

PROFESSIONAL CONSULTING AGREEMENT

BETWEEN THE CITY OF RIALTO AND

DAVID TURCH AND ASSOCIATES

THIS PROFESSIONAL CONSULTING AGREEMENT (herein "Agreement") is made and entered into this ____ day of July, 2021, by and between the CITY OF RIALTO, a California municipal corporation ("City"), and David Turch and Associates, ("Consultant"). City and Consultant are sometimes individually referred to as "Party" or collectively as "Parties".

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES OF CONSULTANT

1.1 Scope of Services.

Rialto hereby engages the services of DTA to advise, counsel and represent Rialto with, principally but not limited to, its affairs with the Legislative and Executive Branches of the Federal Government.

DTA hereby agrees to faithfully, to the best of its ability, discover and monitor procedures and programs of the aforementioned institutions that could result in additional resources, services, or management flexibility for the City of Rialto. No later than 10 days following the completion of any month during the term, DTA shall provide City with a report detailing the services provided by DTA for the month then ended.

It is further understood and expected, that from time to time, or on a continuing basis, other tasks, whether general or specific, may be requested and performed by the mutual consent of the parties. Adjustments to the compensation schedule, if any, for such other tasks shall be mutually agreed to by the parties on a case by case basis.

1.2 Compliance With Law.

All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any federal, state, or local governmental agency of competent jurisdiction.

1.3 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 the Agreement.

2. COMPENSATION

2.1 Contract Sum.

a. Ordinary:

Compensation from Rialto to DTA is agreed to be Seventy-Two Thousand Dollars (\$72,000) per year (billed at the rate of \$6,000 per month). Such compensation is to be paid monthly within thirty (30) days after submittal of an invoice from DTA to Rialto.

b. Expenses:

Rialto agrees to reimburse DTA for all ordinary and reasonable expenses incurred on its behalf, not to exceed Six Thousand Dollars (\$6,000) per year; provided such expenses are set forth in detail in an invoice from DTA to the City. DTA agrees to bill Rialto monthly for such expenses, such billing to be mailed on or before the fifth day of each calendar month. Such expense statements are agreed to be paid by Rialto on or before the first day of the calendar month following such billing.

For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the above schedule, but not exceeding the maximum contract amount of Seventy Eight Thousand (\$78,000) ("Contract Sum").

2.2 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. Contractor 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, 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. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.4 Prevailing Wages.

It is the understanding of the City and Consultant that the California 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.

3. TERM

3.1 Effective Date.

This contract will take effect on the July 1, 2021 and shall continue in full force and effect for a period of two years to its expiration on the June 20, 2023 unless previously modified, amended, or canceled by the written mutual consent of the parties, or unless extended under its provisions.

3.2 3. RENEWAL

This contract may be renewed for a period of one year if mutually agreeable, in writing, thirty (30) days prior to its expiration date.

4. CANCELLATION

This agreement may be terminated by either party, in writing, delivered to the other. Such cancellation shall take effect as of the end of the last calendar day of the month following the month in which such notification was received.

5. DISPUTES

This agreement shall be construed in accordance with the laws of the State of California. Notwithstanding the above, any controversy or claim arising out of or relating to this contract or the breach thereof, may, by mutual consent of the parties, be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The parties agree to utilize the services of an arbitrator selected from the list of retired judges or attorneys by Inland Valley Mediation and Arbitration Services.

6. FAILURE TO ENFORCE

The failure of DTA or City to insist upon strict performance of any of the terms and conditions stated herein shall not be deemed a waiver of any rights or remedies that DTA or City, respectively, may have and shall not be deemed a waiver of any subsequent breach or default in the terms and conditions herein contained.

5. INSURANCE AND INDEMNIFICATION

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, either the general aggregate limit shall apply separately to this contract/location, or 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 either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$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 this 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.

The 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 City's Risk Manager or other designee of the City due to unique circumstances.

5.3 Indemnification.

To the full extent provided by law, Consultant agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorney's fees, or paying any judgment (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 or services of Consultant, its officers, agents, employees, agents, subcontractors, or invitees, provided for herein ("indemnitors"), arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the sole negligence or willful misconduct of the City.

7. ENTIRE AGREEMENT

This is the entire agreement between the parties. This contract may be modified or amended at any time by the mutual consent of the parties. Any such amendment or modification shall be in writing and become a permanent part of this agreement. This agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

9. PROCLAMATIONS AND CERTIFICATIONS

The persons, or any of them, whose signatures are affixed to this document on behalf of their companies do proclaim, certify and affirm that they entered into this agreement freely in accordance with the by-laws of their firm and that their signatures are genuine and that they are authorized, directed and empowered by and on behalf of their firm, and in its name, to execute this contract on such terms and conditions as are stated herein. This contract shall be binding upon Rialto and DTA and their successors and/or assigns.

8.5 Notice.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party 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 Manager
 Tel: (909) 820-2525
 Fax: (909) 820-2527

If to Consultant: David Turch and Associates
 517 2nd Street, Northeast
 Washington, DC 20002
 Tel: (202) 543-3744

8.6 Integration; Amendment.

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. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.7 Severability.

In the event that part of 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 portions 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.

8.8 Waiver.

No delay or omission in the exercise of any right or remedy by any party shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. 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.

8.9 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 any be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment.

8.10 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.

8.11 Conflict of Interest.

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

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.

8.12 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.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Agreement on the date first written above.

CITY:

CONSULTANT:

CITY OF RIALTO, a municipal corporation

David Turch and Associates

By: _____
Marcus Fuller, City Manager

By: _____
Signature

ATTEST:

By: _____
Barbara A. McGee, City Clerk

Name

Title

APPROVED AS TO FORM:

Burke, Williams & Sorensen, LLP

By: _____
Eric S. Vail, City Attorney

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

EXHIBIT "A"

SCOPE OF SERVICES

City hereby engages the services of Consultant to advise, counsel and represent City with, principally but not limited to, its affairs with the Legislative and Executive Branches of the Federal Government.

Consultant hereby agrees to faithfully, to the best of its ability, discover and monitor procedures and programs of the aforementioned institutions that could result in additional resources, services, or management flexibility for the City of Rialto. No later than 10 days following the completion of any month during the term, Consultant shall provide City with a report detailing the services provided by Consultant for the month then ended.

It is further understood and expected, that from time to time, or on a continuing basis, other tasks, whether general or specific, may be requested and performed by the mutual consent of the parties.

Adjustments to the compensation schedule, if any, for such other tasks shall be mutually agreed to by the parties on a case by case basis.

EXHIBIT "B"

SPECIAL REQUIREMENTS

(Superseding Contract Standard Language)

EXHIBIT "C"

SCHEDULE OF COMPENSATION

Consultant shall perform the following Services at the following rates:

Refer to Section 2.1.

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

Consultant shall provide continuous services throughout the term of the Agreement, and provide monthly reporting detailing the services provided by Consultant for the month then ended.