

PROFESSIONAL CONSULTANT SERVICES AGREEMENT (LOW RISK)

MISSION INN FOUNDATION

[Advocacy, Fund Development, Marketing, Educational, Historic Preservation and Interpretation, and Administrative Services]

THIS PROFESSIONAL CONSULTANT SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2018 ("Effective Date"), by and between the CITY OF RIVERSIDE ("City"), a California charter city and municipal corporation and THE MISSION INN FOUNDATION, a California non-profit corporation ("Consultant").

1. **Scope of Services.** City agrees to retain and does hereby retain Consultant and Consultant agrees to provide the services more particularly described in Exhibit "A," "Scope of Services" ("Services"), attached hereto and incorporated herein by reference, in conjunction with Advocacy, Fund Development, Marketing, Educational, Historic Preservation and Interpretation, and Administrative Services ("Project").

2. **Term.** This Agreement shall be effective on the date first written above and shall remain in effect until June 30, 2019, unless otherwise terminated pursuant to the provisions herein.

3. **Compensation/Payment.** Consultant shall perform the Services under this Agreement for the total sum not to exceed Sixty-Seven Thousand One Hundred Four Dollars (\$67,104.00), payable in accordance with the terms set forth in Exhibit "B." Said payment shall be made in accordance with City's usual accounting procedures upon receipt and approval of an itemized invoice setting forth the services performed. The invoices shall be delivered to City at the address set forth in Section 4 hereof.

4. **Notices.** Any notices required to be given, hereunder shall be in writing and shall be personally served or given by mail. Any notice given by mail shall be deemed given when deposited in the United States Mail, certified and postage prepaid, addressed to the party to be served as follows:

To City

Community & Economic Development
Department
City of Riverside
Attn: Brenda Flowers
3900 Main Street
Riverside, CA 92522

To Consultant

Mission Inn Foundation
Attn: Gina Cavallo Collins
3696 Main Street
Riverside, CA 92501

5. **Prevailing Wage.** If applicable, Consultant and all subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

6. **Contract Administration.** A designee of the City will be appointed in writing by the City Manager or Department Director to administer this Agreement on behalf of City and shall be referred to herein as Contract Administrator.

7. **Standard of Performance.** While performing the Services, Consultant shall exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Metropolitan Southern California Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise.

8. **Personnel.** Consultant shall furnish all personnel necessary to perform the Services and shall be responsible for their performance and compensation. Consultant recognizes that the qualifications and experience of the personnel to be used are vital to professional and timely completion of the Services. The key personnel listed in Exhibit "C" attached hereto and incorporated herein by this reference and assigned to perform portions of the Services shall remain assigned through completion of the Services, unless otherwise mutually agreed by the parties in writing, or caused by hardship or resignation in which case substitutes shall be subject to City approval.

9. **Assignment and Subcontracting.** Neither party shall assign any right, interest, or obligation in or under this Agreement to any other entity without prior written consent of the other party. In any event, no assignment shall be made unless the assignee expressly assumes the obligations of assignor under this Agreement, in a writing satisfactory to the parties. Consultant acknowledges that any assignment may, at the City's sole discretion, require City Manager and/or City Council approval. Consultant shall not subcontract any portion of the work required by this Agreement without prior written approval by the responsible City Contract Administrator. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including without limitation, the insurance obligations set forth in Section 12. The Consultant acknowledges and agrees that the City is an intended beneficiary of any work performed by any subcontractor for purposes of establishing a duty of care between any subcontractor and the City.

10. **Independent Contractor.** In the performance of this Agreement, Consultant, and Consultant's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Consultant acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Consultant, or to Consultant's

employees, subcontractors and agents. Consultant, as an independent contractor, shall be responsible for any and all taxes that apply to Consultant as an employer.

11. **Indemnification.** Except for City's sole negligence or willful misconduct, Consultant shall indemnify and hold City and City's officers and employees harmless from all damages, costs and expenses, including attorneys' fees, in law or equity, including damage to property or personal injury, including death, that may arise or be incurred due to intentional or negligent acts, errors or omissions of Consultant or any of Consultant's employees, substitute Consultants or agents committed while rendering services pursuant to this Agreement. The parties expressly agree that any payment, attorney fee, cost or expense City incurs or makes to or on behalf of an injured City employee under City's self-administered Workers' Compensation program are included as a loss, expense or cost for the purposes of this paragraph. The provisions of this paragraph shall survive the expiration or early termination of this Agreement.

12. **Insurance.**

12.1 **General Provisions.** Prior to the City's execution of this Agreement, Consultant shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

12.1.1 **Limitations.** These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations under Section 11 hereof.

12.1.2 **Ratings.** Any insurance policy or coverage provided by Consultant or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

12.1.3 **Cancellation.** The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

12.1.4 **Adequacy.** The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. If Consultant believes that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage as Consultant deems adequate, at Consultant's sole expense.

12.2 **Workers' Compensation Insurance.** By executing this Agreement, Consultant certifies that Consultant is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Consultant shall

carry the insurance or provide for self-insurance required by California law to protect said Consultant from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Consultant shall file with City either 1) a certificate of insurance showing that such insurance is in effect, or that Consultant is self-insured for such coverage, or 2) a certified statement that Consultant has no employees, and acknowledging that if Consultant does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days' prior written notice before modification or cancellation thereof.

12.3 Commercial General/Auto Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and thereafter maintain during the term of this Agreement, such commercial general liability insurance to insure Consultant against damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations by Consultant or by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Consultant. All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California. Consultant's commercial general liability policy shall cover both bodily injury (including death) and property damage (included but not limited to premises-operations liability, independent contractors liability, personal injury liability and contractual liability), in an amount not less than \$1,000,000 per-occurrence limit/\$2,000,000 aggregate. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations under Section 11 hereof. Also, if Consultant carries a "Business Auto Policy", a copy of the insurance policy must be provided to the City, otherwise Consultant shall provide their personal automobile policy.

Prior to the City's execution of this Agreement, insurance policies or original certificates along with additional insured endorsements acceptable to City and evidencing the coverage required by this Agreement for commercial general liability shall be filed with City and shall include City, its officers and employees as additional insureds. Said policy shall be in the usual form of commercial general liability insurance, but shall include the following provision:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

Policies provided shall specify that the insurance provided by the Consultant will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to City.

13. Business Tax. Consultant understands that the Services performed under this Agreement constitutes doing business in the City of Riverside, and Consultant agrees that Consultant will obtain a business tax certificate pursuant to Chapter 5.04 of the Riverside Municipal Code and keep such tax certificate current during the term of this Agreement.

14. Time of Essence. Time is of the essence for each and every provision of this Agreement.

15. **City's Right to Employ Other Consultants.** City reserves the right to employ other Consultants in connection with the Project. If the City is required to employ another consultant to complete Consultant's work, due to the failure of the Consultant to perform, or due to the breach of any of the provisions of this Agreement, the City reserves the right to seek reimbursement from Consultant.

16. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

17. **Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant, except as otherwise directed by City's Contract Administrator. Nothing furnished to Consultant which is otherwise known to the Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production, website, or other similar medium without the prior written consent of the City.

18. **Ownership of Documents.** All reports, maps, drawings and other contract deliverables prepared under this Agreement by Consultant shall be and remain the property of City. Consultant shall not release to others information furnished by City without prior express written approval of City.

19. **Copyrights.** Consultant agrees that any work prepared for City which is eligible for copyright protection in the United States or elsewhere shall be a work made for hire. If any such work is deemed for any reason not to be a work made for hire, Consultant assigns all right, title and interest in the copyright in such work, and all extensions and renewals thereof, to City, and agrees to provide all assistance reasonably requested by City in the establishment, preservation and enforcement of its copyright in such work, such assistance to be provided at City's expense but without any additional compensation to Consultant. Consultant agrees to waive all moral rights relating to the work developed or produced, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

20. **Conflict of Interest.** Consultant, for itself and on behalf of the individuals listed in Exhibit "C", represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Project affected by the above-described Services. Consultant further warrants that neither Consultant, nor the individuals listed in Exhibit "C" have any real property,

business interests or income interests that will be affected by this project or, alternatively, that Consultant will file with the City an affidavit disclosing any such interest.

21. **Solicitation.** Consultant warrants that Consultant has not employed or retained any person or agency to solicit or secure this Agreement, nor has it entered into any agreement or understanding for a commission, percentage, brokerage, or contingent fee to be paid to secure this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement without liability and pay Consultant only for the value of work Consultant has actually performed, or, in its sole discretion, to deduct from the Agreement price or otherwise recover from Consultant the full amount of such commission, percentage, brokerage or commission fee. The remedies specified in this section shall be in addition to and not in lieu of those remedies otherwise specified in this Agreement.

22. **General Compliance With Laws.** Consultant shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of services by Consultant pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations. Consultant represents and warrants that Consultant has obtained all necessary licenses to perform the Scope of Services and that such licenses are in good standing. Consultant further represents and warrants that the services provided herein shall conform to all ordinances, policies and practices of the City of Riverside.

23. **Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute approval of or acquiescence in any breach thereunder, except as may be specifically, provided in this Agreement or as may be otherwise agreed in writing.

24. **Amendments.** This Agreement may be modified or amended only by a written agreement and/or change order executed by the Consultant and City.

25. **Termination.** City, by notifying Consultant in writing, shall have the right to terminate any or all of Consultant's services and work covered by this Agreement at any time. In the event of such termination, Consultant may submit Consultant's final written statement of the amount of Consultant's services as of the date of such termination based upon the ratio that the work completed bears to the total work required to make the report complete, subject to the City's rights under Sections 15 and 26 hereof. In ascertaining the work actually rendered through the termination date, City shall consider completed work, work in progress and complete and incomplete reports and other documents only after delivered to City.

25.1 Other than as stated below, City shall give Consultant thirty (30) days' prior written notice prior to termination.

25.2 City may terminate this Agreement upon fifteen (15) days' written notice to Consultant, in the event:

25.2.1 Consultant substantially fails to perform or materially breaches the Agreement; or

25.2.2 City decides to abandon or postpone the Project.

26. **Offsets.** Consultant acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which Consultant owes or may owe to the City, City reserves the right to withhold and offset said amounts from payments or refunds or reimbursements owed by City to Consultant. Notice of such withholding and offset, shall promptly be given to Consultant by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to the City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

27. **Successors and Assigns.** This Agreement shall be binding upon City and its successors and assigns, and upon Consultant and its permitted successors and assigns, and shall not be assigned by Consultant, either in whole or in part, except as otherwise provided in paragraph 9 of this Agreement.

28. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that each party will bear their own attorney's fees and costs.

29. **Nondiscrimination.** During Consultant's performance of this Agreement, Consultant shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, or sexual orientation, military and veteran status, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Consultant agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

30. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, of this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement, and the remainder of the Agreement shall continue in full force and effect.

31. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions hereof and thereof.

32. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

33. **Interpretation.** City and Consultant acknowledge and agree that this Agreement is the product of mutual arms-length negotiations and accordingly, the rule of construction, which provides that the ambiguities in a document shall be construed against the drafter of that document, shall have no application to the interpretation and enforcement of this Agreement.

33.1 Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of the Agreement or any of its terms. Reference to section numbers, are to sections in the Agreement unless expressly stated otherwise.

33.2 This Agreement shall be governed by and construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.

33.3 In the event of a conflict between the body of this Agreement and Exhibit "A" - Scope of Services hereto, the terms contained in Exhibit "A" shall be controlling.

34. **Exhibits.** The following exhibits attached hereto are incorporated herein to this Agreement by this reference:

Exhibit "A" - Scope of Services
Exhibit "B" - Compensation
Exhibit "C" - Key Personnel

(Signatures on following page)

IN WITNESS WHEREOF, City and Consultant have caused this Agreement to be duly executed the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

MISSION INN FOUNDATION,
a California non-profit corporation

By: _____
City Manager/Department Head

By: Sally V Beaty

SALLY V. BEATY
[Printed Name]

Attest: _____
City Clerk

PRESIDENT
[Title]

*Certified as to Availability of Funds:

By: [Signature]
Chief Financial Officer

By: [Signature]

Ruben Ayala
[Printed Name]

*Required if not approved by Council Action.

Secretary
[Title]

Approved as to Form:

By: Susan Wells
Deputy City Attorney

EXHIBIT “A”

SCOPE OF SERVICES

Advocacy

- 1) Represent and participate in local as well as national and regional initiatives and programs
- 2) Participation in Riverside Cultural Consortium and/or other forums monthly

Fund Development

- 1) Diversification of funding for Mission Inn Foundation (MIF)
 - a. Identify and cultivate at least 4 new prospects per quarter-
 - b. Continue the use of donor management software in MIF fundraising activities by adding contacts created through the public programs and lecture series
- 2) Mission Inn Foundation Run
 - a. Manage and direct the event by November 2018
 - b. Diversify sponsorship opportunities by pursuing new major sponsors for the run and by increasing the fees for the half marathon
- 3) Grant writing
 - a. Submit a minimum of 4 grants per year
- 4) Membership
 - a. Increase membership, target rate of 2% growth per year
- 5) Continue to earn revenue fees through program areas, contracted services, fees for events, etc.
- 6) Seek grant funding to continue conducting a minimum of one activity per year in an area of Riverside with limited exposure to art and cultural experiences

Marketing

- 1) Marketing Plan/Materials
 - a. Develop and distribute marketing materials to raise public awareness and participation in MIF/Museum programs at 10 new local sites quarterly
- 2) Arts Walk and First Sundays
 - a. Continue to participate through free open tours on Thursdays and dynamic programming on Sundays 8 times a year
- 3) Web Presence Enhancement
 - a. Review the Foundation website content with special emphasis on text determining if revisions, edits, and additions as needed
 - b. Continue to expand MIF's website and other social media, multi-media tools
 - i. Communicate through the Mission Inn Run Facebook page
 - ii. Post major events on Facebook and other social media
- 4) Provide monthly staff and volunteer updates and quarterly training to promote and provide customer awareness of other Riverside heritage tourism and cultural amenities

Educational

- 1) Mission Inn Tours
 - a. Provide 100 free tours as public community service
- 2) Docent Training
 - a. Enhance and administer program for community volunteers including the Docent Youth Corp
- 3) Museum-Gallery Exhibits – minimum of two (2) a year
- 4) First Sundays
- 5) Programming – conduct one (1) or more programming events per month including docent education and workshops which are open to the public

Historic Preservation and Interpretation

- 1) Respond to institutional and individual inquiries related to the history of the Mission Inn
- 2) Assist in the professional care of historic collections related to the National Historic Landmark Mission Inn in cooperation with the Friends of the Mission Inn as needed
- 3) Regularly process donated archive materials so they are properly cared for and accessible to researchers
- 4) Add to the body of historic knowledge related to the Mission Inn and its founder through research internships, a volunteer history research committee, and a special publication series
- 5) Update the collections inventory

Administrative

- 1) Develop and manage three (3) internship opportunities
- 2) Active Participation and Input in Citywide Initiatives such as City of Arts & Innovation, Riverside Arts Plan, Cultural Accountability Performance (CAP) as applicable
- 3) Conduct a satisfaction survey of program participants within the museum visitors, tour customers and programming activity audiences

EXHIBIT “B”

COMPENSATION

Consultant shall be paid a sum of Five Thousand Five Hundred Ninety-Two Dollars (\$5,592.00) per month, beginning in July 2018 and ending in June 2019, for a total amount not to exceed Sixty-Seven Thousand One Hundred Four Dollars (\$67,104.00).

EXHIBIT “C”

KEY PERSONNEL

Gina Cavallo Collins, Executive Director – Lead contact for all City contract-related communications.

Nanci Larsen, Director of Audience Development and Administration

Danielle Trynoski, Director of Marketing & Development

Kanani Hoopai, Director of Education

Karen Raines, Curator of History

Rachel Bulteman, Museum Store Manager

Nancee Richardson, Museum Assistant