



City of Rialto
Purchasing Division

Purchasing Manager: William Jernigan

Phone: (909) 820-2570 Fax: (909) 820-2600

Email: procurement@rialtoca.gov

REQUEST FOR PROPOSAL #19-____
Community Development Block Grant Consultant

Closing Date: XXXX XX, 2018, 4:00 P.M.

RFP Number:	19-xxxx
Due Date:	XXXX XX, 2018
Time:	4:00 P.M.
Project:	CDBG Consultant

The prospective consultant shall submit a fully executed sealed proposal, to be received no later than 4:00 P.M., February 5, 2015. Sealed proposals shall be submitted to:

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

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

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
TABLE OF CONTENTS

TITLE	PAGE
Notice Inviting Sealed Proposals	3
Overview & Background	4
Scope of Work	5
Certification of Debarment and Suspension	7
Disclosure of Proposal Contents	8
Diversity Business Statement	9
Small Business Concerns Information	10
General Information	11
General Terms & Conditions	13
Proposer's Background Information	22
Proposer's Declaration	24
Statement of Proposer's Qualifications	26
Statement of References	27
Statement of Proposer's Past Contract Disqualifications	28
Certification of Non-Discrimination by Consultants	29
Non-Collusion Affidavit	30
Sample Professional Services Agreement	31

CITY OF RIALTO
STATE OF CALIFORNIA
NOTICE INVITING SEALED PROPOSALS

NOTICE IS HEREBY GIVEN by the City of Rialto Purchasing Division will be accepting sealed proposals for the following: Community Development Block Grant Consultant

Proposals must be received in the Purchasing Office, 249 S. Willow Ave. (City Yard) Rialto, California 92376, no later than XXXX XX, 2018 at 4:00 P.M.

No proposal shall be considered unless it is made on the proposal form furnished by the City of Rialto and is made in accordance with the provisions of the Request for Proposal. All proposals must be labeled RFP 19-XXX CDBG Consultant and the proposal price must be firm for ninety (90) days from date of the proposal opening in order to permit staff evaluation and City Council award. The City of Rialto reserves the right to reject any or all proposals in whole or in part, and may waive any irregularities or informalities in any proposal to the extent permitted by law, and when the public interest will be served thereby.

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

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

Bid packages are available online at www.rialtoca.gov. For additional information please direct questions to procurement@rialtoca.gov.

(s) William Jernigan,
Purchasing Manager
City of Rialto

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
OVERVIEW & BACKGROUND

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

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

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
SCOPE OF WORK

**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND NEIGHBORHOOD STABILIZATION
(NSP) PROGRAMS**

The City of Rialto is seeking a qualified Community Development Block Grant (CDBG) Consultant. Upon approval by the city council the selected vendor will be awarded a one (1) year contract with two (2) optional one year extensions based upon agreement by both parties and providing there are no changes in pricing or performance

1. CDBG Program Implementation and Administration

Provide staffing and other resources as required to perform the following for all approved City CDBG projects:

- a. Provide day-to-day administration and implementation of the City's CDBG funded Program. Work with City staff to determine project eligibility along with monitoring of programs to assure compliance with all Federal, State, and Local reporting requirements.
- b. Prepare reports, as required by HUD, including, but not limited to, a One-Year Action Plan and Annual Funding application, annual performance report (CAPER), Quarterly Cash Transaction Reports, etc., Section 3 Reports, and other reports required by HUD.
- c. Setup and maintenance of IDIS records, including preparation of requested reports. Prepare draw down requests for reimbursement of expended funds at a minimum of a quarterly basis or more often as directed by the Finance Director.
- d. Coordinate with HUD field office staff and other City representatives on CDBG related issues as needed and provide assistance for all program monitoring and audit preparation.
- e. Work with City staff to prepare funding plans for CDBG funded activities.
- f. Prepare and maintain files and contracts for CDBG funded activities.
- g. Coordinate with City staff in the identification, management, and completion of all CDBG funded projects, including preparation and review of federal funding requirements as part of construction bid packages, requests for proposals, monitoring reports, public notices, etc.
- h. Review and process all CDBG funded Capital Improvement project invoices.
- i. Monitor all Capital Improvement projects during construction. Monitoring includes the implementation of Davis-Bacon labor compliance and Section 3 compliance.
- j. Review completed projects for all necessary compliance issues.
- k. Preparation of necessary Environmental Review forms and documents for CDBG projects.
- l. Provide regularly scheduled office hours at City Hall, on days and hours as determined by City staff. Additionally, remain available on-site, as needed, during HUD monitoring visits and external City audits.
- m. Any such other activities as required to properly administer the program.
- n. Attend City Council meetings as required.

2. Administration of Sub-Recipient Contracts

- a. Prepare of NOFA on an annual basis for social services funding. Work with City staff to prepare a funding plan for the recommended social service providers.
- b. Prepare files and contracts for each of the funded social service and fair housing administration providers.
- c. Process all sub-recipients invoices.
- d. Monitor all sub-recipients on an annual basis or sooner as necessary.

3. Schedule of cost

- a. Consultant to provide a schedule of hourly billing rates for all staff and provide a list of reimbursable items.
- b. Provide schedule of cost by service areas (e.g., preparation of CAPER, administration of program, etc.

1. NSP Program Implementation and Administration

Provide staffing and other resources as required to perform the following for all approved City NSP program:

- a. Provide day-to-day administration and implementation of the City's NSP Program. Work with City staff to determine project eligibility along with monitoring of programs to assure compliance with all Federal, State, and Local reporting requirements.
- b. Prepare quarterly reports, as required by HUD, including annual closout reports as required; Quarterly Cash Transaction Reports, etc., Section 3 Reports, and other reports required by HUD.
- c. Setup and maintenance of DRGR records, including preparation of requested reports. Prepare draw down requests for reimbursement of expended funds at a minimum of a quarterly basis or more often as directed by the Finance Director.
- d. Coordinate with HUD field office staff and other City representatives on NSP related issues as needed and provide assistance for all program monitoring and audit preparation.
- e. Work with City staff to prepare funding plans for NSP funded activities.
- f. Prepare and maintain files and contracts for NSP funded activities.
- g. Coordinate with City staff in the identification, management, and completion of all NSP funded projects, including preparation and review of federal funding requirements as part of requests for proposals, monitoring reports, public notices, etc.
- h. Monitor all projects during construction. Monitoring includes the implmeentatoin of Davis-Bacon labor compliance and Section 3 compliance as applicable.
- i. Review completed projects for all necessary compliance issues.
- j. Preparation of necessary Environmental Review forms and documents for CDBG projects.
- k. Provide regularly scheduled office hours at City Hall, on days and hours as determined by City staff. Additionally, remain available on-site, as needed, during HUD monitoring visits and external City audits.
- l. Any such other activities as required to properly administer the program.
- m. Attend City Council meetings as required.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

By signing and submitting any proposal, Consultant is providing the certification set out below.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

1. Consultant certifies to the best of its knowledge and belief, that its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - b. Have not within a three-year period preceding any grant agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding any application/grant agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Should any of the above certifications provide inaccurate or change during the term of any agreement awarded in response to this RFP, Consultant shall notify the City immediately in writing, with sufficient back up information, as appropriate or as may be requested by the City's Contract Officer.

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
DISCLOSURE OF PROPOSAL CONTENTS

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

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

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

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
DIVERSITY BUSINESS STATEMENT

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

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

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

Small Business Concerns Information

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

- (1) Name: _____
- (2) Address: _____
- (3) Phone No.: _____ Fax No.: _____
- (4) E-Mail: _____
- (5) Type of Firm: (Check all that apply)
_____ Individual _____ Partnership _____ Corporation
_____ Minority Business Enterprise (MBE) _____ Women Business Enterprise (WBE)
_____ Small Disadvantaged Business (SDB) _____ Veteran Owned Business
_____ Disabled Veteran Owned Business _____ Other
- (6) Business License: _____ Yes _____ No License Number: _____
- (7) Tax Identification Number: _____
- (8) Contractors License: State: License No. : _____ Classification(s) _____
- (9) Names and Titles of all members of the firm:

- (10) Number of years as a contractor in construction work of the type: _____
- (11) Three (3) projects of this type recently completed:
Type of project: _____
Contract Amount: _____ Date Completed: _____
Owner: _____ Phone: _____
Type of project: _____
Contract Amount: _____ Date Completed: _____
Owner: _____ Phone: _____
Type of project: _____
Contract Amount: _____ Date Completed: _____
Owner: _____ Phone: _____
- (12) Person who inspected the site of the proposed work for your firm:
Name: _____ Date of Inspection: _____

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
GENERAL INFORMATION

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

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

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

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

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

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

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

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

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

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

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

Delivery: City of Rialto
Purchasing Division
249 S. Willow Avenue
Rialto, CA 92376

FAX: (909) 820-2600
(909) 421-4965
EMAIL: procurement@rialtoca.gov

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

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

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

Proposers, their representatives, agents or anyone else acting on their behalf are specifically directed NOT to contact any City employee, Commission member, Committee member, Council member, or any other agency employee or associate for any propose related to this entire RFP process other than as directed above. Contact with anyone other than as directed above may be cause for rejection of proposal.

CITY OF RIALTO

REQUEST FOR PROPOSAL #19-XXX

GENERAL TERMS AND CONDITIONS

Definition of Terms

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

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

City Business License

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

Consultant's Address and Legal Services

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

Cost of Preparing Proposals

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

Informed Proposer

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

Proposal Errors

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

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

Waiver of Minor Administrative Irregularities

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

Rejection of Proposal

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

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

Proposal Format and Submittal

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

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

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

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

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

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

Submitting Proposals

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

Proposals Property of City/Proprietary Proposal Material

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

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

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

Proposal Acceptance Period

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

Multiple Proposals

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

California State Board of Equalization Permit

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

Applicable Laws

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

Withdrawal of Proposal

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

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

Lowest Ultimate Cost and Best Overall Value to the City of Rialto

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

Pre-Award Negotiations

Prior to award of contract the successful Proposer may be required to attend negotiation meetings which will be scheduled at a later date. The intent of these meetings will be to discuss and negotiate contract requirements, prices, service level agreements, specifications, ordering, invoicing, delivery, receiving and payment procedures, etc. in order to insure successful administration of the contract.

Award Selection Process

Selection of qualified Proposers will be based on the following: quality and completeness of submitted proposal; understanding of project objectives; project approach; experience and expertise with public agencies and similar types of efforts; and references. Additional questions may be asked of Proposers and interviews may be conducted. Proposers will be notified of any additional required information or interviews after the written proposals have been evaluated.

Interviews may be held with the most qualified respondent. The recommended proposals will be submitted to the awarding authority for contract approval. The Proposer selected will be offered a contract with the City.

Bid Protests

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

All protests must be mailed to:

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

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

Execution of Notice of Award

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

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

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

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

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

Modifications/Change Orders/Amendments

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

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

Contract Administrator and Duties

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

Prime Consultant

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

Subconsultant

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

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

Copies of Subconsultant Agreements

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

Record and Audit Rights

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

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

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

Permits/License

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

Most Favored Public Entity Pricing

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

Price Changes

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

Cooperative Purchasing

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

Hold Harmless Clause

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

Safety

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

Severability

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

Non-Collusion Affidavit

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

Workman's Compensation Certificate

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

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

Insurance

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

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

Termination

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

a. Termination for Convenience

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

b. Termination for Cause

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

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

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

Contractual Disputes

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

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

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

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
PROPOSERS BACKGROUND INFORMATION

Proposers Information

Proposer's Contact Name: _____

Contact Title: _____

Mailing Address: _____

Location of Business
(if different from mailing address): _____

Telephone Number: _____

Pager Number: _____

24 Hour Tel. Number: _____

Fax Number: _____

E-Mail Address: _____

Remittance Address:
(if different from mailing address): _____

Number of Years in Business: _____

Applicable State of California License #(s): _____

Expiration Date(s): _____

Proposer's Dunn and Bradstreet
'DUNNS: NUMBER: _____

Customer References

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

Include the following for each reference:

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

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

Business Organization

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

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

Proposed Subconsultant Information

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

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

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
PROPOSER'S DECLARATION

Proposal Date: _____, 2015

To the Honorable Mayor and City Council From:

Consultant

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

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

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

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

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

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

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

Signature of Proposer

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

Dated: _____, 2015

_____ Business Address

_____ Telephone Number

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
STATEMENT OF PROPOSER'S QUALIFICATIONS

STATE OF CALIFORNIA, COUNTY OF _____

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

Executed on _____ at _____, California
(date) (place)

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

Signature of Proposer

Title

Signature of Proposer

Title

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
STATEMENT OF REFERENCES

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

Reference No. 1

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

Reference No. 2

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

Reference No. 3

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

Reference No. 4

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

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

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

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
STATEMENT OF PROPOSER'S PAST CONTRACT DISQUALIFICATIONS

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

If the Proposer has had a contract terminated for default, all such incidents must be described. Termination for default is defined as notice to stop performance due to the Proposer's non-performance or poor performance and the issue was either not litigated; or litigated and such litigation determined the Proposer to be in default. Submit full details of all termination(s) for default experienced by the Proposer including the other party's name, address and telephone number. Present the Proposer's position on the matter. The City will evaluate the facts and may, at its sole discretion, reject the Proposer's proposal if the fact discovered indicates the completion of a contract resulting from the RFP may be jeopardized by selection of the Proposer.

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

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

Executed on _____ at _____, California.

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

Signature of Authorized Representative

Printed Name

Title

Company Name

Date Signed

CITY OF RIALTO
REQUEST FOR PROPOSAL #19-XXX
CERTIFICATION OF NON-DISCRIMINATION BY CONSULTANTS

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

We agree specifically:

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

Signature of Authorized Representative

Printed Name

Title

Company Name

Address

City, State, Zip Code

Date Signed

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

*****SAMPLE*****
**CITY OF RIALTO
PROFESSIONAL SERVICES AGREEMENT
FOR
[NAME OF PROGRAM AND/OR SERVICES]
CITY PROJECT NO. 19-XXX**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective this XXth day of MONTH, 2018, by and between the CITY OF RIALTO, a California municipal corporation, (hereinafter referred to as "City") and [COMPANY NAME], Inc., a [STATE] corporation, (hereinafter referred to as "Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties."

RECITALS

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

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

1.0 SERVICES OF CONTRACTOR

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

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Scope of Services; (3) the City's Request for Proposals;

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

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

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

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

1.6 Care of Work. Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to any site where the Scope of Services are performed and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Scope of Services by the City, except such losses or damages as may be caused by City's own negligence.

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

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

2.0 COMPENSATION

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

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

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

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

3. SCHEDULE OF PERFORMANCE

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

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

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental

agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Administrator in writing of the causes of the delay. The City Administrator shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Administrator such delay is justified. The City Administrator's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

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

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

4. COORDINATION OF WORK

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

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Administrator of City, and is subject to change by the City Administrator. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Consultant shall refer any

decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

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

4.4 Independent Contractor.

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

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

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

5. INSURANCE

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

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

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

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

coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City Administrator.

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

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

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

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

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

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

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

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

part of the City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights hereunder in this or any other regard.

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

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

5.5 Verification of Coverage. Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to

be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

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

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

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

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

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

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

6. INDEMNIFICATION

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

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

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

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

7. REPORTS AND RECORDS

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

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

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

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

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

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

8. ENFORCEMENT OF AGREEMENT

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

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

shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

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

8.4 Default of Consultant.

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

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

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

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

Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

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

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

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

9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

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

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

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

termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10. MISCELLANEOUS PROVISIONS

10.1 Patent and Copyright Infringement.

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

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

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

To City:

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

To Consultant:

[COMPANY NAME]
Attention: [CONTACT PERSON]
ADDRESS
CITY, CA ZIP CODE
Telephone: (XXX) X15-053X
Facsimile: (XXX) X15-053X

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF RIALTO, CALIFORNIA

APPROVED BY THE CITY COUNCIL:

By _____
Deborah Robertson
Mayor

Date _____

Agreement No. _____

ATTEST:

By _____
Barbara McGee
City Clerk

APPROVED AS TO FORM:

By _____
Fred Galante, Esq.
City Attorney

RECOMMENDED:

By _____

CONSULTANT

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

By: _____
Signature (notarized)

Name: _____

Title: _____

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

State of _____)
County of _____)ss

On _____
before me, _____
personally appeared _____

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

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

WITNESS my hand and official seal.

Notary Signature:

Notary Seal:

By: _____
Signature (notarized)

Name: _____

Title: _____

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

State of _____)
County of _____)ss

On _____
before me, _____
personally appeared _____

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

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

WITNESS my hand and official seal.

Notary Signature:

Notary Seal:

**EXHIBIT “A”
SCOPE OF SERVICES**

General Scope of Services

[GENERAL DESCRIPTION OF SERVICES]

City Required Scope of Work

[CITY REQUIRED SCOPE OF WORK]

Consultant’s Technical Scope of Work

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

END OF EXHIBIT “A”

EXHIBIT “B”
CITY’S REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS (RFP) 19-XXX
[TITLE OF RFP]
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.

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

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

END OF EXHIBIT “D”

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

END OF EXHIBIT “E”