

**SERVICES AGREEMENT**  
**BETWEEN THE CITY OF RIALTO AND**  
**NATIONAL PUBLIC SAFETY GROUP LLC**

THIS SERVICES AGREEMENT (herein "Agreement") is made and entered into this 28th day of September, 2021 by and between the City of Rialto, a municipal corporation ("City"), and National Public Safety Group, LLC (a North Carolina limited liability company) ("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.

**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. However, notwithstanding the prior sentence, City shall have the affirmative obligation to keep Consultant informed in writing of any changes to the City's ordinances, resolutions, rules, or regulations which may affect Consultant, its performance under this Agreement, or the terms of this Agreement.

### **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, except as caused by the City's sole or gross negligence.

### **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 [Intentionally deleted.]**

### **1.7 Prevailing Wages.**

Consultant 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. Consultant 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 request 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. Consultant shall not be obligated to perform extra, modified, or additional work unless it agrees thereto in writing as to terms and price ("Terms for Additional Work"). 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 an invoice by Consultant consistent with the Terms for Additional Services. 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 [Intentionally deleted.]**

#### **1.11 Standard of Care**

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. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing

services similar to the Services required of Consultant under this Agreement, and shall use such skill, prudence, and diligence as other members of Consultant's profession commonly possess and exercise. In addition to the general standards of performance set forth in this section, additional specific standards of performance and performance criteria may be set forth in Exhibit "A" that shall also be applicable to Consultant work under this Agreement. Where there is a conflict between a general and a specific standard of performance or performance criteria, the specific standard or criteria shall prevail over the general.

## **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 "B" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \$105,640 (one hundred thousand six hundred forty dollars and no cents) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9.

### **2.2 Method of Compensation.**

The method of compensation is as set forth in Exhibit B.

### **2.3 [Intentionally deleted.]**

### **2.4 Invoices.**

Each month Consultant shall furnish to City an original invoice consistent with Exhibit B. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement.

City may independently review each invoice submitted by the Consultant. Except as to any invoice which the City reasonably disputes consistent with this section, 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. Notwithstanding, the City shall pay Consultant within ninety (90) days of its receipt of Consultant's correct and undisputed invoice. In the event any invoice is disputed by City, City shall provide in writing the basis of its dispute and return the original invoice to Consultant for review, correction (if applicable), 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. City recognizes that Consultant's performance of its services depends at least in part on the timeliness of a third party's performance of its services. Since the third party is under contract with the City, and not with Consultant, only the City can direct or control the timeliness of the third party's performance of its services.

### **3.3 [Intentionally deleted.]**

### **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 agreed to in writing by the parties hereto.

## **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:

<u>Name</u>	<u>Title</u>
Buck Mims	CEO

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, City shall provide in writing the reasons therefor in its Request to Reassign and Consultant shall endeavor , upon receipt of the Request, to 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 Manager or other such person designated by the City Manager in writing. 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 Manager, 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, 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 an 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 in an amount no less than \$1,000,000 per occurrence. 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 one year following the completion of Consultant's services or the termination of this Agreement. During this additional 1-year period, Consultant shall upon request of the City submit written evidence of this continuous coverage. The Contract Officer, or his or her designee, based on the Services to be performed by Consultant, shall determine whether Consultant is required to procure professional liability insurance as set forth herein.

(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, and agents 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, or employees. 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, and employees 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.**

(a) Indemnification for Professional Liability. Where the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) arise out of, are a consequence of, or are in any way attributable to, in whole or in part, any negligent or wrongful act, error or omission of Consultant, or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant, in the performance of professional services under this Agreement.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), to the extent of Consultant's negligence or of the negligence of any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant.

(c) Indemnification from Sub-Consultants. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every sub-Consultant or any other person (excluding Consultant's employees) or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

(d) Under indemnification obligation set forth herein and to the extent of the indemnification obligations and limitations set forth herein:

(i) Consultant and any Sub-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;

(ii) Consultant and any Sub-Consultant will promptly pay any judgment rendered against 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 City, its officers, agents, and employees harmless therefrom;

(e) City's Negligence. The provisions of this section do not apply to claims occurring as a result of sole or gross negligence by City, its officers, directors, officials, employees, or agents. . The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officers, directors, officials, employees and agents.

#### **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. Upon reasonable prior, written notice, 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, subject to the terms of this Agreement including sections 6.2-6.4, inclusive. . 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.**

Subject to the terms of this Agreement, including Section 6.4, 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.**

Except as set forth in this Agreement, including Section 6.4, 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 Confidential Information.**

(a) By virtue of this Agreement, Consultant may have access to confidential information and materials of the City that is provided to Consultant after execution of this Agreement and is so designated in writing (“City Confidential Information”). City Confidential Information does not include information that (i) is already in the Consultant’s possession at the time of disclosure by the City; (ii) is or becomes part of public knowledge other than as a result of any action or inaction of Consultant; (iii) is obtained by the Consultant from an unrelated third party without an express duty of confidentiality; or (iv) is independently developed by the Consultant. Consultant shall not use City Confidential Information for any purpose other than in furtherance of this Agreement and the services described herein. Consultant shall not disclose City Confidential Information to any third parties except as otherwise authorized hereunder. Consultant shall maintain City Confidential Information with at least the same degree of care Consultant uses to protect its own proprietary information of a similar nature or sensitivity, but no less than reasonable care under the circumstances. Consultant shall promptly advise City in writing of any misappropriation or misuse of City Confidential Information of which Consultant becomes aware.

(b) By virtue of this Agreement, City may have access to confidential information and materials of the Consultant that is provided to City after execution of this Agreement and is so designated in writing ("Consultant Confidential Information"). Consultant Confidential Information does not include information that (i) is already in the City's possession at the time of disclosure by the Consultant; (ii) is or becomes part of public knowledge other than as a result of any action or inaction of City; (iii) is obtained by the City from an unrelated third party without an express duty of confidentiality; or (iv) is independently developed by City. City shall not use Consultant Confidential Information for any purpose other than in furtherance of this Agreement and the services described herein. City shall not disclose Consultant Confidential Information to any third parties except as otherwise authorized hereunder. City shall maintain Consultant Confidential Information with at least the same degree of care City uses to protect its own proprietary information of a similar nature or sensitivity, but no less than reasonable care under the circumstances. City shall promptly advise Consultant in writing of any misappropriation or misuse of Consultant Confidential Information of which City becomes aware.

(c) Notwithstanding the foregoing, this Agreement shall not prevent Consultant from disclosing City Confidential Information or the City from disclosing Consultant Confidential Information to the extent required by a judicial order or other legal obligation, provided, however that in such event, the Party from which disclosure is sought first notifies the other Party promptly and in writing to allow intervention (and cooperate with the Party from which disclosure is sought) to contest or minimize the scope of the disclosure, including application for a protective order.

(d) Consultant acknowledges that unauthorized use or disclosure of City Confidential Information could cause the City irreparable harm to which its remedies at law would be inadequate and, similarly, the City acknowledges that unauthorized use or disclosure of Consultant Confidential Information could cause the Consultant irreparable harm for which its remedies at law would be inadequate. Accordingly, each Party acknowledges and agrees that the other Party will be entitled, in addition to any other remedies available to it at law or in equity, to the issuance of injunctive relief enjoining any breach or threatened breach of its obligations hereunder, including the obligations set forth in Section 6.4(c).

## **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 if the City first provides written notice of default to Consultant 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 [Intentionally deleted.]**

## **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 [Intentionally deleted.]**

## **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' prior 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 thirty (30) days' prior 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 in writing. 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 2.4. 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 2.4, take over the work and prosecute the same to completion by contract or otherwise.

## **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 affects the officer's or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee 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, gender identity, 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, sexual orientation, gender, gender identity, 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 email with receipt required 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 email with return receipt.. Any notice, request, demand, direction, or other communication sent by email must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as text messages or 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  
aperry@rialtoca.gov

With copy to:           Burke, Williams & Sorensen, LLP  
1770 Iowa Avenue, Suite 240  
Riverside, CA 92507  
Attn: Eric S. Vail, City Attorney  
Tel: (951) 788-0100  
EVail@bwslaw.com

If to Consultant:       Buck Mims  
National Public Safety Group  
124 Newington Way  
Aberdeen, NC 28315  
Tel: 910.420.3667  
bmims@nationalpsgroup.com



With copy to: Ruthann G. Ziegler  
Law Office of Ruthann G. Ziegler  
3308 El Camino Ave, Suite 300  
#427  
Sacramento, CA 95821  
Tel: 916.330.3170  
rziegler@rzieglerlaw.com

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 Contract Officer. 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.

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

**CITY:**

**CITY OF RIALTO, a municipal  
corporation**

By: \_\_\_\_\_  
Marcus Fuller, City Manager

**CONSULTANT:**

**NATIONAL PUBLIC SAFETY GROUP,  
LLC**

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

**ATTEST:**

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

\_\_\_\_\_  
Buck Mims  
Name

\_\_\_\_\_  
CEO  
Title

**APPROVED AS TO FORM:**

Burke, Williams & Sorensen, LLP

By: \_\_\_\_\_  
Eric S. Vail, City Attorney

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

**NPSG will provide consulting services to perform consulting services to assist with the procurement, and the subsequent project management, of a public safety software system, to include:**

- Computer Aided Dispatch
- Law Enforcement Records Management System
- Mobile Data System

**NPSG will review and negotiate the following items, working with the City of Rialto Police Department, Procurement, and Legal, to complete the *procurement* phase of this project:**

- The scope of work to ensure it is accurate for the contract
- Work with the City of Rialto to ensure the contract terms and conditions are satisfactory and in the best interest of RPD
- Work with the City of Rialto to negotiate the costs of the project
- NPSG will vet the projected project manager, from the software company, to ensure they are capable to provide excellent services to the Rialto Police Department for a project of this magnitude

**NPSG will perform the following items to complete the *project management* phase of this project:**

- Attend and lead discovery sessions to make sure all goals are understood and documented before the project kickoff meeting. If there is no formal implementation plan in place, NPSG will work to make sure one is developed from the discovery and other planning sessions.
- Review and approve software invoices as requested by the City.
- Attend the project kickoff meeting.
- Attend and lead project status meetings, both with the software vendor and directly with the City.
- Work with software vendor and City to develop a detailed implementation schedule. NPSG will identify all tasks that require City involvement to make sure everyone understands them and the time commitment to complete successfully.
- NPSG will be 'on-call' at any time to address any concerns brought up by the City and software vendor.
- Schedule regular checkpoints to make sure everything is on track and all users are aware of the progress being made both from a task and budget perspective.
- Work with the City to try to limit change orders. NPSG will make sure any

showstopper items are identified and resolved by the responsible party and revisit remaining open items after the system is in live operation.

- Provide regular project status reports with financial project status to City stakeholders.
- Schedule calls with the software vendor and all third-party vendors to identify interface requirements. NPSG will coordinate the development schedules of each vendor to make sure they are completed at the appropriate time.
- If there are data conversions or access to legacy data in the scope of the project, NPSG will set up calls with the City and vendor to develop a detailed scope of work and manage the progress throughout the conversion.
- Work with City to develop detailed training plans for all users. Our experienced staff members will attend training sessions and offer suggestions to assure the system is configured in the best way possible to meet the agency goals.
- Work with the City to create detailed functional testing plans that are executed before end-user training.
- Develop and communicate a detailed, go-live cutover plan weeks before live operation.
- Work with City and software vendor to resolve any open issues after the go-live event.
- Identify additional training needed before and after the system is put in live operation.
- Schedule project closure meeting with the City to discuss if goals were met and the project came in on or under budget. Identify any areas that NPSG could have made improvements.

**EXHIBIT “B”**

