

AGREEMENT TO FURNISH ENGINEERING SERVICES TO PREPARE
STREET IMPROVEMENT PLANS FOR LUGONIA AVENUE NEIGHBORHOOD
INITIATIVE PROGRAM

This Agreement is made and entered into this 18th day of March, 2003, by and between the City of Redlands, a municipal corporation ("City") and Hicks and Hartwick, Inc., ("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 and Consultant hereby accepts the engagement to perform engineering consulting services (the "Services") to prepare street improvement plans per the City of Redlands standards for the widening of Lugonia Avenue between Church Street and Orange Street (the "Project"), in the City of Redlands, California.
- 1.2 All work performed by Consultant under this Agreement shall be done in a professional manner, and Consultant represents that it is skilled and has the professional expertise necessary to provide high quality Services to City for the Project at the level of competency presently maintained by other practicing professional consultants in the industry providing similar types of services.

ARTICLE 2 - RESPONSIBILITIES OF CONSULTANT

- 2.1 The specific services which Consultant shall perform are more particularly described in Exhibit "A," entitled "Engineering Services for preparing Street Improvement Plans for Lugonia Avenue Neighborhood Initiative Program" which is attached hereto and incorporated herein by this reference.
- 2.2 Consultant shall comply with all applicable Federal, State and local rules, laws and regulations in the performance of this Agreement including but not limited to all applicable Labor Code and prevailing wage laws.

ARTICLE 3 - RESPONSIBILITIES OF CITY

- 3.1 City shall place at disposal of Consultant all available information in its possession pertinent to the Project.
- 3.2 City will provide access to and make all provisions for Consultant to enter upon City-owned property or right-of-way as required by Consultant to perform the Services pursuant to this Agreement.

- 3.3 City will designate in writing a person to act as City's representative with respect to the Services to be performed under this Agreement, and such person shall have complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the Services covered by this Agreement.

ARTICLE 4 - PERIOD OF SERVICE

- 4.1 Consultant shall perform the Services in a prompt and diligent manner in accordance with the schedule attached hereto and incorporated herein by reference as Exhibit "B," entitled, "Project Schedule for preparing Street Improvement Plans for Lugonia Avenue Neighborhood Initiative Program."

ARTICLE 5 - PAYMENT AND NOTICE

- 5.1 For the performance of the Services, City will pay Consultant the sum of \$12,000.00.
- 5.2 Payments by City to Consultant shall be made within 30 days after receipt and approval of Consultant's hereinabove 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 should be addressed as follows:

City: Bill Hemsley, Civil Engineer
City of Redlands
Public Works Department
PO Box 3005
Redlands, CA 92373

Consultant: James W. Hicks
Hicks and Hartwick, Inc.
37 E. Olive Avenue, Suite C
Redlands, CA 92373

When so addressed, such notices shall be deemed given upon deposit in the United States mail; in all other instances, notices, bills and payments 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, bills and payments are to be given by giving notice pursuant to this paragraph.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

6.1 Consultant's Insurance to be Primary

All insurance required by this Agreement is to be maintained by Consultant for the duration of this Project and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City. Consultant shall provide City with Certificates of Insurance and endorsements evidencing such insurance prior to commencement of work.

6.2 Workers' Compensation and Employer's Liability

- A. Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of this Agreement in an amount which meets the statutory requirement with an insurance carrier acceptable to City. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. The insurance policy shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to City. Certificates of Insurance shall be delivered to City prior to commencement of work.
- B. Consultant expressly waives all rights to subrogation against City, its elected officials, officers and employees for losses arising from work performed by Consultant for City by expressly waiving Consultant's immunity for injuries to Consultant's employees and agrees that the obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by or on behalf of any employee of Consultant. This waiver is mutually negotiated by the parties. This shall not apply to any damage resulting from the sole negligence of City, its agents and employees. To the extent any of the damages referenced herein were caused by or resulted from the concurrent 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 Hold Harmless and Indemnification. Consultant shall indemnify, hold harmless and defend City and its elected officials, agents, and employees 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 any act, omission or failure of Consultant, its officer, agents and employees in performing the Services required by this Agreement.

City agrees to and shall defend, protect, indemnify and hold harmless Consultant from and against any and all claims, losses, expenses, damages, demands, judgments, causes of action, suits, and liability in tort, contract, or any other basis and of every other kind and character whatsoever, to the extent that claims are caused by, result from or arise out of

City's sole negligence, gross negligence, intentional misconduct or strict liability.

- 6.4 Assignment. Consultant is expressly prohibited from subletting or assigning any of the Services described in this Agreement without the express written consent of City. In the event of mutual agreement between parties to sublet a portion of the Services, Consultant shall add the subcontractor as an additional insured and provide City with the insurance endorsements prior to any work being performed by the subcontractor. Assignment does not include printing or other customary reimbursable expenses that may be provided in this Agreement.
- 6.5 Comprehensive General Liability Insurance. Consultant shall secure and maintain in force throughout the duration of the 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 and the insurance policy shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to City. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. Certificates of insurance and endorsements shall be delivered to City prior to commencement of work.
- 6.6 Professional Liability Insurance. Consultant shall secure and maintain professional liability insurance throughout the duration of this Agreement in the amount of one million dollars (\$1,000,000) per claim made. Consultant shall maintain professional liability insurance twelve months (12) beyond the current policy expiration date of September 29, 2003. Certificate of liability insurance and endorsement shall be delivered to City prior to commencement of work.
- 6.7 Business Auto Liability Insurance. Consultant shall have business auto liability coverage, with minimum limits of one million (\$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 on the project, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and a certificate of insurance shall be delivered to City prior to commencement of work.

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 recover its reasonable attorneys' fees.
- 7.2 Consultant shall not sublet or 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.

- 7.3 The Consultant's key personnel proposed for this project is as follows:

James W. Hicks
Anthony Diaz

Consultant agrees that these key personnel will be made available and assigned to City's Project, and that they will not be replaced without concurrence from City.

- 7.4 All documents, records, drawings, electronic data files and data base, photographic prints and negatives, designs and specifications, cost estimates, and other Project documents developed by Consultant pursuant to this Agreement and any copyright interest in above described documents shall become the property of City and shall be delivered to City upon completion of Services.
- 7.5 Consultant and City agree that Consultant is, for all purposes under this Agreement, an independent contractor with respect to the Services provided pursuant to this Agreement and not an employee of City. All qualified personnel provided by Consultant pursuant to the provisions of this Agreement are to be employed by Consultant 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. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties.
- 7.6 Unless earlier terminated as stipulated below, this Agreement shall terminate upon completion and acceptance by City of the Services.
- 7.7 Upon receipt of a termination notice, Consultant shall (1) promptly discontinue all services and (2) deliver or otherwise make available to City, copies 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 any work completed up until notice of termination.
- 7.8 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, proposals or oral agreements are superseded by this Agreement. Any amendment to this Agreement shall be in writing and approved by the City Council of City and signed by City and Consultant.
- 7.9 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 parties have signed in confirmation of this Agreement.

CITY OF REDLANDS

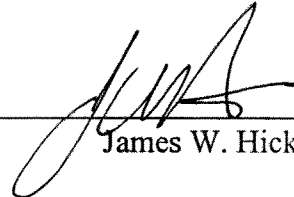
ATTEST:

By 
Mayor


City Clerk

Date March 18, 2003

HICKS AND HARTWICK, INC.

By 
James W. Hicks

Date _____

**ENGINEERING SERVICES
FOR**

**PREPARING STREET IMPROVEMENT PLANS FOR LUGONIA AVENUE
NEIGHBORHOOD INITIATIVE PROGRAM**

HICKS & HARTWICK, INC.



February 5, 2003

City of Redlands
Bill Hemsley
P.O. Box 3005
Redlands, CA 92373

RE: Lugonia Avenue Street Improvement Plan

Hicks & Hartwick, Inc. proposes the following scope of work for Lugonia Avenue.

SCOPE OF WORK

1. Crosssection Lugonia Avenue – Orange to Church
2. Prepare street improvement plan
3. Prepare map for additional dedications
4. Prepare legal descriptions for additional dedications

EXCLUSIONS TO SCOPE OF WORK

1. Reimbursable costs per Appendix "A".
2. Title Company fees.
3. Bid document package
4. Soils Report for street structural sections
5. City checking fees
6. Caltrans plans and applications

FEES AND TERMS

Hicks & Hartwick, Inc. proposes to perform the above scope of work for a fee of \$12,000.00 in accordance with the terms and conditions in Appendix "A" attached hereto and incorporated and made part of this agreement.

Thank you for the opportunity of making this proposal. To accept this proposal, please sign below and return one copy for our files.

Sincerely,
Hicks & Hartwick, Inc.

Harold R. Hartwick
LS 2851

<u>ACCEPTED:</u>	
By:	_____
Title:	_____
Date:	_____

APPENDIX "A"**"Fine Print"**

Appended to and part of Agreement for Professional Services between Hicks & Hartwick, Inc. and City of Redlands, dated February 4, 2003.

FEES FOR PROFESSIONAL SERVICES:

Services outlined under Extra Services shall be provided on a time basis computed as follows:

1. Principal.....	\$125.00
2. Engineer.....	\$85.00
3. Designers.....	\$60.00 to \$70.00
4. Drafters.....	\$55.00
5. Two man survey crew.....	\$120.00
6. Three man survey crew.....	\$140.00
7. Secretary.....	\$50.00

REIMBURSABLE COSTS:

The following costs shall be reimbursed at cost (plus 10%) and are not included in the Fees for Professional Services:

1. Costs of copies of drawings, specifications, reports, and cost estimates; xerography and photographic reproduction of drawings and other documents furnished or prepared in connection with the work of this contract.
2. Cost of commercial carrier and public transportation, lodging, car rental and parking subsistence and out-of-pocket expenses. Private automobile travel at \$.35 per mile.
3. Cost of postage and shipping expenses other than first class mail.
4. Long distance telephone and telegraph charges.
5. Fees for additional special consultants retained with the approval of Client.

EXTRA SERVICES:

1. Extra Services shall be provided on a time basis computed as listed above.
2. Extra Services are any item not listed in the scope of work of the proposal, including revisions and changes to the drawings after their approval by the designated responsible person.
3. Any changes requested by the client will be verified with a change order form completed by Hicks and Hartwick, Inc.; no revisions will be made without authorization from the client.

INVOICES AND PROGRESS PAYMENT:

1. All work will be progress invoiced and billed on a monthly basis.
2. Reimbursable Costs shall be billed with each invoice.

ACCOUNTS:

Accounts are payable net 30 days from the date of invoice at HICKS & HARTWICK, INC.'s office in Redlands, CA. (A service charge of 1.5 percent of invoice amount per month or portion of month will be applied to all accounts not paid within 30 days of invoice date.

RIGHT TO SUSPEND SERVICES:

HICKS & HARTWICK, INC. shall have the right to suspend services on this project if (a) the parties have not executed a written contract for HICKS & HARTWICK, INC.'s services and unpaid invoices have been rendered with an aggregate balance exceeding \$1,000.00; or (b) unpaid project invoices over 60 days old exceed \$1,000.00 in the aggregate.

AUTHORIZATION TO PROCEED:

If HICKS & HARTWICK, INC. is authorized to commence and/or continue providing its services on the project, either orally or in writing, prior to execution of a written contract, such authorization shall be deemed an acceptance of this proposal, and all such services shall be provided and compensated for in accordance with the terms and conditions contained herein as though this proposal were fully executed by the Client.

OWNERSHIP OF DOCUMENTS

Original drawings and other documents, as instruments of service, are the property of HICKS & HARTWICK, INC. None of them are to be used on other projects except by written agreement of HICKS & HARTWICK, INC. One reproducible set of final documents will be furnished to Client upon request at cost plus 10%.

FORCE MAJEURE

HICKS & HARTWICK, INC. shall not be responsible for any delay in the performance or progress of the work, or liable for any costs or damages sustained by Client resulting from such delay, caused by any act or neglect of the Client or Client's representatives, or by any third person acting as the agent, servant or employee of Client, or by changes ordered in the work, or as a result of compliance with any order or request of any federal, state or municipal government authority or any person purporting to act therefor, or by acts of declared or undeclared war or by public disorder, riot or civil commotion, or by any other cause beyond the control and without the fault or negligence of HICKS & HARTWICK, INC. In the event of any delay, HICKS & HARTWICK, INC. shall proceed with due diligence to alleviate such delay and continue performance of all obligations under this Agreement. The time during which HICKS & HARTWICK, INC. is delayed in the performance of the work, shall be added to the time for completion of its services to the extent such time is specified in this Agreement. All additional costs or damages resulting from any delay in the performance or progress of the work caused by any act or neglect of Client, its agents or representatives, shall be borne entirely by the Client. Should work progress be halted through no fault of HICKS & HARTWICK, INC., HICKS & HARTWICK, INC. shall be paid for all services rendered to date.

HAZARDOUS WASTE:

Client shall indemnify and hold harmless HICKS & HARTWICK, INC. and its consultants, agents and employees from and against all claims, damages, losses, and expenses, direct and indirect, or consequential damages, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the performance of the work by HICKS & HARTWICK, INC., or claims against HICKS & HARTWICK, INC. arising from the work of others, related to hazardous waste. The above indemnification provision extends to claims against HICKS & HARTWICK, INC. which arise out of, are related to, or are based upon the dispersal, discharge, escape, release or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic-chemicals, liquids, gasses, or any other material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface soil, water or water-courses, objects, or any tangible or intangible matter, whether sudden or not.

ARBITRATION:

Any controversy or claim arising out of or relating to the formation, interpretation, application, enforceability, or breach of this Agreement, including disputes as to which persons or entities may be liable hereunder, shall be settled by arbitration at San Bernardino, CA. in accordance with the rules of the American Arbitration Association, and judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The prevailing party in any such arbitration shall be entitled to recover arbitration costs and reasonable attorney's fees, as determined by the arbitrator(s), in addition to any other relief available.

LAW:

This Agreement shall be interpreted and enforced according to the laws of the State of California.

SUCCESSORS AND ASSIGNS:

It is mutually understood and agreed that this Agreement shall be binding upon Client and its successors and assigns and upon HICKS & HARTWICK, INC., its successors and assigns. Neither party shall assign nor transfer its interest in this Agreement or any part thereof without the written consent of the other party.

LIABILITY INSURANCE

HICKS & HARTWICK, INC. maintains professional liability insurance for their protection. HICKS & HARTWICK, INC. shall not take any action called for by this agreement or arising from the course of this project which shall cause loss of HICKS & HARTWICK, INC.'s professional liability coverage for this project or any aspect of it.

LIMITATION OF LIABILITY

In Recognition of the relative risks and benefits of the project to both the Client and HICKS & HARTWICK, INC. and to the maximum extent permitted by law, the Client agrees to limit HICKS & HARTWICK, INC.'s liability for the Client's damages to the sum of \$250,000.00 or the HICKS & HARTWICK, INC.'s fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

TERMINATION:

It is understood that these services may be terminated upon 10 days written notice for good reason by either party. In this event, HICKS & HARTWICK, INC. shall be compensated for all work performed prior to date of termination at the rates set forth above.

REVOCATION:

This proposal shall be considered revoked if acceptance is not received within (30) days of the date hereof.

EXHIBIT B

PROJECT SCHEDULE FOR PREPARING STREET IMPROVEMENT PLANS FOR LUGONIA AVENUE NEIGHBORHOOD INITIATIVE PROGRAM

The project schedule is as follows:

Notice to Proceed:	March 18, 2003
90% Submittal:	April 18, 2003
100% Submittal:	May 18, 2003