

**SERVICES AGREEMENT**  
**BETWEEN THE CITY OF RIALTO AND**  
**KOA CORPORATION**

THIS SERVICES AGREEMENT (herein "Agreement") is made and entered into this 10th day of April, 2018 by and between the City of Rialto, a municipal corporation ("City"), and KOA Corporation, a California corporation ("Consultant"). City and Consultant are sometimes individually referred to as "Party" or collectively as "Parties".

**RECITALS**

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

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

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

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

**OPERATIVE PROVISIONS**

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

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement for City to enter into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, it meets all local, state, and federal requirements in performing the services, and it is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials

will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

## 1.2 Consultant’s Proposal.

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

## 1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any federal, state, or local governmental entity having jurisdiction in effect at the time service is rendered.

## 1.4 Licenses, Permits, Fees, and Assessments.

Consultant shall obtain, at its sole cost and expense, such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties, or interest levied, assessed, or imposed against City hereunder.

## 1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. If Consultant discovers any latent or unknown conditions that will materially affect the performance of the services hereunder, then Consultant shall immediately inform the City of such fact and shall not proceed except at City’s risk until written instructions are received from the Contract Officer.

## 1.6 Care of Work.

Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers,

documents, plans, studies, and/or other components thereof, to prevent losses or damages, and shall be responsible for all such damages to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

#### 1.7 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, *et seq.* and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 1600, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. It is the understanding of City and Consultant that the Prevailing Wage Laws do not apply to this Agreement because the Agreement does not involve any services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder. Contractor shall defend, indemnify, and hold City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

#### 1.8 Further Responsibilities of Parties.

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless specified in this Agreement, neither Party shall be responsible for the service of the other.

#### 1.9 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such extra work or change may be undertaken unless a written order is first given by the Contract Officer to the Consultant, describing in detail the extra work or change and the reason(s) therefor and incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work or change, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or an amount not to exceed a total contract sum of Fifteen Thousand Dollars (\$15,000), whichever is less, or any increase in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. Payment for additional services rendered by Consultant under this Agreement requires the submission of the actual costs of Consultant's performance of the extra work with the invoice(s) for the extra work claim(s), as provided in Section 2.4. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

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

#### 1.10 Special Requirements.

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

### **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT**

#### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed One Hundred Ninety Four Thousand Twenty Five Dollars and Zero Cents (\$194,025.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9.

#### 2.2 Method of Compensation.

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

#### 2.3 Reimbursable Expenses.

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

#### 2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor

contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

## **2.5 No Waiver.**

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

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### **3.1 Time of Essence.**

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

### **3.2 Schedule of Performance.**

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

### **3.3 Force Majeure.**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall, within ten (10) days of the commencement of such delay, notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when

and if in the judgment of the Contract Officer such delay is justified. The Contract Officer shall extend the time for performance in accordance with the procedures set forth in Section 1.9. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

### 3.4 Term.

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

## ARTICLE 4. COORDINATION OF WORK

### 4.1 Representatives and Personnel of Consultant.

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

Chuck Stephan, PE  
(Name)

Principal-In-Charge  
(Title)

Ming Guan, PE  
(Name)

Project Manager  
(Title)

It is expressly understood that the experience, knowledge, capability, and reputation of the foregoing Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires to reassign any staff or subcontractor of Consultant, Consultant shall, immediately upon a Reassign Notice from City of such desire of City, reassign such persons or persons.

#### 4.2 Status of Consultant.

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

#### 4.3 Contract Officer.

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

#### 4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present

ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

## **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

### **5.1 Insurance Coverages.**

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

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

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

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

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

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



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

## 5.2 General Insurance Requirements.

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

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

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

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

### 5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations, or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), arising from Consultant's reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, and in connection therewith:

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

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

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

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

indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

#### 5.4 Sufficiency of Insurer or Surety.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager Consultant.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### 6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

#### 6.2 Reports.

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

### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without liability to Consultant, and Consultant’s guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

### 6.4 Confidentiality and Release of Information.

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

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

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

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

Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed, and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, Eastern Division.

### **7.2 Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall proceed with payment on the invoices only when the default is cured. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

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

#### 7.4 Waiver.

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

#### 7.5 Rights and Remedies are Cumulative.

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

#### 7.6 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

#### 7.7 Liquidated Damages

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

#### 7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of

termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

#### 7.9 Termination for Default of Consultant.

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

#### 7.10 Attorneys' Fees.

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

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### 8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

#### 8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of

services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

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

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

### 8.3 Covenant Against Discrimination.

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

### 8.4 Unauthorized Aliens.

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



## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### **9.1 Facilities and Equipment.**

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

### **9.2 Payment of Taxes.**

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

### **9.3 Notices.**

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

If to City:                   City of Rialto  
                                  150 S. Palm Ave.  
                                  Rialto, CA 92376  
                                  Attn: City Administrator  
                                  Tel: (909) 820-2525  
                                  Fax: (909) 820-2527

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

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

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

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

#### 9.4 Interpretation.

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

#### 9.5 Counterparts.

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

#### 9.6 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### 9.7 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

#### 9.8 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

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

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

**CITY:**

CITY OF RIALTO, a municipal corporation

By: \_\_\_\_\_  
Deborah Robertson, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Fred Galante, City Attorney

**CONSULTANT:**

**KOA CONSULTANT**

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

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

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

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

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

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

Two signatures are required if a corporation.

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

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

## BI. SCOPE OF WORK

**KOA Corporation will provide comprehensive design services**, prepare and complete all required environmental studies, environmental documents, surveying, geotechnical investigation, landscaping, drainage design and construction documents, including plans, specifications, and cost estimates for the Cactus Trail Improvement Project. Tasks will also include public outreach, bidding and construction assistance. In general, we agree with the Scope of Work as presented in the RFP. Without repeating the narrative detail included in the RFP, we have sequentially outlined the task and subtask activities to be undertaken by KOA and our Sub-Consultant team members.

### PHASE I: CONCEPTUAL DESIGN DRAWINGS & PRELIMINARY COST ESTIMATES

#### **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*

#### **Task 2 - Data Review, Field Surveying 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.

- 1) *Obtain and Review Existing Documents and Reports*

Research of City records including As-Builts, records of survey, corner records, centerline ties, basis of bearings, utilities, City of Rialto Public Works Standards, Caltrans Highway Design Manual, other standards, parcel maps, tract maps, right-of-way maps, field notes, existing and proposed improvements. These records will show locations of existing centerline and right-of-way monuments necessary to show existing street centerline and right-of-way alignments.

KOA 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, including survey and geotechnical information.

- 2) *Conduct Field Surveys for Control and Mapping*

Project Controls will be established for aerial mapping. Field surveys will be conducted for mapping elevations against National Mapping Accuracy Standards. This work will include sending field crews to the project area and surveying topographic information to develop one-foot contour base maps of the project area. AutoCAD plans will be prepared for the purpose of engineering design. Survey will include street centerline and right of way information, and survey monuments.

Supplemental topographic field surveys will be performed to collect cross sectional information and clearances along the planned trail route and at the ramps at intersection crossings. The topographic field surveys will be

used to verify the 20-scale aerial planimetric mapping and include additional survey data for critical tie-in points and other features obscured by vegetation or shadows in the aerial mapping which fall within the survey limits. The limits of the topography will cover the area as shown on the Exhibit A of the RPF. In addition, collect full topographic detail over the future parking lot, which final location will be determined during conceptual design phase, including hardscape, visible utilities and paint marks.

The street centerlines and record rights of way will be computed from publicly available record maps. Research will be conducted at the county of San Bernardino Public Works and GIS departments for existing files and/or available cadastral records in support of the centerline and rights-of-way and other intersecting rights of way within the project limits. Monuments recovered by field crews will be tied into the horizontal survey control established for this project and utilized in the analysis of the existing centerline and right of way.

3) *Preparation of Base Map*

The survey topography will be submitted in ASCII format on CD-RW and a hard copy plot provided, using AutoCAD software. All drawings will be prepared at 1"= 40' scale.

### **Task 3 - Utility Research and Coordination**

KOA will provide preliminary notification/request letter and relocation/removal notices to all utility companies that have facilities within the limits of the project. The City shall provide KOA with the required format for the utility notice in Microsoft Word format. Said notices will inform the utility company of their need to relocate their facilities prior to construction or to adjust their facilities to grade after completion of the pavement construction. If requested by the City, potholing services will be performed under a supplement agreement.

- 1) *Contact and Obtain Utility Information*
- 2) *Prepare notices and follow up requests with plans to utility companies*
- 3) *Pothole utilities if needed (Optional)*

### **Task 4 - Conceptual Design and Cost Estimates / Preliminary Environmental Assessment**

KOA will develop preliminary concepts, and hold a workshop with City staff to review and modify as needed. KOA will prepare up to two conceptual plans for the project, and preliminary estimate for each conceptual plan will be provided. Conceptual design exhibit for parking lot will also be prepared for City review and determine the final location of the parking area. The approved preliminary alignment will be used to prepare the Preliminary Environmental Assessment and Preliminary Design Plans. The preliminary alignment will be developed based on a full field review, review of right of way limits, and consultation with stakeholders. KOA will conduct up to two (2) meetings with the Project Team to review the draft conceptual plans, and to receive initial comments and direction in which to proceed with the final conceptual plans.

- 1) *Develop Conceptual Design Plans for Trail (Up to Two Alternatives)*
- 2) *Develop Conceptual Design Exhibit for Park Lot*
- 3) *Preliminary Cost Estimates for Two Alternatives*
- 4) *Preliminary Environmental Assessment to identify Scope of Special Studies*

### **Task 5 - Community Outreach**

The KOA team will assist the City in preparing and conducting community outreach meetings to discuss the project, obtain comments, and identify and finalize the project concept. We anticipate up to three such meetings and a City Council presentation to be conducted. KOA will plan, prepare, and conduct these meetings based on discussions with the City. The City will assist in providing notification to affected stakeholders, including businesses and residents. We plan one or two community meetings to receive input from the public. Our Spanish-speaking staff will provide real-time translation. We also have experience with preparing fliers in both English and Spanish. Other tasks could include providing deliverables and services to educate the public on the project; evaluating its effectiveness; and creating

bike/pedestrian and trail route map worksheets to raise route awareness and to tout the benefits of bicycling/walking. Specific tasks will include:

- 1) *Conceptual engineering exhibits (plans and sections for the two alternatives)*
- 2) *Open house meeting written comments*

#### **Task 6 - Geotechnical Design Report**

Geotechnical field investigation will consist of drilling exploratory borings to obtain material samples for trail section design. The results of field exploration and geotechnical laboratory tests will be evaluated and engineering analyses will be performed in order to provide geotechnical recommendations for the design and construction of the proposed project. A professional report will be prepared to summarize the data collected and present our findings, conclusions, and geotechnical recommendations for design and construction of the proposed project. Specific tasks will include:

- 1) *Review Background Information and As-built Documents*
- 2) *Perform visual pavement surface condition assessment*
- 3) *Coordinate and Perform Field Exploration*
- 4) *Perform Geotechnical Laboratory Testing*
- 5) *Conduct Analyses and Prepare a Geotechnical Design Report*

#### **Task 7 - Hydrology Study and Drainage Design**

The KOA team will perform data research in support of the hydrology and drainage design. KOA team will perform a review of available drainage studies, master drainage plans, design topographic maps, aerial photographs of the project area. A field investigation will be conducted to familiarize the project team with the drainage conditions, flow patterns, existing design constraints, and existing improvements in the project area. A 100-year hydrology study will be prepared for the drainage areas encompassing the bike trail based upon the existing (pre-project) and proposed (with-project) conditions. It is assumed that no significant off-site drainage areas are tributary to the proposed bike trail. The study will be performed using the San Bernardino County hydrology method. Specific tasks will include:

- 1) *Data Collection and Review*
- 2) *Hydrology Study*
- 3) *Preliminary Drainage Improvements Plan*

#### **Task 8 - Preliminary Design Plans (30% Plans)**

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, medians, and As-Built data. The 30% complete Preliminary Design Plans will be utilized to support the Environmental Process. Additional subtasks for this task will include:

- 1) *Prepare Preliminary Design Plan(30%)*
- 2) *Prepare Preliminary Cost Estimates*

### **ENVIRONMENTAL DOCUMENTS**

#### **Task 9 - Preparation of Environmental Documents**

The project is funded by SBI ATP Cycle 3, and the City anticipates the issuance of a Negative Declaration for the Cactus Trail between Rialto Avenue and Baseline Road, and the preparation of the CEQA process is anticipated to be handled by the City's Development Services Department. KOA team will be responsible for preparing special studies that may be required once the final project design has been accepted by the City Council.



ECORP Consulting, Inc. (ECORP) is part of KOA team to provide environmental services for the project. To support the findings in the CEQA CE, several technical studies are anticipated to be required. Based on a review of the project site the technical studies to be prepared are anticipated to include the following:

- Cultural Services
- Biological Services
- Air Quality/GHG Analyses
- Noise Impacts

## CULTURAL RESOURCES

A records search will be conducted at the South Central Coastal Information Center (SCCIC) located at the California State University, Fullerton campus. The records search will identify the locations and extent of previous surveys conducted within 1 mile of the project area and will determine if there are any known cultural resources (i.e., prehistoric or historic archaeological sites or historic-period features) located within or near the project area. The records search will identify resources listed on or determined eligible for listing on the National Register of Historic Places (NRHP) and/or the California Register of Historical Resources (CRHR) located within or near the project area.

In addition, a search of the Sacred Lands File will be requested from the Native American Heritage Commission (NAHC) in Sacramento. The search will identify any known sensitive or sacred Native American resources located within or near the project area. It should be noted that the Sacred Lands File search will not constitute consultation in compliance with Senate Bill (SB) 18 or Assembly Bill (AB) 52. SB 18 and AB 52 consultation are separate processes from cultural technical studies and are not included in this scope of work. Based on a preliminary review of the project, it does not appear that SB-18 consultation is required because the project does not include the adoption of a Specific Plan, General Plan, or amendment to a Specific Plan or General Plan. It is assumed that the City of Rialto will conduct AB 52 consultation for the project and will provide copies of documentation of their AB 52 consultation process for inclusion in the CEQA document.

ECORP will complete a field survey of the project area (approximately 1.5 linear miles) using pedestrian transect intervals spaced 15 to 20 meters apart. The project area will be examined for evidence of cultural resources, including prehistoric and historic-period (i.e., over 50 years of age) archaeological deposits and features. If any resources are encountered, they will be recorded and mapped in detail in accordance with the standards of the California Office of Historic Preservation (OHP). California Department of Parks and Recreation (DPR) 523 site records will be prepared for archaeological sites. Aerial photographs of the project area indicate that the area has been heavily graded and is bordered on the east side by a drainage channel and Cactus Avenue and on the west side by a large modern wall. For costing purposes, it is assumed that no archaeological resources will be identified during the field survey.

*Note:* recordation and formal evaluation of archaeological sites is not included in this task. If any archaeological sites are encountered that will require evaluation, it will be considered as an optional task. For costing purposes we have assumed the following optional task:

Evaluate the road using California Register of Historical Resources (CRHR) criteria based on archival research and that the evaluation will be included in the cultural survey report.

A cultural resources technical report will be prepared to document the methods and results of the records search, Sacred Lands File search, and field survey. The report will include a summary of the environmental setting and prehistoric and historic cultural background of the project area. For the purposes of costing, it is assumed that no cultural resources will be identified during the survey. Copies of correspondence with the NAHC will be provided as an attachment to the report.

*Paleontological Records Search.* A paleontological records search and literature review will be conducted with the Los Angeles County Museum of Natural History (LACMNH). The records search will include a review of known fossil localities in the project vicinity and an assessment of the potential for the project area to contain buried paleontological

resources based on geologic maps of the region. A summary letter report will be prepared to document the results of the records search.

## BIOLOGICAL REPORT

ECORP will prepare a CEQA-compliant biological report for the project, by conducting the following general tasks: literature search, field survey, and reporting.

During the literature search task, ECORP will compile a list of sensitive plant and animal species expected to occur at the Project site based on public records. Biologists from ECORP will conduct an updated review of species that have been recorded as occurring near the Project site from the California Natural Diversity Database, California Native Plant Society's online inventory, and the USFWS online inventory tool.

After the literature search is complete, ECORP will conduct a field visit to characterize the existing biological resources on-site that may be affected by project construction. This survey will be conducted on foot, at a time of day that is conducive to making wildlife observations. Using the literature and field study results, ECORP will compile a biological profile of the project area. The profile will characterize the existing biological conditions and biological constraints of the project.

The biologists who conducted the field study and literature search will prepare a document that support the CEQA document being prepared by the City. The document will summarize any project documentation provided by the City, describing the project location and other pertinent details with figures. The document will describe the existing biological environment at the project site, based on the biological information compiled, and will briefly discuss potential project impacts, temporary and permanent, and proposed project mitigation measures for biological resources. The biological report will also incorporate the most current engineering design and full project description.

ECORP assumes one administrative draft report (five copies), followed by one round of review by the City, and preparation of a final report (five copies) based on those comments. An electronic version of the final report will also be supplied. Five copies of the draft report, five copies of final report, and a final electronic document will be provided to the City following its finalization.

## ASSESS POTENTIAL IMPACTS RELATED TO AIR QUALITY & GREENHOUSE GAS EMISSIONS

This scope of work outlines the work that ECORP will undertake to prepare the air quality and greenhouse gas emissions analysis for the Proposed Project. The assessment will quantify short-term (i.e., construction) and long-term (i.e., operational) emissions generated by the Proposed Project using the California Emissions Estimator Model version 2016.3.1 (CalEEMod) software. CalEEMod is a statewide land use emissions computer model designed to quantify potential pollutant emissions associated with operations from a variety of land use projects. ECORP proposes to evaluate potential air quality and greenhouse gas emission-related impacts in a stand-alone technical study. The analysis would be supported by modeling documentation, which would be included as an appendix to the technical study. Specific subtasks to be accomplished are described below.

### *Air Quality Subtask*

*Establish the Existing Conditions and Regulatory Framework.* Primary pollutants of concern in South Coast Air Basin, which encompasses the Project area, include ozone, particulate matter, and toxic air contaminants. ECORP staff will prepare an air quality analysis for the Proposed Project, in accordance with the South Coast Air Quality Management District's recommended methodologies and thresholds of significance, including the District's localized significance thresholds. Baseline meteorological and air quality data developed through the California Air Resources Board (CARB) will be utilized for the description of existing ambient air quality. Air quality data from the nearest air quality monitoring station

(Arrow Highway in Fontana) will be included to help highlight existing air quality local to the Project area. The analysis will also describe and address the requirements set forth by the SCAQMD CEQA Air Quality Handbook.

*Construction-Related Emissions.* Construction emissions associated with the Project will be quantified with CalEEMod version 2016.3.1. A general description of the major phases of construction and their timing will be required. The air pollutant emissions during construction will be compared to the SCAQMD regional thresholds of significance.

*Long-Term Emissions.* Operational (i.e., area and mobile source) emissions will be quantified and compared to the SCAQMD regional thresholds of significance. Due to the nature of the Project, it is not anticipated that it will be a substantial source of operational air pollutants. However, the proposed trail improvements could result in an increase in trail use over existing conditions and generate emissions from an increase in regional vehicle miles traveled. Project consistency with the 2016 Air Quality Management Plan (AQMP) will be evaluated.

*Localized Emissions.* The project is located within the SCAQMD's Source Receptor Area 34 (Central San Bernardino Valley). Based on localized meteorological data for SRA 34, ECORP will analyze localized impacts based upon the SCAQMD's Localized Significance Thresholds (LST) methodology.

### **Greenhouse Gas Emissions Subtask**

ECORP Consulting will prepare an inventory of the greenhouse gas (GHG) emissions (i.e., nitrous oxide, methane, and carbon dioxide) from Project construction activities as well as on-going operations and maintenance activities proposed by the Project. The significance of increased GHG emissions from the existing baseline and the contribution to climate change associated with the proposed Project will be determined by comparing the increase in GHG emissions associated with the Project assessed against the SCAQMD interim screening level numeric bright line threshold of 3,000 metric tons of carbon dioxide equivalent (CO<sub>2</sub>e) annually.

### **ASSESS POTENTIAL IMPACTS RELATED TO NOISE**

This scope of work outlines the work that ECORP will undertake to prepare the noise analysis for the Proposed Project. ECORP proposes to evaluate potential noise-related impacts in a stand-alone technical study. The analysis would be supported by modeling documentation, which would be included as an appendix to the technical study.

*Existing Conditions.* The applicable noise and land use compatibility criteria for the Project area will be reviewed and noise standards (i.e., Municipal Code Chapter 9.50, Noise Control, as well as the compatibility standards in the City's General Plan Safety and Noise Element) regulating noise impacts will be discussed for land uses adjacent to the Project site. Since the Project is proposing improvements to an existing land use as opposed to the development of a new land use, no noise level measurements are necessary.

*Construction-Related Noise and Vibration.* Construction would occur during implementation of the Proposed Project. Noise impacts from construction sources will be analyzed based on the anticipated equipment to be used, length of a specific construction task, equipment power type (gasoline or diesel engine), horsepower, load factor, and percentage of time in use. The construction noise impacts will be evaluated in terms of maximum levels (L<sub>max</sub>) and hourly equivalent continuous noise levels (L<sub>eq</sub>) and the frequency of occurrence at adjacent sensitive locations. An analysis of vibration impacts will be based on the California Department of Transportation's 2004 vibration analysis guidance. Analysis requirements will be based on the sensitivity of the area and specific construction activities.

*Operational Noise Sources.* Due to the nature of the Proposed Project, noise generated on-site during Project operations is anticipated to be minimal, and will be addressed qualitatively. Off-site noise impacts from any increase in vehicular traffic will be assessed using the U.S. Federal Highway Traffic Noise Prediction Model (FHWA-RD-77-108). The 24-hour weighted Community Noise Equivalent Levels (CNEL) will be presented in a tabular format. If necessary, mitigation will be identified to ensure that on-site noise levels do not exceed the County's standards.

- 1) *Coordination with City's Development Services Department*
- 2) *Preparation of Cultural Resources Technical Report*
- 3) *Preparation of Biological Report*
- 4) *Preparation of Air Quality Report*
- 5) *Preparation of Noise Impact Report*
- 6) *Preparation of CRHR Evaluation*

## PHASE II - FINAL PLANS, SPECIFICATIONS & ESTIMATES

### **Task 10 - 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 65%, 95%, 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 showing pavement thickness, etc. Plans include:

- Demolition Plan
- Trail Improvement Plans
- Storm Drain Improvement Plans
- Landscape and Irrigation Plans
- Safety Lighting 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) *2<sup>nd</sup> Review 65% Submittal*
- 3) *3<sup>rd</sup> Review 95% Submittal*
- 4) *Final 100% Review and Submittal*

### **Task 11 – Augmented ATP Grant administration support**

KOA will prepare all SBI and Caltrans forms and documents required for project approval. KOA will provide grant administration support per CTC SB I Accountability and Transparency Guidelines, and prepare progress report and maintain accounting on all invoices as required for the grant funding program. 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.

Subtasks include:

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

## PHASE III – BIDDING AND CONSTRUCTION SUPPORT

### **Task 12 - 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)**

**Not Applicable.**

**EXHIBIT "C"**

**SCHEDULE OF COMPENSATION**

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

**RATE TIME SUB-BUDGET**

- |           |                          |  |  |  |
|-----------|--------------------------|--|--|--|
| <b>A.</b> | <b>See attached fee.</b> |  |  |  |
| <b>B.</b> |                          |  |  |  |
| <b>C.</b> |                          |  |  |  |
| <b>D.</b> |                          |  |  |  |

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.9.**

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

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

**V. The total compensation for the Services shall not exceed \$\_\_\_\_\_ as provided in Section 2.1 of this Agreement.**

**VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.**

FEE PROPOSAL  
Design Services for West Side of Cactus Avenue, between Baseline Road and Rialto Avenue  
City of Rialto RFP No. 17-132, City Project No. 170801

TASKS													Twining Geotech	WestLAND Group Surveying	BMLA Landscape Services	ECorp Environmental	Aguilar Consulting Hydrology	Admin \$65	CAD Tech \$65	Design Engineer \$88	Project Manager \$129	Senior Engineer \$129	TOTAL COST																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																													
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## **EXHIBIT "D"**

### **SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all Services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer and the City Attorney's office.**
- II. Consultant shall deliver the following tangible work products to the City by the following dates.**
  - A. See Attached Schedule.**
  - B.**
  - C.**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

## PROJECT SCHEDULE

Design Services for West Side of Cactus Avenue, between Baseline Road and Rialto Avenue

City of Rialto RFP No. 17-132, City Project No. 170801

