

## AGREEMENT TO FURNISH PROFESSIONAL SERVICES

This agreement for professional services ("Agreement") is made and entered into this 16th day of April, 2009 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and Chambers Group Inc. ("Consultant"). City and Consultant are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

In consideration of the mutual promises contained herein, City and Consultant agree as follows:

### ARTICLE 1 - ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant to perform certain noise studies (the "Services") for Pharaoh's Lost Kingdom Theme Park (the "Property"). The specific Services which Consultant shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by this reference.
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional consultants in the industry providing like and similar types of services.
- 1.3 Consultant shall comply with all applicable Federal, State and local laws and regulations in the performance of its obligations under this Agreement including, but not limited to, the Americans with Disabilities Act and the Fair Employment and Housing Act.
- 1.4 Consultant is being retained specifically to perform the Services for City's City Attorney Office. All communications between Consultant and City with respect to the Services shall be through City's City Attorney Office, or his designee. All data, writings, studies and other written communications and materials provided to City by Consultant shall be delivered to City's City Attorney Office and shall be designated as "work product" and subject to the "work product doctrine privilege."

### ARTICLE 2 - RESPONSIBILITIES OF CITY

- 2.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.

### ARTICLE 3 - PAYMENT AND NOTICE

- 3.1 The total compensation for Consultant's performance of the Services is Three Thousand Six Hundred (\$3,600).
- 3.2 Payments by City to Consultant shall be made within thirty (30) days after receipt and approval by City of Consultant's invoice, by warrant payable to Consultant. Invoices shall be sent to City on a monthly basis. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed, the number of hours spent and by whom, and a description of reimbursable expenses, if any. Expenses to be reimbursed include travel, lodging, subsistence, overnight courier, conference calls, and computer and fax transmission charges.

- 3.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City: Daniel J. McHugh  
City Attorney  
City of Redlands  
PO Box 3005  
Redlands, CA 92373

Consultant: Andrew Minor  
Chambers Group Inc.  
302 Brookside Ave.  
Redlands, CA 92373

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to who notices and payments are to be given by giving notice pursuant to this section.

#### ARTICLE 4 - INSURANCE AND INDEMNIFICATION

- 4.1 Insurance; generally. All insurance required by this Agreement shall be maintained by Consultant for the duration of its performance of the Services. Consultant shall not perform any Services unless and until all required insurance listed below is obtained by Consultant. Consultant shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services.
- 4.2 Workers' Compensation and Employer's Liability. Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of this Agreement in accordance with the laws of the State of California, with an insurance carrier acceptable to City.
- 4.3 Hold Harmless and Indemnification.
- a. Consultant shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorney's fees, arising from injury or death to persons or damage to property occasioned by Consultant's and its officers', employees' and agents' sole negligent acts or sole negligent omissions in performing the Services.
  - b. City shall defend, indemnify and hold harmless Consultant and its officers, employees and agents from and against any and all claims, losses or liability, including attorney's fees, arising from injury or death to persons or damage to property occasioned by City and its elected officials, employees and agents sole negligent acts or sole negligent omissions.

- 4.4 Comprehensive General Liability Insurance. Consultant shall secure and maintain in force throughout the term of this Agreement comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. City shall be named as an additional insured. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 4.5 Professional Liability Insurance. Consultant shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made.
- 4.6 Business Auto Liability Insurance. Consultant shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Consultant owned vehicles used in connection with Consultant's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. Such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City. City shall be named as an additional insured.

#### ARTICLE 5 - GENERAL CONSIDERATIONS

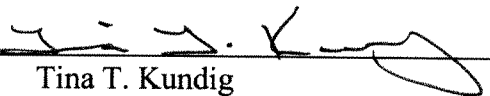
- 5.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.
- 5.2 Consultant shall not assign any of the Services to be performed under this Agreement, except with the prior written approval of City and in strict compliance with the terms, provisions and conditions of this Agreement.
- 5.3 All documents, records, drawings, designs, electronic data files, databases, and other documents developed by Consultant pursuant to this Agreement, and any copyright interest in such documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents and any use of incomplete documents will be at City's sole risk.
- 5.4 Consultant is for all purposes an independent contractor. Consultant shall supply all tools and instrumentalities required to perform the Services. All personnel employed by Consultant are for its account only, and in no event shall Consultant or any personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City.
- 5.5 Unless earlier terminated, as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City.
- 5.6 This Agreement may be terminated by either Party, in its sole discretion and without cause, by providing tow (2) business days' prior written notice to the other Party (delivered by certified mail, return receipt requested) of intent to terminate.

- 5.7 If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant.
- 5.8 Upon receipt of a termination notice, Consultant shall immediately discontinue all services affected, and within five (5) business days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of any data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services required by this Agreement. Consultant shall be compensated on a pro-rata basis for work completed up until notice of termination.
- 5.9 Consultant shall maintain books and accounts of all payroll costs and expenses related to the Services. Such books shall be available at all reasonable times for examination by City at the office of Consultant.
- 5.10 This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Any amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.
- 5.11 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 5.12 The liability of Consultant (including officers, directors, employees, agents, affiliates, and parent companies) for damages resulting from a breach of Consultant's obligation to perform the Services shall be limited to the amount of fees paid pursuant to City in the calendar year in which the breach occurred.

IN WITNESS WHEREOF, duly authorized representatives of the City and Consultant have signed in confirmation of this Agreement.

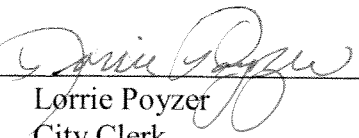
CITY OF REDLANDS

CHAMBERS GROUP INC.

By:   
Tina T. Kundig  
Finance Director / City Treasurer

By:   
Andrew Minor  
Project Manager

ATTEST:

By:   
Lorrie Poyzer  
City Clerk

## Exhibit "A"

### SCOPE OF SERVICES

Purpose of Work. The purpose of the work is to obtain sound readings that may be used as competent evidence of conformance or non-conformance with Redlands Municipal Code Chapter 8.06 ("Community Noise Control"), in connection with an event scheduled to take place at Pharaoh's Lost Kingdom Theme Park on the evening of April 18, 2009, and morning of April 19, 2009.

Measuring Equipment. Chambers Group proposes to monitor and to take noise measurements using the Larson Davis 820, Precision I instrument ("Measuring Equipment"). The Measuring Equipment shall comply with the City's noise ordinance requirements in that it shall include a microphone, amplifier, output meter and frequency weighting networks for the measurement of sound levels, which meet or exceed the requirements of the American National Standard Institute's S1.4-1971, or the most recent revision thereof, for type 1 or type 2 sound level meters.

Noise Study Report. Chambers Group will prepare a clearly written report describing all equipment used, existing noise settings and results of noise measurements. Maps will be provided showing the location of the measurements taken and an analysis of the noise generated at Pharaoh's Lost Kingdom Theme Park. Noise measurement data sheets will be included as an attachment to the report. Chambers Group will incorporate one round of review and comments from the City into the report.

Experience. Chambers Group will only utilize on this matter those employees who have satisfactorily completed an instructional program as recommended by the Measuring Equipment's manufacturer and who have at least five (5) years of experience handling the Measuring Equipment.

Noise Measurement Methodology. Chambers Group understands that the City requires the utilization of a very specific methodology to measure and record noise levels. Chambers Group shall utilize the following noise measurement methodology:

- *Utilization of A-weighted Scale.* Chambers Group will utilize the A-weighting scale of the sound level meter and shall measure the noise levels at a position or positions on no fewer than four (4) different properties adjacent to, or within the immediate vicinity, Pharaoh's Lost Kingdom to determine whether the noise levels comply with the City's noise ordinance. At least two (2) such properties shall be immediately adjacent to (which shall include immediately across the street from) Pharaoh's Lost Kingdom Theme Park. Chambers shall use its best efforts to also take a measurement, in accordance with the City's noise ordinance and this scope of services, at one property near the Pharaoh's Lost Kingdom Theme Park, which property is occupied by a residential use. Chambers shall endeavor to obtain, at no cost or expense to the City, permission from a property owner or occupant adjacent to, or within the immediate vicinity of, the Theme Park in order to conduct interior noise testing, which shall (notwithstanding the standards set forth herein) be measured against the interior noise standards contained in Section 8.06.080 of the Redlands Municipal Code.
- *Microphone Location.* Chambers Group will locate any microphone of the Measuring Equipment at least four (4') to five (5') feet above the ground; ten feet (10') or more from the nearest reflective surface, where possible. If Chambers is able to take interior noise measurements, it will make those measurements using any microphone of the Measuring Equipment at a point at least four (4') feet from the wall, ceiling or floor nearest to the noise source, with the windows closed.
- *Equipment Calibration.* Chambers will calibrate the Measuring Equipment immediately prior to recording any noise data using an acoustic calibrator. Chambers will conduct such calibration in accordance with the manufacturer's recommendations.

- *Outdoor Measurements.* Chambers will not record any noise data: (i) during periods when wind speeds exceed fifteen (15) miles per hour; (ii) without a windscreen, as recommended by the Measuring Equipment's manufacturer, properly attached to the Measuring Equipment; (iii) under any condition that allows the Measuring Equipment to become wet; (iv) when the ambient temperature is out of the range of the tolerance of the Measuring Equipment.

Exterior Noise Measurements. Using the Measuring Equipment, Chambers Group will undertake no fewer than two (2) exterior noise measurements per property, as specified above. Each noise measurement shall occur over a cumulative period of one hour. Chambers Group will familiarize its employees with the maximum permissible sound levels by receiving land uses found in the City's noise ordinance, set forth in the table below, and use these levels as a guide in its measurements. Chambers Group will document and record those noise levels on properties adjacent to Pharaoh's Lost Kingdom, which exceed:

- The noise standard for that land use specified in the table below for a cumulative period of more than thirty (30) minutes in any hour; or
- The noise standard specified in the table below plus five (5) dB for a cumulative period of more than fifteen (15) minutes in any hour; or
- The noise standard specified in the table below plus ten (10) dB for a cumulative period of more than five (5) minutes in any hour; or
- The noise standard specified in the table below plus fifteen (15) dB for a cumulative period of more than one minute in any hour; or
- The noise standard specified in the table below plus twenty (20) dB or the maximum measured ambient level, for any period of time.

Ambient Noise Levels. Chambers Group will adjust its noise measurement if the measured ambient level exceeds the allowable noise exposure standard within any of the first four (4) noise limit categories listed above. Chambers will adjust the allowable noise exposure standard by five (5) dB increments in each category as appropriate to encompass or reflect said ambient noise level. In the event the ambient noise level exceeds the fifth noise limit category, the maximum allowable noise level, Chambers Group will increase the allowable noise exposure to reflect the maximum ambient noise level.

Measurement of Ambient Noise Levels. Chambers Group will measure the ambient noise using the noise measurement methodology identified above, with the alleged offending noise source (the event at Pharaoh's Lost Kingdom Theme Park) inoperative. This means either immediately before or immediately after the event (but not including during any time when any performers may be performing "warm ups" or "stage tests" at the Theme Park). In addition (and not in lieu of the methodology required by the preceding sentence), Chambers Group will estimate the ambient noise by performing a measurement in the same general area of the source but at a sufficient distance that the noise from the source is at least ten (10) dB below the ambient in order that only the ambient level is measured. If the difference between the ambient and the noise source is five (5) to ten (10) dB, then Chambers Group will determine the ambient noise by subtracting a one decibel correction to account for the contribution of the source.

Other Modifications. Chambers Group will reduce the standard limits set forth in the table below by five (5) dB if the alleged offensive noise contains a steady, audible tone such as a whine, screech, hum, or is a repetitive noise such as hammering or riveting, or contains music or speech conveying informational content.

MAXIMUM PERMISSIBLE SOUND LEVELS  
BY RECEIVING LAND USE

Receiving Land Use Category	Time Period	Noise Level - dBA
Single-family residential districts	10:00 P.M. - 7:00 A.M.	50
	7:00 A.M. - 10:00 P.M.	60
Multi-family residential districts; public space; institutional	10:00 P.M. - 7:00 A.M.	50
	7:00 A.M. - 10:00 P.M.	60
Commercial	10:00 P.M. - 7:00 A.M.	60
	7:00 A.M. - 10:00 P.M.	65
Industrial	Any time	75