



**CITY OF RIALTO, CA  
NOTICE FOR REQUEST FOR PROPOSALS (RFP) NO. 18-011  
CITY PROJECT NO. 170700**

**ENGINEERING DESIGN SERVICES FOR  
STORM DRAIN IN BASELINE RD FROM CACTUS BASIN WEST TO TAMARIND AVE**

**NOTICE IS HEREBY GIVEN** that the City of Rialto is requesting proposals from qualified professional firms to provide the City with engineering design services related to the City of Rialto Baseline storm drain from Cactus Basin west to Tamarind Ave, (hereinafter the "Project").

**PROJECT LOCATION:** In Baseline Rd. beginning at Cactus Basin and proceeding west to Tamarind Ave.

**SCOPE OF SERVICES:** The scope of work generally the Professional planning and engineering services for the completion of a Storm Drain Design in Baseline Road from Cactus Basin Number 3 westerly to Tamarind Ave

**OBTAINING RFP DOCUMENTS AND ADDENDA:** The RFP document may be downloaded via the internet at [www.yourrialto.com](http://www.yourrialto.com) (from the main page look for the "City Hall" drop down menu and select "Departments"; on the left hand side, select "Procurement"; Click on "Vendor Portal/Vendor Registration". Once you are redirected to the "City of Rialto Vendor Portal" select "New Vendor Registration" to register or "Bid Opportunities" if you have already registered. To obtain RFP Documents and Addenda, registration with the City of Rialto Vendor Portal is required. Failure to register may result in not receiving addenda to the RFP.

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

**DEADLINE:** All proposals must be received at the Public Works Department Office, located at 335 W. Rialto Ave., Rialto, CA, 92376 by **3:00 P.M., THURSDAY, October 5, 2017**. The receiving time at the Public Works Department will be the governing time for acceptability of Proposals. Telegraphic and telephonic Proposals will not be accepted. Reference the RFP document for additional dates and deadlines. Late proposals will not be accepted and shall be returned unopened.

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

Robert Eisenbeisz  
Public Works Director/City Engineer  
July 20, 2017



**CITY OF RIALTO, CA  
REQUEST FOR PROPOSALS (RFP) 18-011  
CITY PROJECT NO. 170700**

**ENGINEERING DESIGN SERVICES FOR  
STORM DRAIN IN BASELINE RD FROM CACTUS BASIN WEST TO TAMARIND AVE**

Requests for Proposals (RFP #18-011), for Professional planning and engineering services for the completion of a Storm Drain Design in Baseline Road from Cactus Basin Number 3 westerly to Tamarind Ave Project for the City of Rialto, CA, (hereinafter the "RFP") will be received at the Public Works Department Office, located at 335 W. Rialto Ave., Rialto, CA, 92376, until **3:00 P.M., THURSDAY, October 5, 2017**. It is the responsibility of the Proposer to see that any proposal sent through the mail, or any other delivery method, shall have sufficient time to be received by this specified date and time. The receiving time in the Purchasing Division will be the governing time for acceptability of submitted Proposals. Telegraphic, telephonic, faxed or emailed Proposals will not be accepted. Late Proposals will be returned unopened. Failure to register as a Respondent to this RFP process per the instructions in the Notice Inviting Requests for Proposals (under "Obtaining RFP Documents") may result in not receiving Addenda or other important information pertaining to this process. Failure to acknowledge Addenda may render a proposal as being non-responsive. We **strongly advise** that interested firms officially register per the instructions.

**1. PURPOSE AND SCHEDULE:**

The City of Rialto is requesting proposals from qualified professional firms to provide the City with engineering design services related to, Professional planning and engineering services for the completion of a Storm Drain Design in Baseline Road from Cactus Basin Number 3 westerly to Tamarind Ave (Hereinafter the "Project"). The selected firm will be responsible for providing conceptual planning services; and preparation of final construction plans, specifications and estimates ("PS&E").

Funding for all phases of the Project will come from the City's Storm Drain Development funds.

**SCHEDULE:**

The following timetable is anticipated:

Notice requesting Proposals posted and issued ..... Thursday, August 17, 2017  
Deadline for receipt of Questions ..... Thursday, September 28, 2017 3:00 P.M.  
**Deadline for receipt of Proposals ..... Thursday, October 5, 2017, 3:00 P.M.**

Completion of Review of Submissions

Monday, October 16, 2017

Oral Interviews, if scheduled ..... Wednesday, November 1, 2017

Contract awarded by City Council ..... Tuesday, November 14, 2017

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

## **2. BACKGROUND:**

The City of Rialto is currently seeking qualified and capable professional design services for the development of final designs and bid documents for Professional planning and engineering services for the completion of a Storm Drain Design in Baseline Road from Cactus Basin Number 3 westerly to Tamarind Ave City of Rialto. The selected firm shall be responsible for identifying the most cost effective method for the design of Storm Drain improvements including size, location, right of way and resolution of utility conflicts. This design shall be then refined into plans and specifications, with which the City shall be able to use to solicit Request for Bids for construction of the storm drain line. It is understood that the actual limits of construction may be different from the final design as the construction funding may not include the full length of the storm drain in a single project.

The City of Rialto is located in the Inland Empire and is considered to be one of the oldest and most well established cities. Incorporated in 1911, the City celebrated its Centennial year in 2011. The City is served by Interstate 10 that transverses the south end of the city and Interstate 210 that transverses the north end of the City on an east west alignment, and Interstates 15 along the north west edge of the City and Interstate 215 along the eastern edge of the City on a north south alignment. The city of Fontana is adjacent to the west boundary of the City and the cities of San Bernardino and Colton abut on the east side. The current population of the city is 102,092, based on the California Department of Finance E-1.

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

The scope of work generally includes engineering, design and the preparation of plans and specifications along with engineer's estimates, right of way plats and descriptions and support for environmental documents.

More detailed Scope of Work is contained in Attachment 1 – Scope of Work

**TASK 1 – PREPARATION OF ENVIRONMENTAL DOCUMENTS** – The City anticipates the issuance of a Negative Declaration for the Storm Drain in Baseline, and the preparation of the CEQA process is anticipated to be handled by the City's Development Services Department. The selected Consultant shall be responsible for preparing any and all special studies that may be required once the final project design has been accepted by the City Council. These special studies may include but are not limited to noise, traffic, air quality, geotechnical, archeological and historical, hydrological or any other studies deemed necessary by the Development Services Department. It is strongly recommended that the proposer become familiar with the City's requirements for project development by contacting the Development Services Department, Planning Division to review the appropriate requirements.

**TASK 2 – PREPARATION OF CONSTRUCTION DOCUMENTS** – The Consultant shall, using the final design plan, develop bid specifications, plans, engineering estimates and other documents necessary to allow the City to issue a Request for Bid for the construction of the Baseline Storm Drain. The Consultant shall provide draft, revision and final document presentation, shall assist the City in developing the bid packages, including being present at

Mandatory Bid Conference, provide timely inputs and responses to bid questions or issues, and assist the City in evaluating and recommending for award Construction Contracts.

**TASK 3 – PROVIDE ON GOING TECHNICAL SUPPORT** – The Consultant shall be required to provide on-going technical and administrative support to the City from the award of construction contracts and through the entire construction process.

Firms shall provide a detailed Scope of Work in their Proposal that conforms to the general Scope of Work identified above as well as shown in Attachment 1 – Scope of Work.

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

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

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

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

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

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

An Evaluation Committee, using the following evaluation criteria for this RFP, will evaluate all responsive proposals to this RFP. The Evaluation Committee may request, if desired by City,

formal presentations/interviews from a short list of firms at a future date of which the format and presentation evaluation criteria shall be provided at the time of short listing. **Participation in any phase of this RFP process, including the interview phase if conducted, is at the sole expense of the firms replying to this RFP.** The City shall NOT be responsible for any costs incurred by any firm in response to, or participation in, this RFP.

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

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

The firm's proposal adequately demonstrates an understanding of the Project and familiarity with the project area.

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

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

Proposed approach to the Project including the expected time commitment of key personnel, technical approach to the Project, and the emphasis placed on individual elements of Phase 1 – Conceptual Design Drawings & Preliminary Cost Estimates, Phase 2 – Final Construction Drawings & Specifications, and Phase 3 – Construction Support.

**Note:** As this RFP has identified a General Scope of Work, evaluation criteria requires that the proposal identify a detailed scope of work to successfully implement the Project. ***The detailed scope of work must be identical to the format in which the Cost Proposal has been submitted*** – each sub-task must be identified in the firm's separately sealed Cost Proposal with a corresponding fee.

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

Qualifications of the staff assigned to manage and provide services related to the Project.

**D. Firm Qualifications (15 POINTS):**

Past experience with storm drain design projects.

**E. Project Schedule (10 POINTS):**

Thoroughness and reasonableness of the project schedule with the ability to maintain the project within the selected time frame.

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

All proposals shall be sealed within one package and be clearly marked, "**RFP #18-011, REQUESTS FOR ENGINEERING DESIGN SERVICES FOR STORM DRAIN IN BASELINE RD FROM CACTUS BASIN WEST TO TAMARIND AVE**". Within the sealed proposal package, the Cost Proposal shall be in a separately sealed envelope. **Proposals not meeting the above criteria may be found to be non-responsive.**

Each proposal package must include two separately sealed envelopes.

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

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

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

- Cost proposal – provide a Cost Proposal that includes all costs associated with engineering, landscape design, and project management services necessary to appropriately identify future sites, and design selected sites for development. The general Scope of Services outlined in **Attachment 2** is only provided as a guide in this Request for Proposals; Consultants should provide a detailed Scope of Services in their submitted Work Proposal as necessary to reflect the method and procedure in which they intend to provide the required professional services, consistent with the general Scope of Services.
- The City will use a "Cost per Unit of Work" method (lump sum cost per task item or element of work) to pay for professional services related to this project; therefore, Consultants should list a lump sum cost per each sub-task or item of work. The general Scope of Services outlined herein is only provided as a guide in this Request for Proposals; Consultants should provide a detailed Scope of Services in their submitted Work Proposal as necessary to reflect the method and procedure in which they intend to provide the required professional services, consistent with the general Scope of Services. The Cost Proposal must be **identical** to the detailed Scope of Services included as part of the Consultant's Work Proposal submitted in Envelope #1.
- **Do NOT include Attachments "A" or "B" in the Cost Proposal envelope.** Attachments "A" and "B" are to be included in Envelope #1, "Work Proposal".

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

## **SECTION A: PROJECT UNDERSTANDING**

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

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

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

B.1 Provide a detailed scope of work identifying all tasks and sub-tasks required to successfully implement Phase 1 – Conceptual Design Drawings & Preliminary Cost Estimates and Phase 2 – Final Construction Drawings & Specifications. The outline of tasks and sub-tasks must be thorough and complete, and will be used as the scope of work included in the selected firm’s contract.

**Special Note:** *The detailed technical scope of work outline must be identical to the outline of tasks and sub-tasks on the Cost Proposal* (submitted in a separately sealed envelope). This is to ensure that the final agreed contract has a scope of work and payment schedule, which correlate to one another.

## **SECTION C: STAFF QUALIFICATIONS**

C.1 List the name and qualifications of the Project Manager that will be assigned to the Project.

C.2 Identify the total number of projects the Project Manager (assigned as a “Project Manager”) has successfully **completed** which involved approval of storm drain plans involving various stakeholders including San Bernardino County Flood Control District. Provide date completed, a description of the project, location, lead agency (include contact information).

C.3 Identify the total number of projects the Project Manager is currently engaged in which involve park or recreational design projects.

C.4 Identify how many years the Project Manager has been currently employed with the Consultant’s firm. Identify how many years the Project Manager has been previously employed with other firms, and identify the number and name of the other firms.

C.5 Identify how the Project Manager can or will have sufficient time to devote to the Project, given current and future time commitments, if the Consultant is selected.

## **SECTION D: FIRM QUALIFICATIONS**

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

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

D.3 List the firm’s specific and relevant experience with storm drain design projects. Specifically those projects that involved providing drains in developed rights of way and coordination with County level districts. Detailed project information, including dates project started and completed, local agency contact information, local agency Project Manager, and other appropriate supporting information shall be provided.

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

## **SECTION E: PROJECT SCHEDULE**

E.1 Identify the time frame for previous projects the Consultant's firm has successfully **completed**. List the total months required, including the date the Notice to Proceed was issued, the date conceptual plans were approved by the local agency, and the date the final plans were approved by the local agency and County District approval (for construction bidding).

E.2 Provide a thorough project schedule identifying all tasks and sub-tasks identified in the detailed scope of work submitted with the Proposal, showing a schedule to deliver the Project in consideration of all reasonable and expected time frames necessary to coordinate the Project through Phase 1 – Conceptual Design Drawings & Preliminary Cost Estimates, and Phase 2 – Final Construction Drawings & Specifications. Firms shall assume that a Notice to Proceed is issued to the firm in November 2017.

**DEADLINE FOR SUBMISSION OF PROPOSALS:** All proposals must be received at the City of Rialto, Public Works Department Office by **3:00 P.M., THURSDAY, October 5, 2017**. Proof of receipt before the deadline is a City of Rialto, Public Works Department time/date stamp. It is the responsibility of the firms replying to this RFP to see that any proposal sent through the mail, or via any other delivery method, shall have sufficient time to be received by the Purchasing Division prior to the proposal due date and time. Late proposals will be returned to the firm unopened.



**Proposals shall be clearly marked and identified and must be submitted to:**

**City of Rialto  
Public Works Department  
335 W. Rialto Ave.  
Rialto, CA 92376  
Attn: Robert G. Eisenbeisz, Public Works Director/ City Engineer**

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

Any questions, technical or otherwise, pertaining to this RFP **must be submitted electronically via the Q&A tab of the RFP Project found in the City of Rialto Vendor Portal.**

Interpretations or clarifications considered necessary in response to such questions will be resolved by the issuance of formal Addenda to the RFP. **The deadline for all questions is Thursday, September 28, 2017, 3:00 P.M.** Questions received after this date and time may not be answered. Only questions that have been resolved by formal written Addenda via the Purchasing Division will be binding. Oral and other interpretations or clarifications will be without legal or contractual effect.

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

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

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

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

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

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

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

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

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

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

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

**ATTACHMENT "A"**

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

**REQUESTS FOR PROPOSALS (RFP) # 18-011  
CITY PROJECT NO. 170700**

**ENGINEERING DESIGN SERVICES FOR  
STORM DRAIN IN BASELINE RD FROM CACTUS BASIN WEST TO TAMARIND AVE**

**SIGNATURE AUTHORIZATION**

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

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

\_\_\_\_\_  
SIGNATURE

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

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

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

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

**ADDENDA ACKNOWLEDGMENT:**

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

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

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

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

### Attachment "A" - Small Business Concerns Information

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

- (1) Name: \_\_\_\_\_
- (2) Address: \_\_\_\_\_
- (3) Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_
- (4) E-Mail: \_\_\_\_\_
- (5) Type of Firm: (Check all that apply)  
\_\_\_\_\_ Individual \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation  
\_\_\_\_\_ Minority Business Enterprise (MBE) \_\_\_\_\_ Women Business Enterprise (WBE)  
\_\_\_\_\_ Small Disadvantaged Business (SDB) \_\_\_\_\_ Veteran Owned Business  
\_\_\_\_\_ Disabled Veteran Owned Business \_\_\_\_\_ Other
- (6) Business License: \_\_\_\_\_ Yes \_\_\_\_\_ No License Number: \_\_\_\_\_
- (7) Tax Identification Number: \_\_\_\_\_
- (8) Number of years as a firm practicing the requested services: \_\_\_\_\_
- (9) Three (3) projects of this type recently completed:
- Type of project: \_\_\_\_\_
- Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_
- Owner: \_\_\_\_\_ Phone: \_\_\_\_\_
- Type of project: \_\_\_\_\_
- Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_
- Owner: \_\_\_\_\_ Phone: \_\_\_\_\_
- Type of project: \_\_\_\_\_
- Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_
- Owner: \_\_\_\_\_ Phone: \_\_\_\_\_
- (10) Person who reviewed the RFP for your firm:
- Name: \_\_\_\_\_ Date of Review: \_\_\_\_\_

## ATTACHMENT "B"

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

**REQUESTS FOR PROPOSALS (RFP) # 18-011  
ENGINEERING DESIGN SERVICES FOR  
STORM DRAIN IN BASELINE RD FROM CACTUS BASIN WEST TO TAMARIND AVE**

### **DEBARMENT AND SUSPENSION CERTIFICATION**

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

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

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

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

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

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

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

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

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

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

## ATTACHMENT C

THE FOLLOWING DETAILED SCOPE OF WORK IS MERELY INTENDED TO PROVIDE FIRMS WITH THE CITY'S EXPECTATION OF SERVICES TO BE PROVIDED ON THE PROJECT. FIRMS RESPONDING TO THE RFP SHALL PROVIDE THEIR OWN DETAILED SCOPE OF WORK THAT ADEQUATELY IDENTIFIES THE FULL RANGE OF SERVICES NECESSARY FOR THE PROJECT.

**GENERAL SCOPE** – The intent of this contract is to provide the City with engineering design services to accomplish the design and construction documents for the Storm Drain in Baseline from Cactus Basin 3 to Tamarind Ave (the "Project"). The Scope of Services as detailed herein shall provide the City with complete engineering design and construction plans, specifications, and estimates (PS&E) with which to facilitate construction of the desired improvements.

### *I. INTRODUCTION AND OBJECTIVE*

The City of Rialto currently has budgeted funds for the preparation of a Storm Drain Plan in Baseline Road from the County Flood Control Cactus Basins westerly to Tamarind Ave. This is a master planned drain line and the existing Renaissance Specific Plan Hydrology analysis shows this line as Line D with a Q100 of 958 cfs. and an estimated size of 9'x7' RCB culvert. The design calls for the line to turn north at the western edge of the Cactus Basin System and to drain to the bottom of the new Cactus Basin #3 north of the dam structure approximately 1200 feet north of Baseline Rd. The outlet elevation and the dam spillway elevation will likely cause the system to be under pressure flow to a point somewhat west of Fitzgerald Ave. However, the desire is for the system to accept inflows from catch basins along Baseline Rd as soon as possible. If the system is designed with backflow prevention devices, there should be some indication as to what storm frequency will be allowed to enter the system before the backflow devices are activated. There are a significant number of underground utilities existing in Baseline Road and it is anticipated that the location of the proposed drain line may be on the north side of the street within existing roadway easements and/or new dedication areas or drainage easements. It is also assumed that easements thru parcel 0264-213-18-0000 will be required to reach the designated outlet into Cactus Basin. In order to complete the project in a timely manner, with the limited in-house staff available, the City is requesting professional services from qualified consultants to assist the City with the preparation and design of this project as well as identification and procurement of necessary right of way/easements for the proposed construction. Coordination with the San Bernardino County Flood Control District is required. The City will be the lead in environmental processing but will require the selected consultant to provide data and or necessary supporting studies.

The City desires to hire an engineering consulting team that can perform all aspects of the project requirements, including right of way services, environmental services as well as design services and deliver a project design on schedule and within budget.

### TASK 1 ADMINISTRATION AND MANAGEMENT

## **ATTACHMENT C SCOPE OF WORK**

- 1.1 *Kick-off Meeting:* Within one week after the City's Notice to Proceed, the Consultant shall meet with the City Engineering Staff to initiate the Storm Drain Plan project. The purpose of this meeting will be to establish clear lines of communications, review and refine, if needed, the proposed project scope and schedule, establish general study guidelines, discuss project parameters and constraints and obtain background data.
- 1.2 *Status Meetings:* Status meetings are to be conducted on a monthly basis, as necessary, rather than once per month.
- 1.3 *Schedules and Milestones*  
The Consultant shall establish review milestones in the project schedule. The Consultant shall submit deliverable products in a timely manner to allow for adequate City review and revision.

### **TASK 2      DATA COLLECTION**

- 2.1 *Data Collection*  
The Consultant shall be responsible for researching, gathering and reviewing all existing City, adjacent City (where applicable), Caltrans, and County records including studies, atlas sheets, improvement plans, reports and base maps. As a part of this task, the Consultant shall meet with City maintenance staff to obtain a copy of the preliminary hydrology report prepared for the Renaissance Specific Plan. The Consultant will need to review and collect data from all available existing plans for storm drains equal to or greater than 18 inches in diameter, including Caltrans and privately owned storm drains, in order to complete the design review task. The information gathered shall include:
  - Previous Drainage Master Plans
  - Previous drainage studies and project reports delineating drainage boundaries.
  - Record drawings and other plans for existing storm drains.
  - Utility information both above and below ground
  - Specific Plans showing ultimate roadway improvements and designs
- 2.2 *Field Reconnaissance*  
There are numerous storm drains that have been recently constructed or existing systems that have not been identified in the previous studies. Working with City staff, the Consultant shall field verify all existing 18-inch diameter and above storm drain facilities, including Caltrans and private systems, for which no recorded documentation is available. For budgetary purposes, the Consultant shall assume no more than 20 hours for this task.

Field survey shall be included adequate to establish surface profiles over the proposed drainage structures, insure adequate depth of the system and to insure minimum grade on the storm drain.

Alignment shall be checked for potential conflicts and interference with existing improvements. The selected alignment would be expected to be the least costly and disruptive alignment that adequately conveys the storm waters and provides the greatest possible interception of street flows.

## **ATTACHMENT C SCOPE OF WORK**

### **TASK 3    HYDROLOGIC AND HYDRAULIC ANALYSES**

#### **3.1    *Hydrology***

Using the data collected above including the Renaissance Specific Plan Hydrology Study dated May 12, 2015, the Consultant shall perform system hydrology review using the Rational Method. Design frequencies and all other work must be in conformance with the latest edition of the San Bernardino County Hydrology Manual standards and procedures. The consultant shall utilize the subarea drainage boundaries from the previous studies to the maximum extent possible. Further refinement may be needed where new storm drains have been constructed or development has changed the drainage boundaries. Upon completion of the subarea boundary delineation, the Consultant shall submit a hard copy to the City for review. The Consultant shall provide the City with a copy of the input data, digital GIS data showing node numbers, drainage boundaries and the output computer files. The hydrology maps should be in AutoCAD 2000 format and provided to the City at a scale of 1"=200'.

#### **3.2    *Hydraulic Analysis***

Using the hydrologic data and record drawing information, the Consultant shall analyze and design the storm drain system using normal depth calculations and identify all deficiencies, areas of pressurized flow and system constraints. The Consultant shall determine where the proposed systems should best be located (including additional right of way needs). The Consultant may assume the Cactus Basin system is appropriately sized for the estimated 958 cfs discharge from Line D as proposed. The Consultant may also assume the Basins system will be to the proposed County design grades for the basin floor as shown on current development plans. The County is approximately 95% complete on the modifications to Basin 3.

#### **3.3    *System Alternative Analysis***

The Consultant shall formulate recommended facilities to address the identified flows as well as utility conflicts. The City is trying to avoid the creation of storm drain easements through private property but is aware that the County is opposed to the storm drain entering the Cactus Basin system below the dam structure and will not permit a storm drain thru the dam. This will require easements across private property to allow entry to the Cactus Basins above the proposed dam structure. While the land along this proposed alignment is currently vacant, there have been proposed developments in the past and it is unknown what future developments may be planned for the vacant property. The design should consider development alternatives and the potential of inlets from the development of this vacant land. The design shall extend to Tamarind Ave. However, the actual construction documents may have lesser limits based on estimated costs. Ultimately, the storm drain will extend to Tamarind but the current budget will limit construction to an approximately \$2 to \$2.5 million dollars. Consideration of the future westerly extensions of this drainage system to Tamarind Ave and the impact on utilities/development and availability of right of way for that extension shall be included in the overall design. Rights of way or easements required shall be identified and noted in order for the City to secure them as the alignment develops and funds become available for additional construction.

### **TASK 4    DEVELOP GIS DATABASE**

The Consultant shall integrate the proposed storm drain into the existing City's GIS database, without the need for further projection, or data manipulation.



## **ATTACHMENT C SCOPE OF WORK**

### **4.1     *Existing City Maps and Data***

- The Consultant shall review all existing reports, atlas maps, GIS maps, general plans, land use, topographic maps, facilities drawings, CAD drawings, as-built drawings and other data products for the storm drain system.
- The City has parcel level maps in the GIS system that will provide for a land base for this project. Also available are street names, zoning, water and sewers.
- The City maintains geographical data in California State Plane Coordinates, NAD83, Zone 6. Elevations are NAVD 88. Plan elevations must be consistent with adjacent storm drains and the Cactus Basin elevations.

## **TASK 5       FINANCIAL ANALYSIS**

### **5.1     *Cost Estimates***

The Consultant shall generate quantity takeoffs and cost estimates for all the proposed facility improvements. Cost estimates shall include construction, engineering, inspection and administration costs as well as any significant right-of-way costs and a construction contingency. The Consultant shall tie the unit prices to a cost index (i.e. Engineering News Record's Construction Cost Index) so it is in a format that can be easily updated or revised. Bid prices from recent City projects should be incorporated into establishing unit prices. The cost estimates shall be for the entire system as designed with an additional estimate for the portion of the system that can be developed within the current budgeted amount.

## **TASK 6       RIGHT OF WAY**

### **6.1     *Plats and Descriptions***

It is anticipated that a drainage easement will be required thru and across Parcel 0264-213-18-0000 as well as into the County Flood Control property to the east. The Consultant will prepare legal plats and descriptions for the required right of way as well as provide necessary contact with the affected property owners in order to secure the required easements. The City will assist with these efforts but the Consultant will provide the required appraisals and all direct contact with the affected property owners.

### **6.2     *Right of Way Verification***

Prior to bidding, the Consultant shall work with the City to insure that the required easements and/or rights of way as well as County permission for connection to Cactus Basin and the outlet structure are in place sufficient to allow the construction of the proposed storm drain.

### **6.3     *The City of Rialto and the City of Fontana share jurisdiction of Baseline Rd from Maple west with Rialto controlling the north side and Fontana controlling the south side***

## **TASK 7       UTILITY COORDINATION**

### **7.1     *Utility Investigation***

The Consultant will contact all utility companies, determine what if any facilities they may have along the proposed alignment and plot all known utilities in the area.

## **ATTACHMENT C SCOPE OF WORK**

### **7.2     *Utility Relocation***

The Consultant will investigate any claims of prior rights by affected utility companies and work with the City to relocate conflicting utility lines. In the case of prior rights by the utility company, every effort shall be made to avoid additional costs for relocation if alternate storm drain alignments exist.

## **TASK 8       PLANS AND SPECIFICATIONS**

### **8.1     *Design Plans***

The Consultant shall prepare design plans for the recommended facilities with sizes, grades, hydraulic grade lines, interception points and inlet/outlet structures in conformance with County Flood Control conditions and City standards. The plans must be ready for bidding thru the normal City bid process and adequately address all aspects of construction. The design plans will specifically consider the entire alignment for the extension of the Baseline drain to Tamarind Ave. Design plans must include concepts of the required right of way or easement, alignment, utility conflicts with sufficient detail to determine if such an alignment is feasible or not. "Final" design plans will cover a portion of the ultimate design consistent with the available funding. Specifications and bid proposal shall be tailored to fit the estimated budget for construction.

### **8.2     *Specifications***

The Consultant shall prepare project specifications in the City of Rialto format with bid descriptions and all necessary sections for the construction of the proposed storm drain. The City will provide "boiler plate" sections of the specifications for use but the Consultant must prepare all the bid item descriptions and insure all aspects of the project are covered in the final specification. Specifications will be in electronic format and no print copies are required.

### **8.3     *Bid Support***

The Consultant shall provide bid support and respond to all requests for information or clarification during the bidding period. This will include all written response to RFI's and all questions that arise from the bidders during the bid period. The City shall be copied on all responses and may be contacted for clarification on specific requests from the bidders.

Upon completion of all tasks, the Consultant shall be able to deliver complete plans and specifications, ready for bidding. The selected alignment and size of facility shall be adequate for the hydrology/hydraulics of the proposed Line D master planned drain. Any necessary right of way or easements shall be adequately sized, described and obtained to allow for the construction to proceed. Any and all utilities shall be cleared from the necessary right of way allowing for the construction to proceed without conflict.

## **END OF GENERAL SCOPE OF WORK**

**ATTACHMENT D**  
**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

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

**CITY OF RIALTO**  
**PROFESSIONAL SERVICES AGREEMENT FOR**  
**ENGINEERING DESIGN SERVICES FOR**  
**STORM DRAIN IN BASELINE RD FROM CACTUS BASIN WEST TO TAMARIND AVE**

**CITY PROJECT NO. 170700**

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

**RECITALS**

- A. City has determined that there is a need for engineering design and project management services related to the Baseline Storm Drain from Cactus Basin 3 westerly to Tamarind Ave, (hereinafter the "Project").
- B. Consultant has submitted to City a proposal to provide engineering design and project management services for the Project pursuant to the terms of this Agreement.
- C. Consultant is qualified by virtue of its experience, training, education, reputation, and expertise to provide these services and has agreed to provide such services as provided herein.
- D. City desires to retain Consultant to provide such professional services.

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

**1.0 SERVICES OF CONTRACTOR**

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

**1.2 Contract Documents.** The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Scope of Services; (3) the City's Request for Proposals; and, (4) the Consultant's signed, original proposal submitted to the City ("Consultant's Proposal"), (collectively referred to as the "Contract Documents"). The City's Request for Proposals and the Consultant's Proposal, which are both attached as Exhibits "B" and "C", respectively, are incorporated by reference and are made a part of this Agreement. The Scope of Services shall include the Consultant's Proposal. All provisions of the Scope of Services, the City's Request for Proposals and the Consultant's Proposal shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the provisions of the Scope of Services (Exhibit "A"); (2nd) the provisions of the City's Request for Proposal (Exhibit "B"); (3rd) the terms of this Agreement; and, (4th) the provisions of the Consultant's Proposal (Exhibit "C").

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

**1.4 Licenses, Permits, Fees and Assessments.** Consultant represents and warrants to City that it has obtained all licenses (including a City Business License), permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Scope of Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Consultant to perform the Scope of Services under this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the Scope of Services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes penalties, or interest levied, assessed, or imposed against City hereunder.

**1.5 Familiarity with Work.** By executing this Agreement, Consultant warrants that Consultant (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the Services should be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services hereunder. Should the Consultant discover any latent or unknown conditions that will materially affect the performance of the Services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City.

**1.6 Care of Work.** Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to any site where the Scope of Services are performed and the equipment, materials, papers, documents, plans, studies, and/or other

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

**1.7 Further Responsibilities of Parties.** Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

**1.8 Additional Services.** City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Maximum Contract Amount or \$15,000, whichever is less, may be approved by the City Administrator, or his designee, as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the Rialto City Council. It is expressly understood by Consultant that the provisions of this section shall not apply to the services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or materials required to complete any work or service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

## **2.0 COMPENSATION**

**2.1 Maximum Contract Amount.** For the Services rendered pursuant to this Agreement, Consultant shall be compensated by City in accordance with the Schedule of Compensation, which is attached hereto as Exhibit "D" and is incorporated herein by reference, but not exceeding the maximum contract amount of \_\_\_\_\_ (hereinafter referred to as the "Maximum Contract Amount"), except as may be provided pursuant to Section 1.8 above. The method of compensation shall be as set forth in Exhibit "D." Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the Contract Officer designated pursuant to Section 4.2 and will only be approved if such expenses are also specified in the Schedule of Compensation. The Maximum Contract Amount shall include the attendance of Consultant at all Project meetings reasonably deemed necessary by the City. Consultant shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Consultant hereby acknowledges that it accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Consultant anticipates, that Consultant shall not be entitled to additional compensation therefore, and that the provisions of Section 1.8 shall not be applicable to the services identified in the Scope of Services. The maximum amount of city's payment obligation under this section is the amount specified herein. If the City's maximum payment obligation is reached before the Consultant's Services under this Agreement are completed, consultant shall nevertheless complete the

Work without liability on the City's part for further payment beyond the Maximum Contract Amount.

**2.2 Method of Payment.** Unless some other method of payment is specified in the Schedule of Compensation (Exhibit "D"), in any month in which Consultant wishes to receive payment, no later than the tenth (10) working day of such month, Consultant shall submit to the City, in a form approved by the Contract Officer, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Consultant and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Consultant within thirty (30) days after receipt of the invoice or a soon thereafter as is reasonably practical. There shall be a maximum of one payment per month.

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

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

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

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

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

**3.3 Force Majeure.** The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or

negligence of the Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Administrator in writing of the causes of the delay. The City Administrator shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Administrator such delay is justified. The City Administrator's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

**3.4 Term.** Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall commence upon the effective date of this Agreement and continue in full force and effect until completion of the Services, as provided in the Schedule of Performance (Exhibit "E") and pursuant to Section 3.2 above, unless extended by mutual written agreement of the Parties.

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

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

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

**4.2 Contract Officer.** The Contract Officer shall be such person as may be



designated by the City Administrator of City, and is subject to change by the City Administrator. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

**4.3 Prohibition Against Subcontracting or Assignments.** The experience, knowledge, capability, expertise, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City. Consultant shall not contract with any other entity to perform the Services required under this Agreement without the prior written consent of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Scope of Services will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written consent of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Consultant or any surety of Consultant from any liability hereunder without the express written consent of City.

**4.4 Independent Contractor.**

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters.

City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

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

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

## **5. INSURANCE**

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

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

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

(2) If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing

insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City Administrator.

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

B. Workers' Compensation Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, workers' compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Consultant agrees to waive and obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies. If Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

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

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

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

**5.2 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City Administrator prior to commencing any work or services under this Agreement. Consultant guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured

retentions in excess of \$10,000, and the City Administrator may require evidence of pending claims and claims history as well as evidence of Consultant's ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of \$10,000.

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

- 5.3.1 For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects City and its officers, council members, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- 5.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.
- 5.3.3 All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.
- 5.3.4 None of the insurance coverages required herein will be in compliance with these requirements if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Administrator and approved in writing.
- 5.3.5 Consultant agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.
- 5.3.6 Consultant agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Project will be

submitted to the City for review.

- 5.3.7 Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights hereunder in this or any other regard.
- 5.3.8 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Agreement applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.
- 5.3.9 Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- 5.3.10 The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.
- 5.3.11 Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the Scope of Services performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.
- 5.3.12 Consultant agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages resulting from the Consultant's activities or the activities of any person or person for which the Consultant is otherwise responsible.

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

**5.5 Verification of Coverage.** Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the

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

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

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

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

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

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

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

## **6. INDEMNIFICATION**

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

recklessness, or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless, or willful performance of or failure to perform any term, provision, covenant, or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness, or willful misconduct of the City, its officers, council members, officials, employees, or agents.

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

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

## **7. REPORTS AND RECORDS**

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

**7.2 Reports.** Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of the Scope of Services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Scope of Services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of such

fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

**7.3 Ownership of Documents.** All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and the City shall indemnify the Consultant for all damages resulting therefrom. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. Consultant shall ensure that all its subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

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

**7.5 Audit and Inspection of Records.** After receipt of reasonable notice and during the regular business hours of City, Consultant shall provide City, or other agents of City, such access to Consultant's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Consultant's performance under this Agreement. Consultant shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

## **8. ENFORCEMENT OF AGREEMENT**

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

**8.2 Disputes.** Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement of the Parties shall be presented to the City Administrator or his authorized representative by the Consultant's provision of a letter or other writing setting forth the general



nature of the dispute, the disputed facts believed to be true by the Consultant, the relevance of those facts to the dispute in question, and a statement that the dispute is being submitted to the City Administrator or his authorized representative pursuant to this Section 8.2 of this Agreement. Upon receipt of any notice of a disputed fact as provided immediately above, the City Administrator or his authorized representative shall set a hearing to be conducted within thirty (30) days and shall direct the head of the department having the most knowledge concerning the dispute to assemble the City's position with respect to the matters set forth in the notice of dispute. At the hearing, the Consultant and the City Department Head, or their attorneys, shall have the right to call and examine such witnesses as shall have knowledge of the facts relevant to the matter in dispute. All witnesses shall be sworn under oath and the hearing before the City Administrator shall be transcribed by a court reporter. The costs of the court reporter shall be split equally between the Consultant and the City. The hearing before the City Administrator or his authorized representative may be continued from time to time as necessary to elicit all relevant evidence with regard to the disputed fact. Within thirty (30) days of the close of the hearing, the City Administrator or his authorized representative shall issue his or her written decision and mail the same to the Consultant. The decision of the City Administrator or his authorized representative shall be conclusive.

This Section 8.2 does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this agreement, however, shall be construed as making the final decision of any administrative official representative or board on the question of law. Nothing in this Section 8.2 shall prohibit the City from terminating this Agreement pursuant to Section 3.5 of this Agreement.

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

**8.4 Default of Consultant.**

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

B. If the City Administrator, or his designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Consultant in writing of such default. Consultant shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Consultant shall be liable for any and all reasonable costs

incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 3.5.

C. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.4 B, take over the Scope of Services and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the Scope of Services required hereunder exceeds the Maximum Contract Amount (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Consultant shall not limit Consultant's liability for completion of the Services as provided herein.

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

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

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

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

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

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

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

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

## **10. MISCELLANEOUS PROVISIONS**

### **10.1 Patent and Copyright Infringement.**

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

B. Consultant shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof, Consultant shall not be obligated to indemnify City under any settlement made without Consultant's consent or in the event City fails to cooperate

in the defense of any suit or claim, provided, however, that such defense shall be at Consultant's expense. If the use or sale of such item is enjoined as a result of the suit or claim, Consultant, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

**10.2 Notices.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by pre-paid First Class U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

To City:

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

To Consultant:

Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

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

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

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

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

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

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

(SIGNATURES ON FOLLOWING PAGE)

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

**CITY OF RIALTO, CALIFORNIA**

**APPROVED BY THE CITY COUNCIL:**

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

Date \_\_\_\_\_

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
City Attorney

**RECOMMENDED:**

By \_\_\_\_\_  
Robert Eisenbeisz  
Public Works Director/City Engineer

## CONSULTANT

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

Firm/Company Name

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

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

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

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

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

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

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

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

WITNESS my hand and official seal.

Notary Signature:

Notary Seal:

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

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

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

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

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

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

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

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

WITNESS my hand and official seal.

Notary Signature:

Notary Seal:



**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**END OF EXHIBIT "A"**

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**EXHIBIT "B"**  
**CITY'S REQUEST FOR PROPOSALS**

**REQUEST FOR PROPOSALS (RFP) #18-011**

**CITY PROJECT NO. 170700**

**ENGINEERING DESIGN SERVICES FOR  
STORM DRAIN IN BASELINE RD FROM CACTUS BASIN WEST TO TAMARIND AVE  
FOLLOWS THIS PAGE**

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

**CONSULTANT'S PROPOSAL FOLLOWS THIS PAGE**

**EXHIBIT "D"**  
**SCHEDULE OF COMPENSATION**

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

**END OF EXHIBIT "D"**

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**EXHIBIT “E”**  
**SCHEDULE OF PERFORMANCE**

City and Consultant hereby mutually agree that the nature of the scope of services associated with this Contract, and the requirement to coordinate and obtain approvals by other agencies, utility companies, and to complete all necessary right of way activities, may cause the term of this contract to exceed initial project schedule estimates. The term of this contract shall automatically extend until such time as required approvals are obtained and all services identified in Exhibit “A” are completed.

The Consultant’s initial schedule of performance follows this page and shall be incorporated herein. The schedule shall be adjusted accordingly to revise the project notice to proceed (NTP) date of November , 2017, to the actual NTP date indicated in the City’s letter to Consultant following approval of this agreement by the City Council.

**END OF EXHIBIT “E”**