

**SERVICES AGREEMENT**  
**BETWEEN THE CITY OF RIALTO AND**  
**CNS ENGINEERS**

THIS SERVICES AGREEMENT (herein "Agreement") is made and entered into this April 9<sup>th</sup> , 2019 by and between the City of Rialto, a municipal corporation ("City"), and CNS Engineers, a California corporation ("Consultant"). City and Consultant are sometimes individually referred to as "Party" or collectively as "Parties".

**RECITALS**

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

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

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

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

**OPERATIVE PROVISIONS**

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

**ARTICLE 1. SERVICES OF CONSULTANT**

1.1 Scope of Services.

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

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

## 1.2 Consultant's Proposal.

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

## 1.3 Compliance with Law.

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

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

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

## 1.5 Familiarity with Work.

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

## 1.6 Care of Work.

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

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

#### 1.7 Prevailing Wages.

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

#### 1.8 Further Responsibilities of Parties.

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

#### 1.9 Additional Services.

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

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

#### 1.10 Special Requirements.

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

### ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

#### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed **Two Hundred Forty Six Thousand Four Hundred Sixty Two Dollars and Twenty Nine Cents (\$246,462.29)** (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9.

#### 2.2 Method of Compensation.

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

#### 2.3 Reimbursable Expenses.

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

#### 2.4 Invoices.

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

labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

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

#### 2.5 No Waiver.

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

### **ARTICLE 3. PERFORMANCE SCHEDULE**

#### 3.1 Time of Essence.

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

#### 3.2 Schedule of Performance.

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

#### 3.3 Force Majeure.

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

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

### 3.4 Term.

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

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

### 4.1 Representatives and Personnel of Consultant.

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

Jong-Jiann(James) Lu (Name)	President (Title)
Hui-Min(Lily)Huang (Name)	Chief Financial officer (Title)

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

#### 4.2 Status of Consultant.

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

#### 4.3 Contract Officer.

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

#### 4.4 Independent Contractor.

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

#### 4.5 Prohibition Against Subcontracting or Assignment.

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

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

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

### **5.1 Insurance Coverages.**

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

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

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

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

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

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

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

## 5.2 General Insurance Requirements.

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

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

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

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

### 5.3 Indemnification.

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

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

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

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

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

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

#### 5.4 Sufficiency of Insurer or Surety.

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

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

#### 6.1 Records.

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

#### 6.2 Reports.

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

### 6.3 Ownership of Documents.

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

### 6.4 Confidentiality and Release of Information.

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

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

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

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

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

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

### **7.1 California Law.**

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

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

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

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

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

#### 7.4 Waiver.

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

#### 7.5 Rights and Remedies are Cumulative.

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

#### 7.6 Legal Action.

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

#### 7.7 Liquidated Damages

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, Consultant and its sureties shall be liable for and shall pay to City the sum of Zero Dollars (\$0) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

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

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

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

#### 7.9 Termination for Default of Consultant.

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

#### 7.10 Attorneys' Fees.

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

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

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

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

#### 8.2 Conflict of Interest.

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

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

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

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

### 8.3 Covenant Against Discrimination.

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

### 8.4 Unauthorized Aliens.

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

## ARTICLE 9. MISCELLANEOUS PROVISIONS

### 9.1 Facilities and Equipment.

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

### 9.2 Payment of Taxes.

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

### 9.3 Notices.

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

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

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

If to Consultant: James Lu  
11870 Pierce Street, Suite 265  
Riverside , CA 92505  
Tel: (951)687-1005  
Fax: (951)667-3387

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

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

#### 9.4 Interpretation.

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

#### 9.5 Counterparts.

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

#### 9.6 Integration; Amendment.

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

#### 9.7 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless

the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.8 Corporate Authority.

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

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

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

**CITY:**

CITY OF RIALTO, a municipal corporation

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

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

**CONSULTANT:**

**CNS ENGINEERS**

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

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

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

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

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

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

**Two signatures are required if a corporation.**

## EXHIBIT “A”

### SCOPE OF SERVICES

#### Phase I - Preliminary Engineering

##### 1.0 Project Management and Coordination

1.1 Project Administration and Project Controls – Project administration shall be conducted to ensure timely progress reporting and billing, accurate project record keeping, monitoring of costs, progress, deliverables and adherence to quality standards. Internal project coordination meetings shall be conducted monthly through office meetings, conference calls and exchange of emails, to maintain good project communication. The task includes effort in schedule control, document control, accounting and Invoicing, and cost control. **Deliverables:** *Detailed schedule within one month of the NTP, Monthly Invoices, Monthly Progress Reports, Schedule Updates and Document Logs.*

1.2 Meetings and Coordination - This task shall include general management and coordination with the City, Consultant Team, Caltrans, regulatory agencies, and other key stakeholders. Project meetings shall be conducted to maintain good project communication in purposeful and concise meetings. Project coordination shall be established by frequent progress review meetings or conference calls. Monthly Project Development Team (PDT) meetings in the City Hall or by conference calls shall be conducted. There will be one Kick-Off meeting attended by all key team members. **Deliverables:** *Meeting Agendas, Meeting Minutes, Sign-in Sheets, and Coordination Memoranda*

1.3 Quality Assurance and Quality Control - A Quality Control and Quality Assurance for all project documents and plans shall be provided to the City of Rialto to ensure that the project moves forward to delivery as quickly as possible. Upon notice to proceed, the QC/QA procedures shall be clearly outlined for the project team. Consultant shall review the design documents to make sure that the design is consistent with the funding requirements so that the review and approval process is expedited. **Deliverables:** *Quality Control and Quality Assurance memo.*

##### 2.0 Preliminary Design

2.1 Data Gathering and Records Research - Available existing reports, data, as-built plans, and information relevant to the project are collected from Rialto and other stakeholders and agencies. **Deliverables:** *A document log showing all data obtained from the agencies.*

2.2 Field Review and Site Assessment -A field review meeting and a thorough site investigation is conducted by the project team accompanied by a representative of City. The field review meeting shall assist the CNS Team in verifying plan information obtained in data gathering and research, clarifying the project scope, documenting existing street improvements, surface drainage conditions, Street Lighting, underground and overhead utilities, miscellaneous features, and evaluating potential unforeseen issues that may cause delay to the project. As part of the Street Light Design the field Review will identify all existing street lights and safety lights within the project limits. Street Light related field work will include measuring existing street light locations and recording the associated pole numbers and fixture type/output. **Deliverables:** *A document log showing all data obtained from the agencies, field review notes and a photo log. Potential conflicts between As-Builts and existing conditions will be reported.*

## 2.3 Surveying and Topographic Mapping

### *A. Field Surveying*

**SITE CONTROL** - Establish a site-wide network of horizontal/vertical control to serve as the basis for any subsequent boundary, topographic, or construction staking surveys that may be required throughout the course of the project. CL Surveying and Mapping will reference an assumed horizontal datum and available local agency vertical datum, unless specifically requested otherwise.

**CENTERLINE/RIGHT-OF-WAY ESTABLISHMENT/MAPPING** - Conduct the field measurements necessary to re-trace the centerlines and rights-of-ways within the project limits. This effort does not constitute a full and complete boundary survey of the adjacent land parcels. Survey monuments located and indicated on the survey shall be limited to existing, centerline monuments found to be present along the streets and all associated ties as indicated. No additional monuments will be set under this scope of services other than ground control in the topography effort.

**TOPOGRAPHY AND STREET CROSS SECTIONS** - Perform a field topographic survey along Baseline Road to document existing site planimetrics between Willow Avenue and 300 feet east of Sycamore Avenue, and then 300 feet both east and west of Acacia, Pepper, Eucalyptus, and Meridian. Also perform a field topographic survey and existing curb ramps at the intersections of Willow, Riverside, and Meridian along Baseline Road. Visible indications of subsurface utilities, trees, utility poles, sidewalks, hardscape will be located, as well as lip of gutter, flowline, top of curb and back of walk elevations.

Street cross sections will be taken at 50 foot intervals within the limits described above. The standard cross sectional data will consist of Back of Walk, Top of Curb, Flow Line, Gutter Lip, and Crown for both sides of the street. All data will be reduced to an ASCII file.

**COLOR AERIAL ORTHOPHOTO** – Perform necessary fieldwork to establish ground control for the color aerial orthophoto. Aerial Orthophoto will be used with the Community and Council Presentations and various Environmental Exhibits. Photo extends approximately 300 feet north and south of Baseline Centerline between Willow Avenue and Sycamore Avenue and extends 50 feet beyond R/W east of Sycamore Avenue. Color Aerial Orthophoto will be compiled at a scale of 1" = 40'

***Deliverables:*** AutoCAD drawing file along with the Ascii point file of the survey points collected in the field.

### *B. Prepare Base Map*

CNS Engineers prepares the base maps by compiling the topographic survey data, underground utility records from the utility companies, and other record drawings obtained from the City. All plans are developed using current AutoCAD software. The Baseline Road base map will include the known right of way, street centerline, curb returns, curb and gutters, sidewalk, catch basins, and driveways. ***Deliverables:*** Street, right-of-way, and utility base map (CAD and PDF file)

2.4 Utility Research and Coordination –Standard utility notices are sent to each utility purveyor in the project area. They are requested to provide information regarding the location of existing utilities and any upcoming plans for future or improved facilities in the vicinity of the project site. Draft notification letters are forwarded to the City to be finalized on Rialto Letterhead. CNS will mail each notification letter with a vicinity map via certified

mail in order to verify the receipt of notifications. **Deliverables:** *Utility Contact information, matrix and utility notification log, correspondence of each utility company*

## 2.5 Traffic (Median Opening) Analysis

**MEDIAN OPENINGS:** All driveways between Willow Avenue and Sycamore Avenue will be reviewed, including collection of turning movement counts and pedestrian counts. Based on the data collected, median openings will be recommended for up to 4 locations. The possibility of consolidation of driveways and movements will also be investigated based on availability of internal circulation within the commercial lots. Preliminary screening shall include field investigation to identify prospective sight distance and potential safety issues.

**LEFT TURN POCKET LENGTH ANALYSIS:** Left-turn pocket length recommendations will be made for up to 4 new median openings, and for all east/west left-turn pockets on Baseline Road at the 7 existing signalized intersections. Pocket lengths will be determined using the Highway Capacity Software back-of-queue analysis (signalized intersections) or other acceptable method (unsignalized intersections); AM/PM turning movement counts at each location; and a growth factor determined through discussion with the City.

Services consisting of Synchro of new signal and/or coordination timing, additional traffic analysis for locations east of Sycamore and Analysis/design for internal circulation on any of the adjacent lots, level of service analysis, left-turn phasing analysis, U-turn analysis based on accidents and mobility, controlled/uncontrolled midblock, crosswalk analysis are not included in the proposed scope and can be added upon request.

**Deliverables:** *Brief Memo on Driveway Location and Warrant Analysis*

2.6 Drainage Analyses – JLC Engineering will provide a hydrology analysis for the Baseline Road right-of-way within the project limits. The watershed area is approximately 15 acres. The hydrology analyses will be performed in order to determine the impacts associated with the 10-year and 100 year storm event. The following tasks will be performed as part of the hydrology study:

- Hydrology analyses using the Rational Method, as outlined in the San Bernardino County Hydrology Manual, to evaluate the 10-year and 100-year flow rates. The rational method hydrology analyses will be used to evaluate and determine the total flow rate tributary to the existing storm drain systems.
- The hydrology map delineating the total tributary onsite sub area boundaries, flow patterns, and nodal points will be prepared to support the hydrology calculations.
- Develop a Drainage Area Map to determine the water quality runoff from the proposed project in order to treat the runoff emanating from the project improvements.

**Deliverables:** *Drainage Report documenting the findings associated with the project improvements.*

## 2.7 Conceptual Development (30% Complete)

**CIVIL** - The intent of the 30% conceptual plan is to identify issues and concerns that may affect the project budget and timeline. The Conceptual Development will include preliminary layouts of the medians based on the findings of the Traffic Analysis, identify Curb Ramps to be reconstructed, updated striping configurations, per the recommendations discussed below.

LANDSCAPING – The Landscaping concepts are limited to preparing color exhibits demonstrating hardscape and fencing concepts for the medians.

COST ESTIMATE - Preliminary quantities are calculated and the construction cost estimate is prepared based on researched unit prices for the various items of work including a 20% contingency.

**Deliverables:** *40-scale Baseline Road strip maps on color Aerial showing proposed median geometrics, striping configurations, signing modifications, landscape renderings.*

### 3.0 Environmental Documentation

3.1 Project Initiation – Project Initiation will begin with a kick-off meeting with Client staff, Chambers Group team members and any other parties the Client deems necessary to discuss the Project in detail including but not limited to project objectives, data needs, scheduling, scope of work, and project deliverables. The kick-off meeting may be completed in-person or via teleconference. This meeting is assumed to take no more than two (2) hours. A site visit will be conducted to confirm the conditions of the project.

**Deliverables:** *Meeting Notes*

3.2 Project Description – Based on information received during the Project Initiation Phase, Chambers Group will develop a brief description of the project that will form the basis for the analysis of the potential impacts on the environment. It is important that the Project Description be as complete and comprehensive as possible at the outset, so that the impact analyses and findings that the Project is exempt can be prepared with accurate information. The Project Description will include a narrative and graphical presentation of the Project and will include location and boundaries, proposed construction activities, and a statement of the Project's goals and objectives.

Chambers Group assumes the Client will provide project details necessary to develop the Project Description, including a brief description of the construction equipment and methods and engineering plans for the installation of the median islands. Chambers Group will submit an electronic copy of the draft Project Description for review by the Client.

**Deliverables:** *1 electronic copy of the draft Project Description*

3.3 Review Supporting Documentation – Chambers Group will collect and review the materials used in development of the Project Description to further evaluate the Project's applicability to the Categorical Exemption in order to substantiate the Project's exemption from CEQA. Additionally, Chambers Group will determine that no exceptions listed in Section 15300.2 and in Caltrans Standard Environmental Reference (SER) Chapter 34 Exceptions to Categorical Exemptions would apply to the Project.

#### 3.4 Prepare a Notice of Exemption

##### PRELIMINARY ENVIRONMENTAL STUDY

Based upon concept plan information and supporting data developed under separate engineering tasks, Chambers Group will draft a PES, based upon the Department's *Standard Environmental Reference*. The initial investigation will include a site visit, review of existing land uses and environmental conditions and a photographic recording of on-site and surrounding uses. Preparation of the PES will utilize a site visit conducted by an Environmental Planner and otherwise rely on desktop information.

##### AREA OF POTENTIAL EFFECTS (APE) MAP

Chambers Group will prepare the Area of Potential Effects (APE) Map for Caltrans review and approval. The APE limits will be delineated to include the direct project footprint including R / W acquisitions areas (direct APE) and areas that contain buildings and structures that may be potentially affected by visual, noise, or atmospheric intrusions

(indirect APE). This proposal stipulates that an APE map will be submitted and there will be up to two rounds of response to comments.

The Draft Preliminary Environmental Study will be submitted for review and approval by the CNS Team/City and Caltrans staff. Chambers Group will incorporate all City and Caltrans comments on the Draft and prepare the Final Preliminary Study for circulation and review.

#### NOTICE OF EXEMPTION

Chambers Group will prepare the Notice of Exemption (NOE) on behalf of the Client. Chambers Group will utilize the template provided by the California Department of Transportation, or another template preferred by the Client.

Using the information obtained in the PES and the Categorical Exemption, Chambers Group will prepare an application for NOE. This will include the development of a Categorical Exclusion Determination form and Categorical Exclusion Checklist. Preparation of these forms will rely on the data collected and analysis completed for the PES and Categorical Exemption.

The Draft NOE Checklist will be submitted for review and approval by the City and Caltrans staff. A final draft screencheck will be submitted to the Client for final review. Chambers Group will incorporate all City and Caltrans comments on the Draft and prepare the Final Preliminary Study for circulation and review. Two rounds of comments and responses are assumed under this task. Once deemed Final, one (1) hard copy will be sent to the State Clearing House via certified mail.

***Deliverables:*** 1 electronic copy of the Draft Preliminary Environmental Study. 1 electronic copy of the Final Preliminary Study. 1 electronic copy of the NOE. 1 hardcopy of the NOE.

## Phase II - Final Design Plans, Specifications and Estimate

### 4.0 Final Concept Development

4.1 Landscape Concepts and Renderings – The Landscape Architect will fully develop, detail, render one Conceptual designs for median fencing and hardscape schemes for review by staff and the City Council. They will provide mounted presentation boards and electronic versions of all of the plans and concepts as well. The Landscape Architect will work with the Design Team to review the various concepts presented and funnel them down to a develop a Final Master Median Plan that meets and matches the needs of the community/Council as well as meets the design budget. Updated construction estimates will be presented at this time. ***Deliverables:*** Three Final Master Plans (all concepts and projects) will be presented to the City Staff and the full City Council for all approvals.

4.2 Community Outreach and City Council Presentation – Key members of the CNS Team will assist the City by preparing information flyers for distribution to stakeholders in advance of the meeting. Prior the meeting CNS will coordinate with City staff to go over the material that will be presented at the Community Meeting. Colored median concepts depicting the project site and the shopping centers will be mounted on foam boards. General information can be provided via Power Point, or by foam boards. The presentation includes an explanation of the study process and recommendations and includes proposed traffic circulation exhibits. All attendees sign in and are provided the opportunity to provide written comments. The presentation to City Council occurs after any desired revisions required by City Staff to the median concepts have been prepared based on comments made at the Community Meeting. ***Deliverables:*** Preview of material to be presented. Sign-in sheet and written comments.

## 5.0 Plans, Specifications and Estimate

5.1 60% Street Improvement (Median) Plans and Estimate – 60% Complete Street Improvement Plans are based on the 30% Concept Plans and alterations stemming from the Community Meeting. All elements of the work are included in the 60% Roadway Plans, however, some details may be remaining for the 90% submittal. The typical section and detail sheets shall include the typical sections, non-standard details such as Curb Ramps as well as a full listing of roadway construction and removal notes, left turn pocket grading details, if necessary, and fencing and decorative paving details. The Street Improvement plan sheets shall show the existing topography, limits of work, construction notes, available right-of-way, known utilities, and other general design elements. Preliminary quantities are calculated and a 60% Complete Estimate is prepared to assure the proposed improvements are within the City's anticipated construction budget. **Deliverables:** *Two Full size and Electronic File of 60% Street Improvement (Median) Plans and Construction Cost Estimate.*

5.4 60% Signing and Striping Plans and Estimate – Signing and striping plans shall be prepared with limits extending from Willow Avenue to Meridian Avenue. The plans shall show the location of all proposed traffic stripes, markings, and the proper disposition of all affected existing signs and markings. Any work required to transition the proposed stripes to join with existing stripes on intersection approaches shall be provided. The final sign and striping plans shall be prepared for final plotting on D-sized sheets at 1" = 40' scale, as appropriate. **Deliverables:** *Two Full size and Electronic File of 60% Signing and Striping Plans and Construction Cost Estimate.*

### 5.5 90% Complete PS&E –

PLANS IN ALL DISCIPLINES - Comments from Rialto for the 60% Median, Signing and Striping design submittal shall be reviewed and resolved. If needed, a meeting with the City shall be held to seek clarification on comments. Consultant shall incorporate resolution of comments in the 90% PS&E. Unresolved details are finalized and all drawings receive a general progress update.

TECHNICAL SPECIFICATIONS - Consultant shall prepare special provisions for items of work and conditions that are not covered by the Standard Specifications for Public Work Construction (Green Book). Construction Technical Specifications for the roadway improvements shall be prepared using the City's format and the provided boilerplate materials. Each item of work shall include a method of measurement and payment. Quantity calculation and construction cost estimates in Microsoft Excel format with a contingency directed by the City shall be prepared. Consultant shall conduct an internal QA/QC review of the project deliverables prior to submittal.

COST ESTIMATE - Quantity calculation updates and construction cost estimates in Microsoft Excel format with a contingency directed by the City shall be prepared.

UTILITY NOTICE - The second utility notices along with the 90% complete plans are sent to the utility owners with facilities in the area. The letter requests verification of the utility's location as shown on the plans based on the atlases provided, and the letter identifies any possibly conflicts with the utility and the proposed improvement.

**Deliverables:** *Two Full size and Electronic File of 90% Street Improvement (Median) Plans, Landscape Plans, Signing and Striping Plans, and Street Lighting Plans, hard copy and electronic files of 90% Complete Specifications and Updated Construction Cost Estimate, Second Utility Letters with 90% Complete Plans*

5.6 100% Design PS&E and Contract Bid Documents – The 100% Submittal consists of final modifications made to the PS&E. Specifications are updated including the bid schedule to include items that may have been omitted from the previous submittal. The cost estimate is finalized using the latest available construction cost data. **Deliverables:** *100% PS&E and response to comments matrix.*

5.7 Storm Water Pollution Prevention Plan – The SWPPP shall meet the requirements set forth in the latest California Construction General Permit and shall be prepared using the CASQA Template and shall be signed by a Qualified SWPPP Developer (QSD). The SWPPP shall address the required elements including: project pollutants and their sources, including control measures (BMPs); identification of non-storm water discharges and measures for their elimination, control, or treatment; BMPs that are effective and result in the reduction or elimination of pollutants in storm water and authorized non-storm water discharges; BMPs for control of site run-on; BMPs to stabilize soils disturbed by construction; and a description of post-construction BMPs incorporated into the project design to control the discharge of pollutants from the completed project. **Deliverables:** *SWPPP.*

5.8 Final Mylar Submittal – Upon the City's acceptance of the 100% PS&E Submittal, Mylars are plotted, wet signed and stamped, and the specification cover letter is signed and stamped. Rialto receives electronic copies of the PS&E for their files and for bidding purposes. **Deliverables:** *Mylar Wet Signed Plan set, electronic file/ record CD, Specifications and Cost Estimate (electronic and hard copy)*

## **6.0 Grant Administration**

6.1 Prepare Right of Way Certification – CNS shall assist the City in preparing the Right of Way Certification (Exhibit 13-A) in accordance with Caltrans Local Assistance Procedures Manual. Consultant shall provide technical support and attend up to two (2) meetings with the City and Caltrans District 8 Local Assistance as required to discuss the funding authorization matters. **Deliverables:** *Right of Way Certification.*

6.2 Prepare and Submit RFA Package to Caltrans – CNS shall assist the City in preparing the Requests for Authorization (RFA) to proceed with Construction in accordance with Caltrans Local Assistance Procedures Manual. Consultant shall provide technical support and attend up to two (2) meetings with the City and Caltrans District 8 Local Assistance as required to discuss the funding authorization matters. **Deliverables:** *RFA to proceed with Construction.*

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS**

**(Superseding Contract Standard Language)**

**N/A**

**EXHIBIT "C"**

**SCHEDULE OF COMPENSATION**

City of Rialto											
Cost Proposal - Man Hour Worksheet											
Project Name: Median Islands Improvements on Baseline Road								Date: 2/21/19			
Contract No.: HSIPL - 5205(027)											
Consultant: CNS Engineers											
Task No.	Task Description	Principal in Charge	Senior Project Manager	Design Engineer	Project Controller	0	0	Total Hours	Labor Cost	Subconsultants Labor Cost	Subtotal Labor Cost
	Loaded Billing Rate	\$258.71	\$171.99	\$111.29	\$169.10	\$0.00	\$0.00				
<b>Phase I - Preliminary Engineering</b>											
<b>1.0</b>	<b>Project Management and Coordination</b>										
1.1	Project Administration and Project Controls	12	44		12			68	\$ 12,701.22	\$ -	\$ 12,701.22
1.2	Meetings and Coordination	32	144					176	\$ 33,045.14	\$ -	\$ 33,045.14
1.3	Quality Assurance and Quality Control	16	56					72	\$ 13,770.74	\$ -	\$ 13,770.74
<b>2.0</b>	<b>Preliminary Design</b>										
2.1	Data Gathering and Records Research		4	8				12	\$ 1,578.26	\$ -	\$ 1,578.26
2.2	Field Review and Site Assessment		4	8				12	\$ 1,578.26	\$ 2,625.19	\$ 4,203.45
2.3	Surveying and Topographic Mapping		4	32				36	\$ 4,249.16	\$ 20,392.86	\$ 24,642.02
2.4	Utility Research and Coordination		12	8				20	\$ 2,954.18	\$ -	\$ 2,954.18
2.5	Traffic Analyses							0	\$ -	\$ 12,871.60	\$ 12,871.60
2.6	Drainage Analyses							0	\$ -	\$ 4,477.77	\$ 4,477.77
2.7	Conceptual Development (30% Complete)		40	64				104	\$ 14,001.98	\$ -	\$ 14,001.98
<b>3.0</b>	<b>Environmental Documentation</b>										
3.1	Project Initiation							0	\$ -	\$ 1,261.68	\$ 1,261.68
3.2	Project Description		4					4	\$ 687.96	\$ 1,996.59	\$ 2,684.54
3.3	Review Supporting Documentation							0	\$ -	\$ 907.53	\$ 907.53
3.4	Prepare Notice of Exemption		16	12				28	\$ 4,087.28	\$ 7,863.74	\$ 11,951.02
<b>Phase II - Final Design Plans, Specifications and Estimate</b>											
<b>4.0</b>	<b>Final Concept Development</b>										
4.1	Landscape Concepts and Renderings							0	\$ -	\$ 3,408.83	\$ 3,408.83
4.2	Community Outreach and City Council Presentation							0	\$ -	\$ 3,645.91	\$ 3,645.91
<b>5.0</b>	<b>Plans, Specifications and Estimate</b>										
5.1	60% Median / Street Improvement Plans and Estimate		32	64				96	\$ 12,626.07	\$ 2,888.89	\$ 15,514.95
5.2	60% Landscape and Irrigation Plans and Estimate							0	\$ -	\$ 4,357.15	\$ 4,357.15
5.3	60% Street Lighting Plans and Estimate							0	\$ -	\$ -	\$ -
5.4	60% Signing and Striping Plans and Estimate		32	52				84	\$ 11,290.62	\$ -	\$ 11,290.62
5.5	90% Complete PS&E		72	62				134	\$ 19,283.08	\$ 4,771.62	\$ 24,054.70
5.6	100% Design PS&E and Contract Bid Documents		32	32				64	\$ 9,064.87	\$ 3,733.59	\$ 12,798.46
5.7	Storm Water Pollution Prevention Plan							0	\$ -	\$ 4,766.66	\$ 4,766.66
5.8	Final Mylar Submittal		4	16				20	\$ 2,468.56	\$ -	\$ 2,468.56
<b>6.0</b>	<b>Caltrans Construction Authorization</b>										
6.1	Prepare Right of Way Certification		4	24				28	\$ 5,162.58	\$ -	\$ 5,162.58
6.2	Prepare and Submit RFA Package to Caltrans		12	24				36	\$ 7,232.24	\$ -	\$ 7,232.24
								0	\$ -	\$ -	\$ -
<b>Total Hours</b>								<b>994</b>	<b>Total Labor Cost</b>	<b>\$ 235,751.79</b>	<b>\$ 235,751.79</b>
									<b>Subtotal ODC</b>	<b>\$ 10,710.50</b>	<b>\$ 10,710.50</b>
									<b>Total Cost w/ ODC</b>	<b>\$ 246,462.29</b>	<b>\$ 246,462.29</b>

**EXHIBIT "D"**

**SCHEDULE OF PERFORMANCE**

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