

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as "City") and RSG, Inc., a California Corporation, whose address of record is 17872 Gillette Avenue, Suite 350, Irvine, California 92614 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to assess the City's affordable housing policy and determine an in-lieu fee structure, housing trust fund guide and prohousing policy assistance; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide affordable housing analysis/consulting services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the analysis and consulting services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Development Services or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "B" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the day first above written and end on April 30, 2023.

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" for a not to exceed sum of Ninety-Five Thousand Dollars (\$95,000.00).

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City,

Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement; Consultant shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and all claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.

(iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

## 11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a "public works" the Vendor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Consultant further agrees to the penalties

and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Vendor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Consultant at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Consultant agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a "public works" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

13. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

14. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

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 agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

15. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

17. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

18. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

19. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

20. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

21. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

22. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:



City Attorney

7-29-22

Date

ACCOUNT DATA:

BY:

Verified by Finance Officer

*{Signatures continued on next page}*

CONSULTANT  
RSG, INC.,  
A California Corporation

BY:   
(Signature)  
\_\_\_\_\_  
Jim Simon  
(Typed Name)

Its: Secretary/Principal  
(Title)

BY: Tara E. Matthews  
(Signature)

\_\_\_\_\_  
Tara E. Matthews  
(Typed Name)

Its: Vice President/Principal  
(Title)

Taxpayer I.D. No. 95343-5849

ADDRESS: 17872 Gillette Ave.  
Suite 350  
Irvine, CA 92614

TELEPHONE: (714) 541-4585  
FAX: (714) 541-1175  
E-MAIL: tmatthews@webrsg.com

## **EXHIBIT A**

### **SCOPE OF WORK**

RSG is proposing the following tasks be undertaken. It should be noted that some of the tasks overlap to a certain degree.

#### **Task 1 – Project Kickoff and Subsequent Meetings**

RSG would coordinate an in-person or virtual kick-off meeting with City staff to review the scope of services and schedule of work and deliverables, as well as any special issues or considerations related to the local real estate market, affordable housing, public policy priorities, etc. We will also collect any data that may be helpful in the process.

RSG anticipates monthly virtual check-in meetings with staff to review progress, discuss the administrative draft of the study, and to prepare for Planning Commission and City Council meetings.

The results of the study will be presented in-person to the Planning Commission and City Council. RSG will present the findings, conclusions, and recommendations of the Study and answer questions from the members and public. RSG can attend a second City Council meeting if necessary.

The scope is estimating a total of four virtual meetings and up to four in-person meetings for Tasks 1 through 5.

#### **Task 2 - Municipal Code Amendments and Affordable Housing Inclusionary Policy**

This analysis includes evaluating the City's current practices and policies governing the implementation of inclusionary housing. RSG would evaluate the Zoning Code and any other applicable local development requirements such as housing overlays or density bonus to provide recommendations to the City on amendments to the Municipal Code and the proposed Affordable Housing Inclusionary Policy. RSG can work with the City to see if there are any other City planning goals that could also be addressed in this process – such as workforce housing, transit priorities, or priority development areas in the community. This information will also be used to complete the inclusionary housing financial evaluation.

RSG would approach this task by initially reviewing Resolution 2022-15 and the interim RHNA Unit Production Plan adopted on April 4, 2022 and relevant Municipal Code sections affecting inclusionary zoning to better understand where in the community housing and inclusionary housing is allowed and currently being developed. We would work in conjunction with the City's Planning Department to understand current impediments to residential development that may be a result of zoning regulations. Conversely, we would seek their input on specific policies that are effective in achieving the City's goal of increasing the supply of both market-rate and affordable housing.

RSG would review the City's RHNA requirements and Housing Element to best determine the thresholds of affordability and the percentage of inclusionary housing. We would also examine policies of nearby jurisdictions as a means of setting a benchmark and to ensure that policies implemented by the City do not deter development.

There are multiple alternatives in which a developer can comply with inclusionary housing requirements, such as an in-lieu fee or partial fees, land dedication, or purchase of

## **EXHIBIT A**

covenants. RSG will examine these alternatives and offer suggestions for other alternatives that may fit the community's needs.

### **Task 3 - Economic and Financial Feasibility**

Based on the evaluation of the City's existing programs and regulations, an economic and financial feasibility analysis of the proposed policy will be completed to determine if development of both market-rate and affordable residential units is feasible. It should be noted that this analysis may modify some of the items initially identified in the previous task.

The City's interim policy requires a minimum of 12.5% affordable units in new multi-family residential developments with at least 36 units and single-family residential developments with at least 60 units (with some exceptions). As part of our comprehensive examination of the City's inclusionary housing policies, we will evaluate the current requirements to determine if they are reasonable or need to be adjusted to meet legal parameters and the City's goals. As part of this analysis, we will examine a maximum inclusionary percentage and alternate options including an in-lieu fee, land dedication, off-site construction, and acquisition and rehabilitation of existing housing units.

### **Task 4 – Inclusionary Housing State Trends and Fee Comparison with Neighboring Jurisdictions**

It is important to understand both statewide and neighboring jurisdiction trends as relates inclusionary ordinances. RSG will research existing inclusionary housing programs in California that will serve as a baseline for reasonable and justifiable approaches to establishing the City's policy (building on the City's research presented in the staff report for Resolution 2022-15). This research may also provide insight on additional factors that may be considered as part of the financial and economic feasibility.

RSG will also compare the proposed in-lieu fees with those in neighboring and similar communities, to assess whether the proposed fees may serve to impede development opportunities in the City by making it less competitive with other cities.

### **Task 5 –Report on Affordable Housing Inclusionary Policy and In-Lieu Fees**

The culmination of our research and analysis will result in a written document that details our findings and recommendations regarding the adoption of an Affordable Housing Inclusionary Policy and residential in-lieu fees. This will include an evaluation of the economic and financial impacts of the recommended policy and a written policy analysis addressing inclusionary housing and zoning. The report will include information on key court cases impacting inclusionary housing policy. It will provide an overview of State law regulating inclusionary housing policies and HCD's role in the process.

The report will identify production requirements, in-lieu fees, and alternatives to the fee; the financial benefits, costs, and impacts; the process for annually adjusting an In-Lieu Fee Schedule; the process, assumptions, and process for adjusting maximum affordable rent and sale prices; and a draft of the recommended affordable housing policy.

RSG will prepare an Administrative Draft of its report on findings, methodology, fee recommendations for City staff review and comment. After incorporating comments, RSG will

## **EXHIBIT A**

deliver a Final Report to be used as the basis for establishing inclusionary in-lieu fees and for the Planning Commission and City Council's consideration. If needed, RSG will make any edits to the Report based on feedback from the presentations.

RSG will rely on the City's legal counsel to review the policy and draft any related ordinances before adoption. Reports will be delivered using the Microsoft Office suite and/or Adobe PDF.

### **Task 6 – Prohousing Policy with Housing Trust Fund Guidelines**

The City Council has authorized creating a local housing trust fund with \$500,000 in starter funds. In-lieu fees generated by the new inclusionary housing policy will be deposited into the trust fund. The City wishes to draft a Prohousing Policy that creates guidelines on how to spend local housing trust funds. The Prohousing Policy should incorporate enhancement factors that help the City obtain a Prohousing Designation from HCD. RSG will collaborate with City staff to draft a Prohousing Policy that considers Merced's housing needs and priorities. The policy will consider the City's Housing Element, local demographics, land use constraints, and other factors as necessary. The Prohousing Policy will be drafted to increase points on the Prohousing Designation Program application as much as possible. RSG will kick-off and develop the Prohousing Policy concurrently with Tasks 1 to 5. However, we anticipate it will be finalized and completed after City Council has approved the Affordable Housing Inclusionary Policy. The fee estimate includes 1 additional virtual staff meeting and 1 in-person City Council meeting for Task 6.

## EXHIBIT B

### SCHEDULE

The following details the approximate timeline by week; this is an estimation and the schedule may vary depending on the availability of meeting dates and by mutual agreement. RSG will refine the schedule with City staff at the kick-off meeting.

Date	Tasks/Deliverables
Week 1	Contract Execution, Project Kick-off <ul style="list-style-type: none"><li>Virtual or in-person meeting with lead staff</li></ul>
Weeks 2-5	Municipal Code Amendments and Affordable Housing Inclusionary Ordinance Administrative <ul style="list-style-type: none"><li>Virtual meeting with Development Services staff</li><li>Evaluation of policies, zoning, thresholds, inclusionary percentages and alternatives</li><li>Discussion of needs and priorities for Prohousing Policy</li></ul>
Weeks 6-9	Economic and Financial Feasibility Analysis <ul style="list-style-type: none"><li>Examine current fees and update methodology and fees as needed</li><li>Evaluate development concessions and impacts on inclusionary housing</li></ul> Trends and Fee Comparison <ul style="list-style-type: none"><li>Inclusionary Housing program research</li><li>Development fee comparison</li></ul>
Weeks 10-13	Draft Report on Affordable Housing Inclusionary Policy and In-Lieu Fees <ul style="list-style-type: none"><li>Draft Report for City staff review</li></ul>
Week 14-16	Final Report on Affordable Housing Inclusionary Policy and In-Lieu Fees <ul style="list-style-type: none"><li>Finalize Report incorporating City staff comments</li><li>Virtual meeting with lead staff</li></ul>
Weeks 17-20	Planning Commission and City Council meetings <ul style="list-style-type: none"><li>Present study results for discussion</li></ul>
Weeks 21-24	Final Affordable Housing Inclusionary Policy <ul style="list-style-type: none"><li>Finalize City Policy incorporating Planning Commission and City Council direction</li></ul>
Weeks 25-36	Prohousing Policy with Housing Trust Fund Guidelines <ul style="list-style-type: none"><li>Finalize Prohousing Policy with City staff</li><li>Present to City Council for approval</li></ul>