

**CITY OF RIO VISTA
CONSULTANT SERVICES AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 20____, by and between the CITY OF RIO VISTA, a municipal corporation of the State of California (hereinafter referred to as "CITY"), and (hereinafter referred to as "CONSULTANT").

WITNESSETH:

A. WHEREAS, CITY desires to enter into this Agreement for services for the CITY's _____; and

B. WHEREAS, CITY desires to retain CONSULTANT to provide these services by reason of its qualifications and experience for performing such services, and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

AGREEMENT

1. **INCORPORATION OF RECITALS.** The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. **DEFINITIONS.**

(a) The term "City Manager" shall mean the duly appointed City Manager of the City of Rio Vista, California, or his/her designated representative.

(b) The term "City Attorney" shall mean the duly appointed City Attorney of the City of Rio Vista, California, or his/her designated representative.

(c) The term "City Clerk" shall mean the duly appointed City Clerk of the City of Rio Vista, California, or his/her designated representative.

3. **PROJECT COORDINATION.**

(a) CITY. The City Manager shall be representative of CITY for all purposes under this Agreement. The City Manager or designee is hereby designated as the PROJECT MANAGER. The PROJECT MANAGER shall supervise the progress and execution of this Agreement.

(b) CONSULTANT. The CONSULTANT shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this

Agreement for CONSULTANT. _____ hereby is designated as the PROJECT DIRECTOR for CONSULTANT. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR for any reason, the CONSULTANT shall immediately notify PROJECT MANAGER of the name of the new PROJECT DIRECTOR.

4. **SCOPE AND PERFORMANCE OF SERVICES.**

(a) **Services to be Furnished.** Subject to such policy direction and approvals as the CITY through its staff may determine from time to time, CONSULTANT shall perform the services set forth in the "Scope of Services" attached hereto as **Exhibit A** and incorporated herein by reference.

CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities as attached hereto as **Exhibit B.**

(b) **Standard of Quality.** All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT's field of expertise.

(c) **Compliance with Laws.** CONSULTANT shall comply with all applicable federal, state and local laws, codes, ordinances, regulations, orders and decrees. . In the event that CONSULTANT believes that there is a conflict between existing and applicable federal, state and/or local law, codes, ordinances, regulations, orders and decrees, that would preclude CONSULTANT from complying with the requirements set forth in this paragraph, CONSULTANT shall notify CITY in writing, and meet and confer with CITY to determine an appropriate course of action. CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for CONSULTANT to practice its profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for CONSULTANT to practice its profession or are necessary and incident to the due and lawful prosecution of the services it performs under this Agreement. CONSULTANT shall maintain a City of Rio Vista business license. CONSULTANT shall at all times during the term of this Agreement, and for one year thereafter, provide written proof of such licenses, permits, insurance, and approvals upon request by the CITY. The CITY is not responsible or liable for CONSULTANT's failure to comply with any or all of the requirements contained in this paragraph.

5. **COMPENSATION.** For the full performance of the services described herein by CONSULTANT, CITY shall pay CONSULTANT a total sum not to exceed _____ dollars (\$_____). The method and

timing of payment to CONSULTANT shall be as set forth in **Exhibit C**, incorporated herein by reference.

6. **ADDITIONAL SERVICES.** CONSULTANT shall not commence any work exceeding the Scope of Services without prior written authorization from CITY. CONSULTANT agrees to perform such work only if requested in writing by CITY and shall bill for such services in a separate agreement.

7. **TERM.** This Agreement shall be effective and shall remain in effect until _____ or otherwise terminated as provided herein.

8. **SUSPENSIONS; TERMINATION.**

(a) **Right to Suspend or Terminate.** The City Manager may suspend or terminate this Agreement for any reason by giving ten (10) days written notice to CONSULTANT. Upon receipt of such notice, CONSULTANT shall immediately discontinue its performance under this Agreement. CONSULTANT may suspend or terminate this Agreement for any reason by giving thirty (30) days written notice to CITY. CONSULTANT shall not discontinue its performance under this Agreement until such notice period has expired.

(b) **Payment.** Upon such suspension or termination, CONSULTANT shall be paid for all services actually rendered to CITY to the date of such suspension or termination.

(c) **Termination for Cause.** Should CONSULTANT fail within three (3) working days from receipt of CITY's written notice to correct any deficiencies related to failure to perform the Work in accordance with this Agreement including its Exhibits; failure to comply with the directions of CITY; or failure to pay its creditors, CITY may terminate this Agreement. Following a termination for default, CITY shall have the right to take whatever steps it deems necessary to correct and complete the work and charge the cost thereof to CONSULTANT, who shall be liable for the full cost of CITY's corrective action, including reasonable overhead, profit and attorneys' fees.

(d) **Rights and Remedies.** The rights and remedies of the CITY provided in this Section are in addition to any of the rights and remedies provided by the law or under this Agreement.

9. **CLAIMS.** If any dispute shall arise between CITY and CONSULTANT regarding performance of the work, or any alleged change in the work, CONSULTANT shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the work to CITY within ten (10) days after commencement of the disputed work. CONSULTANT's failure to give written notice within the ten (10) day period constitutes an agreement by CONSULTANT that it will receive no extra compensation for the disputed work.

10. **INSPECTION.** CONSULTANT shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of CONSULTANT are being performed

in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the PROJECT MANAGER'S inspection and approval. The inspection of such work shall not relieve CONSULTANT of any of its obligations to fulfill its agreement as prescribed. Any materials created by CONSULTANT shall become the property of CITY upon delivery. CONSULTANT shall not be held liable for any reuse of the CITY-owned materials for purposes outside this Agreement.

11. **INDEPENDENT JUDGMENT.** Failure of CITY to agree with CONSULTANT's independent findings, conclusions or recommendations, if the same are called for in this Agreement, on the basis of differences in matters of judgment shall not be construed as a failure on the part of the CONSULTANT to meet the requirements of this Agreement.

12. **ASSIGNMENT; SUBCONSULTANTS; EMPLOYEES.**

(a) **Assignment.** CONSULTANT shall not assign, delegate, transfer or, convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation or interest in or to the same or any part thereof without the CITY's prior written consent. Any assignment without such approval shall be void and, at CITY's option, shall terminate this Agreement and any license or privilege granted herein.

(b) **Subconsultants; Employees.** CONSULTANT shall be responsible for employing or engaging all persons necessary to perform the services of CONSULTANT hereunder. No subconsultant of CONSULTANT will be recognized by CITY as such; rather, all subconsultants are deemed to be employees of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subconsultants, if any, and shall keep the work under its control. If any employee or subconsultant of CONSULTANT fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, he shall be discharged immediately from the work under this Agreement on demand of the PROJECT MANAGER.

13. **INTEREST OF CONSULTANT.**

(a) **No Conflict of Interest.** CONSULTANT (including principals, associates and professional employees) covenants and represents that it presently has no investment or interest, and shall not acquire any investment or interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONSULTANT further covenants and represents that it does not now have and shall not acquire any source of income, business entity, interest in real property or investment which would be affected in any manner or degree by the performance of CONSULTANT's services hereunder. CONSULTANT further covenants and represents that no person having any such investment or interest shall perform any services under this Agreement.

(b) **Independent Contractor.** It is expressly agreed that, in the performance of the services hereunder, CONSULTANT shall at all times be deemed an independent

contractor and not an agent or employee of CITY. CONSULTANT, its officers, employees, agents and subconsultants shall have no power to bind or commit the CITY to any decision or course of action, and shall not represent to any person that they have such power.

(c) Financial Records. CONSULTANT shall retain all financial records, including but not limited to documents, reports, books, and accounting records that pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement. CONSULTANT or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

14. **INDEMNITY**. CONSULTANT shall indemnify, defend (with counsel approved by CITY), and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT'S performance (or the performance of any of its officers, officials, employees or volunteers) of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY. Should conflict of interest principles preclude a single lawyer from representing both CITY and CONSULTANT, or should CITY otherwise find CONSULTANT'S legal counsel unacceptable, then CONSULTANT shall reimburse the CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The CONSULTANT shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

15. **WORKERS' COMPENSATION**.

(a) Covenant to Provide. CONSULTANT certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with such provisions before commencing the performance of the work of this Agreement.

(b) Waiver of Subrogation. CONSULTANT and CONSULTANT's insurance company agree to waive all rights of subrogation against the CITY, its elected or appointed officials, agents and employees for losses paid under CONSULTANT's worker's compensation insurance policy which arise from the work performed by CONSULTANT for CITY.

16. **INSURANCE.**

(a) **Required Coverage.** CONSULTANT, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this Agreement the following described insurance coverage, insuring not only CONSULTANT and its subconsultants, if any, but also, with the exception of workers' compensation and employer's liability insurance, CITY, its officers, agents and employees, and each of them:

<u>POLICY</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Workers' Compensation	Statutory
(2) Comprehensive Automobile Insurance Services Office, Form #CA 0001 (Ed 1/87 covering Automobile Liability, code 1, or equivalent (any auto).	Bodily Injury/Property Damage \$1,000,000 each accident
(3) General Liability Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), or equivalent	\$1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit
(4) Errors and Omissions/ Professionals Liability, errors and omissions liability insurance appropriate to the CONSULTANT'S profession as defined by the CITY.	Generally \$1,000,000 per occurrence

(b) **Deductibles and Self-insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the CITY.

(c) **Required Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(1) For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.

(2) Any failure to comply with reporting or other provisions of the policies including breaches of warrants shall not affect coverage provided to the CITY, its officers, officials, employees or designated volunteers.

(3) The 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.

(4) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified U.S. mail, return receipt requested has been given to the CITY.

(d) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

(e) Verification of Coverage. CONSULTANT shall furnish the CITY with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the CITY MANAGER before work commences. The CONSULTANT'S insurer must provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

17. **NOTICE.** Any notices or other communications to be given to either party under this Agreement shall be in writing, shall be delivered to the addresses set forth below, and shall be effective, as follows:

(a) by personal delivery, effective upon receipt by the addressee;

(b) by facsimile, effective upon receipt by the addressee, so long as a copy is provided by certified U.S. mail, return receipt requested, postmarked the same day as the facsimile;

(c) by certified U.S. mail, return receipt requested, effective 72 hours after deposit in the mail.

CITY: CITY OF RIO VISTA
1 Main Street
Rio Vista, CA 94571

CONSULTANT: Consultant's Business Name
Address
City, State, zip

Either party may change its address for notices by complying with the notice procedures in this Section.

18. **AGREEMENT BINDING.** The terms, covenants and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns and subconsultants of both parties.

19. **WAIVERS.** The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement or of any provisions, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any other term, covenant, condition, ordinance or law. The subsequent acceptance by either party of which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant or condition of this Agreement or of any applicable law or ordinance.

20. **COSTS AND ATTORNEYS' FEES.** If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses and attorneys' fees.

21. **NONDISCRIMINATION.** No discrimination shall be made in the employment of any person under this Agreement on the basis of race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, disability or place of birth.

22. **VENUE.** Any action arising out of this Contract shall be brought in Solano County, California, regardless of where else venue may lie.

23. **TIME OF ESSENCE.** CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in the Scope of Services.

24. **AGREEMENT CONTAINS ALL UNDERSTANDINGS.** This document represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and CONSULTANT. All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California and interpreted as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Solano County.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement the day and year first above written.

CITY OF RIO VISTA, a municipal corporation of the State of California:

Rob Hickey, City Manager

Date:_____

ATTEST:

Anna Olea-Moger, CMC, City Clerk

Date:_____

APPROVED AS TO FORM:

Mona Ebrahimi, City Attorney

Date:_____

CONSULTANT:

Printed Name & Title, Here

Date:_____

Exhibit A

(Scope of Services)

CONSULTANT shall provide CITY with the following services pursuant to this Agreement:

Exhibit B

(Schedule of Activities)

Exhibit C

(Method and Timing of Payment)