

AGREEMENT TO FURNISH PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 29th day of January, 2002, by and between the City of Redlands, a municipal corporation (hereinafter "City") and Futterman and Associates, Inc., a California corporation, hereinafter ("Consultant").

In consideration of the mutual promises and conditions hereinafter set forth, City and Consultant hereby agree as follows:

ARTICLE 1 - ENGAGEMENT OF CONSULTANT

- 1.1 City hereby retains Consultant to conduct a multi-day "urban design workshop" for the City and the Redlands community and perform associated professional consulting services ("Services"), all as more particularly described in Exhibit "A" which is attached hereto and incorporated herein by this reference, in connection with the City's efforts to evaluate development potential for the City's "downtown" area and its immediate environs.
- 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 high quality Services to the City at the level of competency presently maintained by other practicing professional consultants in the industry who provide similar types of services.

ARTICLE 2 - RESPONSIBILITIES OF CITY

- 2.1 City will make provision for Consultant to enter upon City-owned property, as required by Consultant to perform its Services.
- 2.2 City shall provide to Consultant geographic information systems (GIS) data and a digital 1-meter orthophotography (from March 1998) with a maximum viewable scale of 1" = 300' of the City's downtown area and the immediate environs. The contents of the GIS data shall describe the physical characteristics of the area; elevations at 40 foot elevation contours; street centerlines (includes some alleyways, but not all,) water distribution system (mains, valves, meters, hydrants), sewer collection system (mains, laterals maintenance holes); zoning and land use. In addition, the GIS data shall specify the applicable land use and zoning.
- 2.3 City shall promptly report to the Consultant any defects or suspected defects in the Consultant's Services of which City becomes aware, so that Consultant may take measures to correct such defects at Consultant's cost, and minimize the consequences of such defects to City. Failure by City to provide such notification within a reasonable time to Consultant shall relieve Consultant of paying those costs of remedying the defects above the sum such remedy would have cost Consultant had the prompt notification been given.

- 2.4 City shall use its best efforts to reasonably support and assist Consultant, and render decisions in a timely manner pertaining to documents submitted by Consultant, to avoid unreasonable delay in the orderly and sequential progress of Consultant's Services.
- 2.5 City shall provide all workshop logistics including, without limitation, arranging the venue; providing working dinner the Friday night before the workshop; providing workshop furnishings, lighting, power, food and beverages, and public notifications of the workshop.

ARTICLE 3 - PERIOD OF SERVICE

- 3.1 Consultant shall perform the Services in a diligent manner and in accordance with the time line and schedule set forth in Exhibit "A." Time is expressly made "of the essence" in connection with Consultant's provision of Services under this Agreement.

ARTICLE 4 - PAYMENTS TO THE CONSULTANT

- 4.1 The compensation to Consultant for the performance of the Services shall not exceed Twenty Three Thousand (\$23,000) Dollars.
- 4.2 Consultant shall bill City within ten days following the close of each month by submitting an invoice indicating the Services performed, who performed the Services, and any reimbursable costs to which Consultant may be entitled, including backup documentation. Payments by City to Consultant shall be made within 30 days after City's receipt and approval of Consultant's invoice, by warrant payable to Consultant.
- 4.3 All notices shall be given in writing and may be given by personal delivery or by mail. Notices sent by mail shall be addressed as follows:

City
John Davidson, City Manager
City of Redlands
PO Box 3005
Redlands, CA 92373

Consultant
Marc Futterman, President
Futterman and Associates, Inc.
714 W. Olympic Blvd., Suite 701
Los Angeles, CA 90015

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

ARTICLE 5 - INSURANCE AND INDEMNIFICATION

- 5.1 Consultant shall maintain worker's compensation insurance and, in addition, shall maintain insurance to protect City from claims for damage due to bodily injury, personal injury and death, and claims for injury to, or destruction of, property while performing the Services required by this Agreement. Such public liability and property damage insurance shall be in a minimum combined single limit of \$1,000,000, and \$2,000,000 in the aggregate. Consultant shall maintain automobile liability insurance, and, in addition, shall maintain insurance to protect City from claims for damage due to bodily injury, personal injury and death, and claims for injury to or destruction of tangible property while performing the Services required by this Agreement. Automobile liability shall be in a minimum \$500,000 blanket, and \$50,000 per occurrence. City shall be named as an additional insured under all policies for public liability, property damage and comprehensive automobile liability and professional liability insurance, and such insurance shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City. Consultant shall provide City's Finance Director with certificates of insurance evidencing the insurance coverage required by this Agreement prior to commencing the Services. No insurance required under this paragraph shall be canceled or modified during the term of this Agreement except upon thirty (30) days prior written notice to City.
- 5.2 Consultant shall indemnify, hold harmless and defend City and its elected officials, officers, agents and employees from and against all claims, loss, damage, charges or expense, to which it or any of them may be put or subjected to the extent that they arise out of, or result from, any willful or negligent act or actions, omission or failure to act on the part of Consultant, its contractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose negligent acts or omissions any of them maybe liable in the performance of the Services required by this Agreement.

ARTICLE 6 - GENERAL CONSIDERATIONS

- 6.1 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.
- 6.2 Consultant shall not assign any of the Services required by this Agreement, except with the prior written approval of City and in strict compliance with the terms and conditions of this Agreement.
- 6.3 Consultant's key personnel for the Project shall be Marc Futterman. Consultant agrees that Mr. Futterman shall not be replaced without the prior consent of City.
- 6.4 All documents, records, drawings, designs, shall be prepared for the City in "hard" and

“digitized” versions, and all such documents and other electronic data files and databases developed by Consultant pursuant to this Agreement shall become the property of City and shall be delivered to City upon completion of the Services, or sooner upon the request of City. Any reuse of such documents for other projects and any use of incomplete documents will be at City’s sole risk.

- 6.5 Consultant is for all purposes an independent contractor. All personnel employed or retained 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. Consultant shall supply all tools and instrumentalities required by it to perform the consulting Services described in this Agreement.
- 6.6 Nothing in this Agreement shall give Consultant authority with respect to any City decision beyond the consulting Services described herein.
- 6.7 Unless earlier terminated, as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City.
- 6.8 This Agreement may be terminated by City, without cause, by providing five (5) days prior written notice to Consultant delivered by certified mail, return receipt requested.
- 6.9 Upon receipt of a termination notice, Consultant shall (1) promptly discontinue all services affected, and (2) 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.
- 6.10 Consultant shall maintain books and accounts of all payroll costs and all expenses associated with its performance of the Services. Such books shall be available at all reasonable times for examination by City at the office of Consultant.
- 6.11 This Agreement, including the exhibits incorporated herein by reference, represents the entire agreement and understanding between the parties as to the subject matter described herein, and any prior negotiations, proposals or oral agreements are superseded by this Agreement. Any amendment to this Agreement shall be in writing, approved by City Council of City and signed by City and Consultant.
- 6.12 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

City of Redlands
("City")

By:

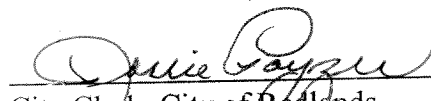

KARL N. (KASEY) HAWS
Mayor

Futterman and Associates, Inc.
("Consultant")

By:


MARC FUTTERMAN
President

ATTEST:


City Clerk, City of Redlands

DETAILED DESCRIPTION OF SERVICES

EXHIBIT "A"

Consultant shall assist City (1) to establish a vision for a portion of downtown generally bounded by Interstate 10 to the north, Texas Street to the west, Church Street to the east, and Olive and Citrus Avenues to the south; (2) establish an urban design concept that expresses this vision through principles and guidelines in order to link together the various parts of the downtown; and, 3) within this urban design framework determine a site for locating the proposed hotel project that is synergistic with the expansion of the Krikorian cinema complex and other time sensitive activities in the downtown.

Pre-Workshop Activities

A. Obtain from City all existing City documentation, development information and plans, photographs, and computer aided design (CAD) geographic information systems, and aerial photographic information as set forth in Section 2.2.

B. Consultant shall review all materials described in paragraph "A" above.

C. Consultant shall format base drawings for use in workshop and post workshop activities. Formatting activities in this task are limited to setting up computer aided design (CAD) files, formatting the typical sheet including establishing the sheet size and layout, and title block.

D. Consultant shall work with City to develop a detailed pre- and post-workshop schedule and workshop agenda. Due to the time sensitive nature of the Project, the workshop shall occur on Friday, March 1 and Saturday, March 2, 2002, unless otherwise agreed upon in writing by City and Consultant.

E. Consultant shall prepare and direct one (1) eight-hour work day in Redlands in advance of the workshop, during which several focus meetings will be scheduled with participants, as mutually determined between City and Consultant. Participants may include elected officials, City commissioners, stakeholders (e.g. property owners, business owners, developers), transit services providers (e.g., Metrolink, Omnitrans) and City staff, among others. City will be responsible for scheduling meetings. Consultant shall prepare agendas and minutes for each focus meeting. Consultant shall follow up with participants, to obtain requested materials or clarify participant priorities, as needed.

F. Consultant and City shall mutually develop the preliminary goals and objectives statement, and statement of intended products. The purpose of these statements will be to guide City's negotiations with third parties with regard to real estate development in the downtown area. These preliminary statements will be used internally by City and Consultant to organize the work

day focus meetings.

G. After the work day focus meetings, but prior to the workshop described above, Consultant shall revise the goals and objectives and intended products statements as may be needed and mutually agreed upon between City and Consultant.

H. In advance of the workshop, Consultant shall prepare the following:

- Site reconnaissance photography.
- Urban design analysis addressing such issues as land use; urban fabric; pedestrian and vehicular circulation; regulatory framework; streetscape, landscape, and open space; transit; and key features, among others.
- Community slide show to set the stage for the workshop.
- Comparable of urban hotel projects.

I. Consultant shall confer with City in City's preparation of workshop logistics.

Products: Review of information provided by City; format base drawings; prepare goals/objectives and intended products statement; prepare agenda, attend, and prepare minutes for work day focus meetings; prepare workshop materials; discuss workshop logistics with City.

Workshop Activities

A. Friday Morning: Consultant shall assist City in setting up the items of professional practice at the workshop site.

B. Friday Afternoon and Evening: Consultant shall tour the project area with participants and attend a working dinner, presentations, and discussions.

C. Saturday Morning and Afternoon: Consultant shall work at the workshop to achieve the intended goals/objectives and products.

Products: Leadership at the workshop to achieve workshop goals/objectives and intended products. Consultant shall have no less than four (4) persons from its team participate in the Saturday portion of the workshop and no less than two (2) persons participate in the Friday portion.

Post-Workshop Activities

A. Consultant shall prepare workshop documentation in the form of a workbook. The workbook shall include selected relevant materials produced prior to and during the workshop and subsequent Consultant recommendations. Consultant recommendations shall address the goals/objectives and intended products. Products may include any of the following which

Consultant and City mutually agree best communicates the Consultant's recommendations:

- Concept diagram
- Urban design diagram
- Land use concept
- Traffic, parking and transit concept
- Streetscape concept, pedestrian circulation and open space concept
- Illustrative plan
- Sketches
- Note: graphics may include detailed concepts and/or illustrations for the recommended hotel site.

B. Consultant shall submit the draft workbook for City review.

C. Consultant shall prepare the final workshop based on City revisions.

D. Consultant shall attend a maximum of two (2) meetings such as with City staff and/or City Council to present the results of workshop.

Product: Draft workbook, Final Workbook and attendance at a maximum of two (2) meetings.