

## **PROFESSIONAL SERVICES AGREEMENT FOR COUNSELING SERVICES**

**THIS AGREEMENT** is made and entered into this July 1, 2018, by and between the City of Rialto, a California Municipal Corporation (hereinafter "City"), and Counseling Team International (hereinafter "Consultant").

**WHEREAS**, City has determined it is in the public interest to contract for certain professional services which are necessary or convenient to the exercise of its powers; and

**WHEREAS**, City has requested Consultant to perform such services; and

**WHEREAS**, City does not have available employees to perform such services; and

**WHEREAS**, Consultant is registered or licensed to the extent required by law to perform such professional and technical services;

**NOW, THEREFORE**, City and Consultant, for and in consideration of the mutual promises, covenants and conditions contained hereinafter, agree as follows:

### **DESCRIPTION**

1. The professional services to be provided pursuant to this Agreement are more particularly described in Exhibit "A," attached hereto and made a part thereof by this reference.

## **SCOPE OF WORK**

2. Consultant's scope of work is described on Exhibit "A," attached hereto and incorporated herein by this reference.

## **PAYMENT TERMS**

3. Consultant shall be compensated for the services rendered pursuant to this Agreement at the rate detailed in Exhibit "A". Consultant shall remit monthly invoices to the City, clearly detailing the specific work completed during the prior month. City shall review such invoices and notify Consultant in writing within ten (10) days of any disputed amounts. Invoices shall be due and payable thirty calendar days after the invoice date. Invoices not paid within thirty days of the invoice date shall bear interest until paid at a rate of 1% per month.

## **TIME FOR PERFORMANCE**

4. Services shall begin immediately upon Consultant's receipt of a written Notice to Proceed from City and shall be completed in accordance with the Project steps shown on Exhibit "A" which is attached hereto and incorporated herein by this reference.

5. Consultant shall perform the work described in Exhibit "A" with reasonable diligence.

## **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT**

6. Time is of the essence in the performance of this agreement. If the Consultant refuses or fails to prosecute the work, or any severable part thereof, with such diligence as will ensure its completion within a reasonable time (not to exceed 90 days from project kick off meeting), the City may, by written notice to Consultant, terminate its right to proceed with the work, or such part of the work as which there has been a delay. In such an event, the City may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize to complete the work such materials, plans, specifications, reports and other documents related to such work. Whether or not the Consultant's right to proceed with the work is terminated, the Consultant and the Consultant's sureties, if any, shall be liable for any damages to the City resulting from the Consultant's refusal or failure to complete the work within the specified time period.

7. The Consultant's right to proceed shall not be so terminated, nor the Consultant charged with resulting damage if:

- (a) The delay in the completion of the work arises from unforeseeable causes beyond the control without the fault or negligence of the Consultant, including but not restricted to acts of God, acts of another Consultant in the performance of a contract with the Agency, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of sub-contractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Consultant and such sub-contractors or suppliers; and

- (b) The Consultant, within ten (10) days from beginning of any such delay, notifies the City in writing of the causes of the delay. The City shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in its judgment, the findings of fact justifies such an extension, and its findings of fact shall be final and conclusive on the part of the parties subject only to appeal as provided in the clause of this agreement entitled "Disputes"; and
- (c) If, after notice of termination of the Consultants right to proceed under the provisions of this clause, it is determined for any reason that the Consultant was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the City; and
- (d) Failure to agree to such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this agreement entitled "Disputes"; and
- (e) The rights and remedies of the City provided in this clause are in addition to any rights and remedies provided by law or under this Agreement.

## **DISPUTES**

**8.** Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement of the parties shall be presented to the City Administrator or his

authorized representative by the Consultant's provision of a letter or other writing setting forth the general nature of the dispute, the disputed facts believed to be true by the Consultant, the relevance of those facts to the dispute in question, and a statement that the dispute is being submitted to the City Administrator or his authorized representative pursuant to this paragraph 17 of this Agreement. Upon receipt of any notice of a disputed fact as provided immediately above, the City Administrator or his authorized representative shall set a public hearing to be conducted within thirty (30) days and shall direct the head of the department having the most knowledge concerning the dispute to assemble the City's position with respect to the matters set forth in the notice of dispute. At the hearing, the Consultant and the City Department Head, or their attorneys, shall have the right to call and examine such witnesses as shall have knowledge of the facts relevant to the matter in dispute. All witnesses shall be sworn under oath and the hearing before the City Administrator shall be transcribed by a court reporter. The costs of the court reporter shall be split equally between the Consultant and the City. The hearing before the City Administrator or his authorized representative may be continued from time to time as necessary to elicit all relevant evidence with regard to the disputed fact. Within thirty (30) days of the close of the hearing, the City Administrator or his authorized representative shall issue his or her written decision and mail the same to the Consultant. The decision of the City Administrator or his authorized representative shall be conclusive unless the same shall be appealed by a written appeal directed to the City Council. Any written appeal to the City Council shall be filed with the City Clerk within thirty (30) days of the City Administrator's mailing of his or her notice of determination and shall include a copy of the transcript of the hearing before the City Administrator. Upon receipt of an appeal pursuant to this paragraph, the City Council shall consider the appeal in open session within thirty (30) days of

receipt of the appeal. Upon its consideration of the appeal, the City Council shall limit its consideration to the transcript on appeal and may reject, affirm or modify the decision of the City Administrator or his authorized representative. The City Council may allow each party, or their attorneys, a limited time to discuss the transcript on appeal and its relation to the matters in dispute. The City Council shall render its decision within thirty (30) days after the conclusion of the appeal. The decision of the City Council shall be final and conclusive unless the same is fraudulent, capricious, arbitrary or so grossly erroneous as to necessarily imply bad faith on the part of the City Council. The City may provide a written notice of the determination of the appeal by the City Council to the Consultant pursuant to California Code of Civil Procedure section 1094.5. If the City chooses to provide such a notice of determination on appeal, then the provisions of section 1094.5 and 1094.6 shall apply in any law suit brought by the Consultant or his heirs or assigns, to enforce the terms or provisions of this Agreement or to sue for damages for breach of this Agreement. Pending final decision of a dispute hereunder, the Consultant shall proceed diligently with the performance of the contract in accordance with the City's decision.

9. Clause "8" does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this agreement, however, shall be construed as making the final decision of any administrative official representative or board on the question of law. Nothing in this clause "8" shall prohibit the City from terminating this agreement without cause upon providing thirty (30) days prior written notice.

## **SPECIAL PROVISIONS**

**10.** Consultant and City agree that all consulting services performed pursuant to this agreement by Consultant shall be performed as an independent contractor. All persons employed by Consultant in connection with this agreement shall not be an agent or employee of City. Contractor shall be solely and exclusively in charge of determining the means by which the professional services called for herein are performed, and shall be responsible for all costs incurred in connection therewith, unless the City agrees otherwise in a duly executed writing delivered to Contractor prior to the incurring of such expense.

**11.** Consultant may also retain or subcontract for the services of other necessary consultants with the approval of City. Payment for such services shall be the responsibility of Consultant.

**12.** Consultant and City agree to use reasonable care and diligence to perform their respective obligations under this agreement. Unless hereinafter specified, neither Consultant nor City shall be responsible for the services of the other, or any subcontractor of the other.

**13.** Consultant shall use reasonable care and diligence to comply with applicable federal, state, and local laws in performance of work under this agreement.

**14.** During the performance of this agreement, Consultant will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, sex or age. Such action 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 selecting for training, including apprenticeship. The Consultant will insure that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

Consultant will take affirmative action to insure that employees are treated during employment, without regard to their race, religion, creed, color, national origin, sex or age.

**15.** All deliverables, whether plans, specifications, reports and other documents prepared by Consultant pursuant to this agreement shall become the property of the City. The City is entitled to full and unrestricted use of such deliverables, including plans, specifications, reports and other documents. City may also retain the original of the documents upon request. Consultant will retain such records for at least two years after termination or final payment under this Agreement.

The Consultant reserves right, title, and interest in the methodologies, trade secrets, software tools, and know-how employed by the Consultant to conceptualize and produce all work products and deliverables.

**16.** This agreement is binding upon City and Consultant and their successors and assigns. Except as otherwise provided herein, neither City nor Consultant shall assign, sublet or transfer its interest in this agreement or any part thereof without the prior written consent of the other.

**17.** A City representative shall be designated by City and a Consultant representative shall be designated by Consultant. The City representative and the Consultant representative shall be the primary contact person for each party regarding performance of this agreement. The City representative shall cooperate with Consultant and Consultant representative shall cooperate with City in all matters regarding this agreement and in such a manner as will result in the performance of the work in a timely and expeditious fashion.



City Representative

Lucy Garcia

Director of HR/RM

(909) 820-8063

Consultant Representative

Julie Koot

CFO/Office Manager

(909) 884-0133

**18.** Any notice required or authorized to be given by this Agreement shall, unless otherwise specified in this Agreement, be served by deposit in the United States mail with first class postage prepaid, addressed to the person and address listed below, unless written notice is provided of the change of address as to either party.

**City: Lucy Garcia**

**Consultant: Julie Koot**

**19.** Where the payment terms provide for compensation on a time and materials basis, Consultant shall maintain adequate records to permit inspection and audit of Consultant's time and material charges under this agreement. Consultant shall make such records available to City. The Consultant shall maintain and keep books and records on a current basis, recording all transactions pertaining to this agreement in a form in accordance with generally acceptable accounting principles. Said books and records shall be made available to the City, the State of California, the Federal Government and to any authorized representative thereof for purposes of audit at all reasonable times and places. All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter periods of

retention, all books, records, and supporting detail shall be retained for a period of at least three years after the expiration of the term of this agreement.

**20.** City and Consultant agree that, EXCEPT for as provided in paragraphs "6" and "7" above, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without the prior written consent of both parties.

**21.** Consultant shall employ no City official or employee in the work performed pursuant to this agreement. No officer or employee in the City shall have any financial interest in this agreement in violations of California Government Code Sections 1090 and following, or Sections 87100 and following; nor shall the City violate any provision of its Conflict of Interest Code adopted pursuant to the provisions of California Government Code Section 87300 and following. No member of or delegate to the Congress of the United States, and no Resident Commissioner shall be admitted to share or part of this agreement or to any benefit to arise from the same.

### **TERMINATION**

**22.** City may terminate this agreement by giving at least thirty (30) days notice to Consultant. The written notice shall specify the date of termination and the reasons for termination. Upon receipt of such notice, Consultant may continue work through the date of termination. City shall pay Consultant for all work performed through the date of termination within thirty (30) days of the date of termination. Consultant may terminate this agreement by giving at least thirty (30) days written notice to the City. The written notice shall specify the date of termination and the reasons for termination. City shall pay Consultant for all work performed through the date of termination within thirty (30) days of the date of termination.

### **REMEDIES FOR BREACH BY CONSULTANT**

**23.** If Consultant materially breaches the terms of this agreement, City shall exercise any or all of the following remedies:

- (a) Immediately terminate the agreement with Consultant;
- (b) Retain the plans, specifications, drawings, reports and other design documents prepared by Consultant;
- (c) Complete the unfinished work, under this agreement, with a different consultant;
- (d) Charge Consultant with the difference between the cost of completion of the unfinished work pursuant to this agreement and the amount that would otherwise be due Consultant, had Consultant completed the work.

### **BUSINESS LICENSE REQUIREMENT FOR CONSULTANT**

**24.** Consultant agrees to obtain a business license to do business within the City of Rialto, and shall be responsible for obtaining business licenses for any subcontractors. In so doing, Consultant shall pay the administrative costs for the issuance of said licenses, as effective at the time that this agreement is executed, as well as any and all business license taxes reasonably related to that portion of the taxable activity actually related to the quantum of business done for the City under this Agreement.

### **INSURANCE REQUIREMENTS FOR CONSULTANT**

**25.** Consultant shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damage to property

which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees, or assigns.

**26.** The minimum scope of such insurance coverage shall be AT LEAST as broad as the following:

- (a) Insurance Services Office Commercial General Liability Coverage.
- (b) Insurance Services Office Automobile Liability.
- (c) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.
- (d) Errors and Omissions Liability Insurance as deemed appropriate by the City Chief Financial Officer.

**27.** The minimum limits of such insurance to be maintained Consultant shall be NO LESS THAN:

- (a) General Liability of One Million (\$1,000,000.) Dollars per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form in with a general aggregate limit is used, either general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be TWICE the required occurrence limit.
- (b) Automobile Liability of One Million (\$1,000,000.) Dollars per accident for bodily injury and property damage.
- (c) Employer's Liability of One Million (\$1,000,000.) Dollars per accident for bodily injury or disease.
- (d) Errors and Omissions Liability in an amount as deemed appropriate by the City's Chief Financial Officer.

**28.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either:

(a) The insured shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, agents and volunteers; or

(b) The Consultant shall procure a bond, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**29.** The General Liability and Automobile Liability policies of Consultant are to contain, or be endorsed to contain, the following provisions:

(a) The City, its officers, officials, employees, agents, representatives and volunteers are to be covered as additionally named insured with respect to any and all:

(i) liability arising out of activities performed by or on the behalf of the Consultant;

(ii) products and completed operations of the Consultant;

(iii) premises owned, leased, rented, occupied or used by the Consultant; and

(iv) automobiles owned, rented, leased, hired, borrowed or otherwise used by Consultant.

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

(c) The insurance coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

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

(e) The insurance coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(f) Each insurance policy required by this section shall be endorsed to state that coverage SHALL NOT be suspended, voided, and/or canceled by either party, and that there shall be no reduction in the amount of coverage or in limits EXCEPT after thirty (30) days prior written notice has been given to the City; Said written notice to be delivered by U.S. Certified Mail, Return Receipt Requested.

(g) In its sole discretion, the City may waive all or some portion of the above referenced insurance if such waiver is in writing and executed by the City's Chief Financial Officer.

**30.** Consultant's Insurance is to be placed with insurers with a current A.M. Best's rating of NO LESS THAN A: VII, unless otherwise acceptable to the City and approved in writing which shall be appended to this Agreement as the next exhibit in order.

**31.** Consultant shall furnish the City with original endorsements effecting coverage required by this section of the Agreement. The endorsements are to be signed by the person authorized by that insurer to bind coverage on its behalf. The endorsements are to be received and approved by the City BEFORE work commences. As an alternative to the City's forms, the Consultant's insurer

may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

### **INDEMNIFICATION CLAUSE**

**32.** Consultant agrees that they will indemnify, save harmless, and defend the City, its officers, agents and employees from and against any and all liability from or relating to loss, damage, or injury to persons or property arising out of or incident to the Consultant's negligent performance of this Agreement, including, without limitation, all consequential damages, resulting from the negligence of Consultant and or its agents, to the extent caused by such negligent performance.

The City will, to the extent allowable by law, indemnify the consultant, its owners, employees, contractors and agents against all costs, fees, expenses, damages and liabilities (including reasonable attorney's fees and costs) associated with any third party claim relating to /or arising as a result of the services or City use of the deliverables except to the extent the liability was caused by the negligent or willful acts or omissions of consultant employees, contractors or agents in performing the services, as finally adjudicated by a court of law.

### **ATTORNEY FEES**

**33.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to a reasonable attorneys fee, which may be set

by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the parties may be entitled.

### **GOVERNING LAW**

**34.** The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this agreement and shall also govern the interpretation of this agreement. Venue shall be in the County of San Bernardino, California.

### **ENTIRETY OF AGREEMENT/ CONFLICTING PROVISIONS**

**35.** This agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be modified or amended only by a subsequent written agreement signed by both parties. In the event that any provision of this agreement, exclusive of Exhibit "A" hereto is inconsistent or in conflict with any provision of Exhibit "A" hereto, then the provisions of the agreement shall be controlling, regardless of the provisions of Exhibit "A" hereto.

**35.** This Agreement may not be amended or modified except as expressly provided herein. Any amendment, modification, waiver, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.



**37.** All exhibits attached to this Agreement or documents expressly incorporated by reference shall be deemed incorporated into this Agreement by the individual reference to each such exhibit or document, and all exhibits and documents shall be deemed part of this Agreement as though set forth in full.

**IN WITNESS THEREOF**, the parties have caused their authorized representative to execute this agreement on \_\_\_\_ day of \_\_\_\_\_, 2018.

**THE CITY OF RIALTO**

**CONSULTANT**

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

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**RECOMMENDED:**

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