

SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th 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 “Contractor”).

WHEREAS, City is undertaking a project to provide affordable housing services; and,

WHEREAS, Contractor represents that it possesses the professional skills to provide affordable housing 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 Contractor shall furnish the following services: Contractor shall provide the affordable housing consulting services described in Exhibit “A” attached hereto.

No additional services shall be performed by Contractor 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 Contractor.

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 Contractor 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 June 30, 2026.

4. **COMPENSATION.** Payment by the City to the Contractor for actual services rendered under this Agreement shall be made upon presentation of an

invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "C" attached hereto and incorporated herein by reference. The Contractor agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "C". For Contractor's services rendered under this Agreement, City shall pay Contractor the not to exceed sum of \$161,000.

5. **METHOD OF PAYMENT.** Compensation to Contractor shall be paid by the City after submission by Contractor 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 Contractor relating to the matters covered by this Agreement shall be the property of the City, and Contractor 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. **CONTRACTOR'S BOOKS AND RECORDS.** Contractor 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 Contractor 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 Contractor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Contractor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Contractor desire any insurance protection, the Contractor is to acquire same at its expense.

In the event Contractor or any employee, agent, or subcontractor of Contractor 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, Contractor 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 Contractor 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. Contractor 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 Contractor or Contractor's officers, employees, volunteers, and agents during performance of this Agreement; Contractor 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 Contractor or its employees, subcontractors, or agents, or by the quality or character of Contractor'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 Contractor 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 Contractor 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, Contractor 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, Contractor 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) Contractor 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) Contractor 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 Contractor.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor 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) Contractor 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) Contractor 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 Contractor.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor 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. Contractor shall carry professional liability insurance appropriate to Contractor'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. Contractor 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 Contractor'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 Contractor 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 Contractor 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 Contractor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Contractor at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Contractor 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 Contractor 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 Contractor 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 Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor 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. Contractor shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Contractor 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 Contractor 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, Contractor 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 Contractor 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: _____
D. Scott McBride
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 5/21/2024
City Attorney Date

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

{Signatures continued on next page}

CONTRACTOR
RSG, Inc.
A California Corporation

BY: _____
(Signature)

Tara E. Matthews

(Typed Name)

Its: _____
Vice President, Principal

(Title)

BY: _____
(Signature)

James Simon

(Typed Name)

Its: _____
President, Principal

(Title)

Taxpayer I.D. No. _____
95-3435849

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

TELEPHONE: _____
(714) 541-4585

FAX: _____
(714) 541-1175

E-MAIL: tmatthews@webrsg.com

SCOPE OF SERVICES

RSG would assist the City with a variety of tasks as needed, billed on a time and materials basis up to the negotiated contract amount. Services may include, but are not limited to, the following:

Task 1: Affordable Housing Development Negotiations and Agreements

The City has an open Request for Proposals inviting developers to request City funding for affordable housing development in Merced. Funding sources include federal funds administered by the U.S. Department of Housing and Urban Development ("HUD") and American Rescue Plan Act ("ARPA"); state funds administered by the California Department of Housing and Community Development ("HCD") such as the Permanent Local Housing Allocation ("PLHA"), and local funds such as the Housing Successor and Local Housing Trust Fund.

RSG will assist the City with reviewing developer proposals, negotiating deal points, drafting agreements, and overall project management. This includes evaluating developer pro formas to ensure projects are financially feasible. RSG would ensure all legal requirements tied to applicable funding sources are met (e.g. HUD, HCD, and Housing Successor requirements).

The budget estimate includes underwriting of up to 4 proposals (2 per year) and preparation of up to 10 sets of agreements (5 per year); additional sets would be billed on a time and materials basis with staff's authorization. Each set of agreements includes the standard City documents drafted to lend money from a single funding source (i.e. Note, Deed of Trust, Deed Restriction Covenant and Loan Agreement, Agreement Containing Covenants, Regulatory Agreement, Notice of Affordability Restrictions, and the adopting resolution).

Task 2: HOME Subsidy Layering Analysis and Neighborhood Standards Review

If the City plans on assisting affordable housing projects with HOME or other federal funds, a Subsidy Layering Analysis and Neighborhood Standards Review may be required. RSG will complete these reports as needed for applicable projects. The budget estimate assumes they will be prepared for 4 projects (2 per year). The City may negotiate with individual developers to be reimbursed for the cost of the Subsidy Layering Analysis and Neighborhood Standards Review.

- Subsidy Layering Analysis – Subsidy layering occurs when a project receives funds from more than one governmental source. If the City plans to combine HOME funds with other governmental funds to assist an affordable multi-family housing project, it must demonstrate that the project will not receive more HOME funding than necessary. Subsidy layering evaluations must comply with published HUD Guidelines (CPD 98-1). HUD has prepared a HOME Multifamily Underwriting Evaluation Template ("HOME Template") to assist jurisdictions with the required analysis.

RSG would review the development pro forma to determine the reasonableness of estimated development costs, revenue assumptions and proposed financing structure, including, but not limited to, the potential for receiving HOME funds. RSG will review rents, expenses, cash flows, and tax benefits to determine whether cash flow projections are reasonable given current economic conditions. RSG will evaluate whether the costs funded by the HOME Program are eligible and the HOME funds per unit do not exceed the maximum per-unit subsidy limits.

RSG will complete the HOME Template and prepare a memorandum detailing our findings and recommendations regarding the economic feasibility of the proposed development, and determining whether the total requested amount of HOME funding and other governmental assistance is reasonable based on costs and/or projected rate of return.

- Neighborhood Standards Review - Site and neighborhood standards of 24 CFR 983.6(b) and 987.57(e) apply to new construction of rental housing, which places limiting conditions on building in areas of "minority concentration" and that are "racially mixed." If a Site and Neighborhood Standards Review is required, RSG will conduct research to determine whether the project site is of adequate size, exposure, and contour to the proposed development, has adequate utilities, and whether it is in an area of minority concentration. Findings will be presented in a summary memorandum.

Task 3: Compliance Monitoring

Affordable housing projects assisted by the former redevelopment agency's ("RDA") Low and Moderate Income Housing Fund or by HOME funds require compliance monitoring to ensure properties comply with affordable housing agreements. RSG currently monitors one property (Woodbridge). RSG can assist with monitoring additional properties that were recently assisted including Childs Avenue & B Street (Richman), Devonwood (Richman), Mercy Village (UP Holdings), 1213, Gateway Terrace II (Central Valley Coalition), CC 915, Habitat, and Linc Housing.

RSG can assist the City with the following affordable housing compliance monitoring tasks as desired by staff:

- Review Controlling Documents & Prepare Project Summary Database: RSG would collect and review controlling documents for the City's affordable housing projects and create an Affordable Housing Inventory that includes the following information for each project:
 - Project name and location
 - List of controlling documents and funding sources
 - Affordability restriction start and end dates
 - Compliance requirements (i.e. Annual Income Recertification, Residual Receipts, etc.)
 - Number of age-restricted (senior) units
- Request Monitoring Forms: RSG would prepare and distribute letters requesting property managers/owners to submit compliance monitoring forms that verify tenant incomes and rents comply with affordability requirements for 2021.
- Analyze Data and Prepare Monitoring Reports: RSG would review the completed forms to analyze compliance with affordable housing agreements and restrictive covenants. RSG would prepare a monitoring summary report for each property that identifies whether the property is in compliance with the terms of the applicable regulatory documents. It would detail areas of non-compliance, if any, and make recommendations for correcting any non-compliance issues. Monitoring reports would be sent to the City for review and edit, then to property owners. Property owners would be given an opportunity to address non-compliance issues, if any.
- Follow-up with Non-Compliant Properties: RSG would correspond with property managers/owners to address issues of non-compliance that can be addressed by providing additional documentation. This would be limited to up to 10 hours of correspondence and review. More complicated matters, particularly those requiring changes in rents or tenancies, would be addressed jointly with City staff and for an additional fee with the City's authorization.

- **Clearance Reports and Summary Report:** For any properties that had non-compliance issues, RSG would prepare Clearance Reports after the property managers/owners respond to corrective action requests. RSG would provide a compliance review summary table to City staff summarizing the compliance status of each property and remaining non-compliance issues, if any.

All affordable housing agreements for recent projects require developers to complete annual compliance monitoring to ensure they are meeting income and rent limits. HOME-funded projects require on-site inspections.

RSG's fee estimate assumes compliance monitoring for up to 8 projects per year, including set-up costs for projects being monitored for the first time. Additional projects may be monitored with staff's authorization on a time and materials basis.

Task 4: Housing Successor Agency Annual Reports

RSG will prepare the Housing Successor Agency Annual Report ("Annual Report") for Fiscal Years 2023-24 (due in FY 2024-25) and 2024-25. The Annual Report is due with the City's Housing Element Annual Report by April 1 annually to the California Department of Housing and Community Development ("HCD"). The Annual Report must also be presented to City Council.

The Annual Report will include all items required by Health & Safety Code Section 34176.1. It includes a summary of financial activity and affordable housing efforts. RSG will integrate financial data provided by City staff and information about affordable housing resources and activity. The Annual Report will clearly detail compliance with legal requirements and outline steps to come into compliance, if necessary.

Task 5: General As-Needed Services

The City and Housing Successor have multiple responsibilities related to asset management and property disposition and development. Many needs may arise that are impossible to predict in advance. RSG will assist with general as-needed services as requested by staff. This may include assisting with services under Tasks 1 to 4 that require more in-depth services than anticipated due to the complex and unpredictable nature of developer negotiations, including drafting more than one set of loan agreements depending on the number of financing sources contributed to each affordable housing project.

TIME OF PERFORMANCE

The City expects that the work on this scope will continue for 2 years until the end of Fiscal Year 2025-2026.

FEE SCHEDULE

Task	Principal/ Director \$275	Senior Associate \$200	Associate \$185	Analyst \$135	Total
1: Affordable Housing Negotiations and Agreements					
Detailed Proposal Evaluation (2 projects)	20	20	0	20	12,200
Developer Negotiation (2 projects)	25	0	0	0	6,875
Agreement Preparation and Project Mgmt (5 sets)	80	0	0	6	22,810
<i>Task 2 Total</i>	125	20	0	26	\$ 41,885
2: Subsidy Layering Analysis and Neighborhood Standards Review (2 projects)	20	0	20	20	\$ 11,900
3: Compliance Monitoring (8 projects)	5	45	0	40	\$ 15,775
4: Housing Successor Annual Report (per year)	10	0	0	20	\$ 5,450
5: General As-Needed Services	20	0	0	0	\$ 5,500
<i>Rounding Adjustment</i>					\$ (10)
ANNUAL TOTAL (2024-25)	180	65	20	106	\$ 80,500
TWO YEAR TOTAL (2024-25 AND 2025-26)	360	130	40	212	\$ 161,000

EXHIBIT C