASE III – BIDDING AND CONSTRUCTION SUPPORT

Task 7 - Engineering Support during Bidding, Award & Construction Phase

KOA will assist the City in advertising for bids, and providing plans and specifications. Tasks may include answering questions from prospective bidders, providing responses to requests for information (RFI's), preparing addenda to the PS&E during the advertisement period, and providing consultation and interpretation of construction documents. KOA will attend the project pre-construction meeting. During construction, we will be available to answer requests for information, requests for clarification, and address interpretation needing comment. We will issue clarifications or addenda if necessary. We will be available to review and comment on project submittals. KOA will work closely with the City's appointed construction inspector. Subtasks will be as follows

- 1) *Bidding Services*
- 2) *Preconstruction meeting*
- 3) *Review Inquiries, submittals and change orders during construction*
- 4) *Prepare As Built Drawings*

EXHIBIT "B"

SPECIAL REQUIREMENTS

(Superseding Contract Standard Language)

Consultant has been hired to perform the services described in the Agreement, which include the creation of engineering design and the preparation of plans, specifications, and estimates (PS&E). Consultant acknowledges that City has budgeted the amount of Thirty-Four Thousand One Hundred Ninety Seven Dollars and 98 Cents (\$34,197.98) ("Contract Sum") for the design phase of the project ("Design Budget"). Consultant shall be responsible to do Project estimating to create PS&Es which will enable the Project to be constructed within at an amount which shall not exceed the Construction Budget by more than ten percent (10%). Should City solicit bids for construction of the Project, as such Project has been designed by Consultant, and the lowest responsible bid exceeds the Construction Budget by more than ten percent (10%), Consultant agrees to revise the previous PS&E, or to create new PS&Es, at no additional cost to City, so that a new price can be negotiated or the Project can be re-bid so that the Project does not exceed the Construction Budget by more than ten percent (10%). Notwithstanding the foregoing, Consultant is not responsible for changes in the Project scope initiated by City and all such changes shall include appropriate mutually agreed changes to the Construction Budget.

EXHIBIT "C"

SCHEDULE OF COMPENSATION


PROPOSAL FEE Professional Services for Design of Class II Bike Lanes on Merrill Avenue And South Riverside Avenue Federal Project No. HSIPL-5205(024)								
TASKS	Principal in Charge \$219	QA/QC Engineer \$201	Project Manager \$142	Senior Engineer \$142	Design Engineer \$96	Admin. Assist. \$91	Environmental E Corp	TOTAL COST
PHASE 1 - PRELIMINARY DESIGN DRAWINGS, COST ESTIMATES & ENVIRONMENTAL CLEARANCE								
Task 1 - Project Management and Administration								
1) Management of project team including sub-consultant	1		2					\$503.45
2) Attend Project Start-up Meeting, Development and Agreement on Design Standards			4		4			\$952.18
3) Conduct Meetings including Preparing Agenda and Meeting Minutes			2		2			\$476.08
4) Submitting of Monthly Progress Reports and Invoices including Updating Schedules			2			4		\$647.37
5) Quality Control of Submittals		4	2	2				\$1,373.54
Subtotal	1	4	12	2	6	4	\$0	\$3,952.63
Task 2 - Data Review, Field Review and Base Mapping								
1) Obtain and Review Existing Documents and Reports			2		2			\$476.08
2) Preparation of Base Map					32			\$3,064.48
Subtotal			2		34		\$0	\$3,540.57
Task 3 - Environmental Document								
1) Preliminary Environmental Study(PES)			2		2		\$7,600	\$8,076.08
2) NEPA Categorical Exclusion and CEQA Categorical Exemption			2		2		\$1,400	\$1,876.08
Subtotal			4		4		\$9,000	\$9,952.16
Task 4 - Preliminary Design Plans (35% Plans)								
1) Prepare Preliminary Design Plan(35%)		4	8	4	16			\$4,044.01
2) Prepare Preliminary Cost Estimates			2		8			\$1,050.68
Subtotal		4	10	4	24		\$0	\$8,094.69
PHASE 1 SUBTOTAL	1	8	28	6	68	4	\$9,000	\$22,540.06
PHASE II - FINAL PLANS, SPECIFICATIONS & ESTIMATES								
Task 5 - Prepare Interim and Final Plans, Specifications and Estimate								
1) Specifications and Special Provisions and Engineers Estimate	1		2	4	4			\$1,455.83
2) 2nd Review 60% Submittal		1	4		20			\$2,885.52
3) 3rd Review 90% Submittal		1	2		12			\$1,834.84
4) Final 100% Review and Submittal		1	2		4			\$888.72
Subtotal	1	3	10	4	40		\$0	\$6,844.72
Task 6 - Caltrans and Federal Forms								
1) Prepare the Request for Authorization for Construction (RFACON)			8		16	2		\$2,851.88
Subtotal			8		16	2	\$0	\$2,851.88
PHASE 2 SUBTOTAL	1	3	18	4	56	2	\$0	\$9,496.68
PHASE III - BIDDING AND CONSTRUCTION SUPPORT								
Task 7 - Engineering Support during Bidding, Award & Construction Phase								
1) Bidding Services			2		2			\$476.08
2) Preconstruction meeting			2		2			\$476.08
3) Review inquiries, submittals and change orders during construction			2		2			\$476.08
4) Prepare As Built Drawings					4			\$383.06
Subtotal			6		10		\$0	\$1,811.32
PHASE 3 SUBTOTAL	0	0	6	0	10	0	\$0	\$1,811.32
1) Reports, Printing and Mylars								\$260.00
2) Mileage								\$100.00
TOTAL HOURS	2	11	52	10	134	6		
TOTAL COST	\$437.78	\$2,212.17	\$7,398.52	\$1,422.79	\$12,832.50	\$544.22	\$9,000.00	\$34,197.90
								

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

The City and Consultant shall agree on a schedule of performance for the scope of work after the Notice To Proceed (NTP) is issued by the Director of Public Works.