

AGREEMENT TO FURNISH CONSULTING SERVICES  
FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE DEVELOPMENT AND  
CONSTRUCTION OF THE BOYS AND GIRLS CLUB OF REDLANDS BUILDING

This Agreement is made and entered into this 7<sup>th</sup> day of March, 2006 by and between the City of Redlands, a municipal corporation (hereinafter "City") and Harris and Associates (hereinafter "Consultant").

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 engineering services which are more particularly described in Article 2, incorporated herein by this reference (the "Services") for construction administration.
- 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 similar types of services.

ARTICLE 2 - SERVICES OF CONSULTANT

- 2.1 The specific Services which Consultant shall perform are more particularly described in Exhibit "A" which is attached hereto and incorporated herein by this reference.
- 2.2 Consultant shall comply with all applicable Federal, State and local laws and regulations in the performance of this Agreement including, but not limited to, all applicable Labor Code and prevailing wage laws commencing at Labor Code section 1770 et seq., and non-discrimination laws including the Americans with Disabilities Act and the Fair Employment and Housing Act.
- 2.3 Consultant further understands that if it violates the provisions of the Labor Code relating to prevailing wage, that City may enforce the Labor Code by notice of the withholding of contract payments to Consultant or its subcontractors pursuant to Labor Code sections 1726, 1727 and 1771.6.
- 2.4 Consultant agrees that if it executes an agreement with a subcontractor to perform any of the Services, that Consultant shall comply with Labor Code sections 1775 and 1777.7 by providing the subcontractor with copies of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code. Consultant acknowledges that the statutory provisions for penalties for failure to comply with state wage and hour laws and to pay prevailing wages may be enforced by City pursuant to Labor Code sections 1775 and 1813.

ARTICLE 3 - RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in City's possession that is relevant to the performance of Consultant's Services.
- 3.2 City will make provision for Consultant to enter upon City-owned property to perform the Services.

- 3.3 City designates Ronald C. Mutter, P.E. to act as its representative with respect to the Services to be performed under this Agreement.

#### ARTICLE 4 - PERIOD OF SERVICE

- 4.1 Consultant shall perform the Services in a prompt and diligent manner. The Services shall be commenced on March 7, 2006 and shall be completed with the final acceptance and certificate of occupancy of the building, unless the project is terminated sooner as described in the "Scope of Services."

#### ARTICLE 5 - PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount per each phase of the project as follows:  
The total amount of Phase I shall not exceed \$12,600.00;  
the total amount of Phase II shall not exceed \$27,995.00;  
the total amount of Phase III shall not exceed \$208,375.00;  
per the proposal dated January 26, 2006.
- 5.2 Within ten days following the end of each month Consultant shall submit an invoice to City indicating the portion of the Services performed, who performed the Services, indirect costs, and the detailed cost of all Services including backup documentation. Payments by City to Consultant shall be made within 30 days after receipt and approval of Consultant's invoice, by warrant payable to Consultant.
- 5.3 All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail shall be addressed as follows:

City

Ronald C. Mutter, P.E.  
City of Redlands  
Public Works Department  
PO Box 3005  
Redlands, CA 92373

Consultant

James Guerrero, P.E.  
Project Manager/Vice President  
Harris and Associates  
9445 Fairway View Place  
Rancho Cucamonga, CA 91730

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 whom notices and payments are to be given by giving notice pursuant to this section.

#### ARTICLE 6 - INSURANCE AND INDEMNIFICATION

6.1 Consultant's Insurance to be Primary

All insurance required by this Agreement shall be maintained by Consultant during its performance of the Services and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City. Consultant shall not commence the Services unless and until all required insurance listed below is obtained by Consultant and Certificates of Insurance and endorsements evidencing such insurance are presented to City. All insurance policies shall include a provision prohibiting cancellation, except upon thirty (30) days prior written notice to City.

6.2 Workers' Compensation and Employer's Liability

- A. Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout its performance of the Services in amounts which meet statutory requirements with an insurance carrier acceptable to City.
- B. Consultant expressly waives all rights to subrogation against City, its elected officials and employees for losses arising from work performed by Consultant for City by expressly waiving Consultant's immunity for injuries to Consultant's employees. Consultant agrees that its obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by or in behalf of any employee of Consultant. This waiver is mutually negotiated by the parties. This section shall not apply to any damage resulting from the sole negligence of City, its agents or employees, the obligations provided herein to indemnify, defend and hold harmless are valid and enforceable only to the extent of the negligence of Consultant, its officers, agents and employees.

6.3 Comprehensive General Liability Insurance. Consultant shall secure and maintain in force throughout its performance of the Services 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. Consultant shall obtain an endorsement that City shall be named as an additional insured.

6.4 Professional Liability Insurance. Consultant shall secure and maintain professional liability insurance throughout its performance of the Services in the amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate.

6.5 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 its performance of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. Consultant shall obtain an endorsement that City shall be named as an additional insured.

6.6 Assignment and Insurance Requirements. Consultant is expressly prohibited from assigning any of the Services without the prior written consent of City. In the event of mutual agreement between the parties to sublet or assign a portion of the Services, Consultant shall add the assignee as an additional insured to Consultant's insurance policies and provide City with insurance endorsements prior to any Services being performed by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided in this Agreement.

6.7 Hold Harmless and Indemnification. Consultant shall defend, indemnify and hold harmless City, its elected officials, officers, employees and agents from and against any and all actions, claims, demands, lawsuits, losses and liability for damages to persons or property, including costs and attorney fees, that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of or in connection with Consultant's negligent and/or intentionally wrongful acts or omissions in performing the Services; but excluding such actions, claims, demands, lawsuits and liability for damages to persons or property arising from the sole negligence or intentionally wrongful acts of City, its officers, employees or agents.

## ARTICLE 7 - GENERAL CONSIDERATIONS

- 7.1 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.
- 7.2 Consultant's key personnel for the Project are:  
David Seevers, Project Director  
Jim Guerrero, Project Manager  
Kurt Gray, Construction Manager  
Jeff Wells, Scheduler  
Lachelle Hamilton, Administrative Assistant
- Consultant agrees that these key people shall be made available and assigned to perform the Services and that they shall not be replaced without concurrence from City.
- 7.3 All documents, records, drawings, designs, cost estimates, 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.
- 7.4 Consultant is for all purposes an independent contractor. Consultant shall supply all tools and instrumentalities required to perform the Services described in this Agreement. 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 in behalf of City.
- 7.4 Unless earlier terminated, as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City.
- 7.5 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) of intent to terminate.
- 7.6 If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be made, but no amount shall be allowed for anticipated profit or unperformed Services, and 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.
- 7.7 Upon receipt of a termination notice, Consultant shall immediately discontinue all Services, and 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. Consultant shall be compensated on a pro-rata basis for work completed up until notice of termination.
- 7.8 Consultant shall maintain books and accounts of all payroll costs and expenses incurred in performing the Services. Such books shall be available at all reasonable times for examination by City at the office of Consultant.
- 7.9 This Agreement, including the attachments 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 agreements with regard to the subject matter


hereof between City and Consultant 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.

7.10 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 City and Consultant have signed in confirmation of this Agreement.

City of Redlands

By:   
JON HARRISON  
Mayor

By:   
JAMES GUERRERO  
Project Manager  
Harris and Associates

ATTEST:

  
City Clerk, City of Redlands

## **Exhibit "A"**

### **Scope of Services**

The general scope of work and related task items for this project are indicated below. The project shall be broken down into three phases, each with a separate fee for services, as follows:

Phase I - The Consultant shall review of existing design and construction drawings, specifications and cost estimates. This review shall include an analysis of the existing design and recommendations on any appropriate modifications to the design as necessary, value engineering reviews, revised cost estimates, etc. Calculated cost estimates shall be compared to available funding from all sources and a recommendation made on whether to proceed with the project to Phase II subject to funding availability. The City reserves the right to stop the project at this point and not to continue to Phase II at the City's sole discretion.

Phase II - Upon notice to proceed from the City, the Consultant shall administer the construction bid process including final assembly of plans and specifications, notices and advertising to contractors as required. The City will open the bids through the normal City process. The consultant shall review of all bids and contract documents submitted at the bid opening, and make a recommendation to the City Council through City staff for award of a construction contract to the lowest qualified bidder, subject to funding availability. If the City awards a contract, the Consultant will proceed to Phase III. If no contract is awarded, the project will be terminated at this point and will not proceed to Phase III at the City's sole discretion.

Phase III - Upon notice to proceed from the City, the Consultant shall provide all construction administration and management for the construction of the facility per plans and specifications, including all general contract administration, review of shop drawings and submittals, all inspections, review and processing of monthly payment requests, final inspection for certificate of occupancy, and conformance with all local and Federal guidelines and requirements for the administration of Federally funded project, including employee interviews.