

AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of open space management and consulting services ("Agreement") is made and entered in this 4th day of September, 2013 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and KTU&A ("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 provide open space management and consulting services for City (the "Services").
- 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.

ARTICLE 2 – SERVICES OF CONSULTANT

- 2.1 The Services that Consultant shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by reference.
- 2.2 Consultant shall comply with applicable federal, state and local laws and regulations in the performance of this Agreement including, but not limited to, State prevailing wage laws.

ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 3.2 City designates Chris Boatman, Sr. Project Manager, as City's representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to performance of the Services.

ARTICLE 4 – PERFORMANCE OF SERVICES

- 4.1 Consultant shall perform and complete the Services in a prompt and diligent manner in accordance with the schedule set forth in Exhibit "B," entitled "Project Schedule," which is attached hereto and incorporated herein by reference. The Services shall commence immediately upon the Effective Date of this Agreement.

- 4.2 If Consultant's Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with City Council adopted policy for the same. It shall be the obligation of Consultant to obtain a copy of such policy from City staff.

ARTICLE 5 – PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of Fourteen Thousand, Nine Hundred Forty Five Dollars (\$14,945). City shall pay Consultant on a time and materials basis up to the not to exceed amount, in accordance with Exhibit "C" entitled "Project Costs," and based upon the hourly rates shown in Exhibit "D," entitled "Rate Schedule." Both Exhibits "C" and "D" are attached hereto and incorporated herein by this reference.
- 5.2 Consultant shall submit monthly invoices to City describing the Services performed during the preceding month. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed and the number of hours spent and by whom, and a description of reimbursable expenses related to the project. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 5.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City

Fred Cardenas, Director
Quality of Life Department
City of Redlands
35 Cajon Street, Suite 222
P.O. Box 3005 (mailing)
Redlands, CA 92373

Consultant

KTU&A
3916 Normal Street
San Diego, CA 92103

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 5.3.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 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 the 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. Insurance policies shall include a provision

prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.

- 6.2 Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance in accordance with the laws of the State of California, with an insurance carrier acceptable to City as described in Exhibit "E," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference.
- 6.3 Consultant shall secure and maintain 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 such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 6.4 Consultant shall secure and maintain business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit 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. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City.
- 6.5 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 attorneys' fees, arising from injury or death to persons or damage to property occasioned by and negligent act, omission or failure to act by Consultant, its officers, employees and agents in performing the Services.

ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Consultant covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Consultant's Services. Consultant further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 7.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:
 - A. Does not make or participate in:

- (i) the making or any City governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;
- (ii) the issuance, denial, suspension or revocation of City permits, licenses, applications, certifications, approvals, orders or similar authorization or entitlements;
- (iii) authoring City to enter into, modify or renew a contract;
- (iv) granting City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
- (v) granting City approval to a plan, design, report, study or similar item;
- (vi) adopting, or granting City approval of policies, standards or guidelines for City or for any subdivision thereof.

B. Does not serve in a staff capacity with City and in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of interest Code under Government Code section 87302.

- 7.3 In the event City officially determines that Consultant must disclose its financial interests, Consultant shall complete and file a Fair Political Practices Commission Form 700, Statement of Economic Interests, with the City Clerk's office pursuant to the written instructions provided by the City Clerk.

ARTICLE 8 – GENERAL CONSIDERATIONS

- 8.1 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 the use of in-house counsel by a Party.
- 8.2 Consultant shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms, and conditions of this Agreement.
- 8.3 Project related documents, records, drawings, designs, cost estimates, electronic data files, databases and any other documents developed by Consultant in connection with its performance of the Services, 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 earlier request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.
- 8.4 Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or Consultant's employees, except as herein set forth. Consultant shall supply all necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Consultant are for its account only, and in no event shall Consultant or personnel retained by it be deemed to have been

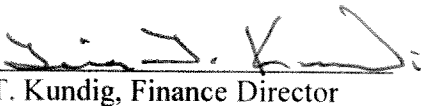
employed by City or engaged by City for the account of, or on behalf of City. Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind City to any obligation.

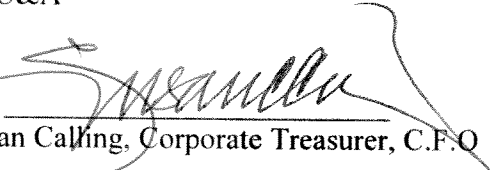
- 8.5 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City; provided, however this Agreement may be terminated by City, in its sole discretion, by providing five (5) days prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate. 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. Upon receipt of a termination notice, Consultant shall immediately discontinue its provision of the Services and, within five (5) 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 project related 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 Services completed up to the date of termination.
- 8.6 Consultant shall maintain books, ledgers, invoices, accounts and other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Consultant.
- 8.7 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. Except as otherwise provided for herein, an amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.
- 8.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.9 If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate the remaining sentences, clauses, paragraphs or sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.

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

CITY OF REDLANDS

KTU&A

By: 
Tina T. Kundig, Finance Director

By: 
Susan Calling, Corporate Treasurer, C.F.O.

Attest:


Sam Irwin, City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

The City of Redlands (City) has purchased properties to serve as passive and active open space opportunities. The City has entered into multiple agreements with the Redlands Conservancy (Conservancy) authorizing the Conservancy to assist in the management and maintenance of its properties. In total, these agreements include fifteen (15) properties totaling two hundred twenty-seven (227) acres, and all designated city trails.

The City will consolidate these agreements and include additional properties. The City is soliciting proposals to assist the City in determining the appropriate management and maintenance of its properties designated for open space purposes. To this end, the City is requesting the preparation of a "management and maintenance plan." The following list provides a scope of work for the preparation of the "management and maintenance plan."

1. Review the existing Conservancy agreements and conservation easement deeds;
2. Attend mandatory site visits as required.
3. Review the various property management and maintenance tasks, standards and constraints that are contained within each such agreement and consolidate those obligations, standards and place them into one "management and maintenance plan" for all properties designated as open space for the City.
4. The "management and maintenance plan" should also be based upon the site characteristics of the subject properties and its improvements.

The "management and maintenance plan" should, at a minimum, include the following items:

1. Specifically identify and delineate management and maintenance provisions for City owned open space property and trails, using industry standards.
2. Identify and delineate Conservancy obligations and City obligations
3. Include procedures for conducting maintenance of trails and open space including approval procedure, permitting, etc.
4. Include procedures for requesting and approving improvements to properties such as trails, fences, and structures for conservation for educational purposes. Said procedures should delineate the responsibilities of both the City and the Conservancy in order to expedite processing.
5. Include provisions for permitted maintenance and procedures for requesting and approving other maintenance that may be required.
6. Address Conservancy's method of "patrol" for trails and property for the purpose of monitoring and reporting damage or unauthorized activity.

EXHIBIT “B”

PROJECT SCHEDULE

Project Schedule (43 days)

Consultant Services shall be performed in accordance with the following timeframe, which commences on the Effective Date of this Agreement:

1. Consultant review of existing documents and prepare draft plan for City review: **Ten (10) days**
2. City staff review draft plan and provide written comments to Consultant: **Fourteen (14) days**
3. Incorporate staff comments into plan: **Two (2) days**
4. Redlands Conservancy review and provide comments on revised plan: **Fourteen (14) days**
5. Consultant revise draft plan as needed and deliver final three (3) copies of draft to City: **Two (2) days**
6. Attend one (1) City Council meeting: **One (1) day**

EXHIBIT "C"
PROJECT COSTS

The total compensation for Consultant's performance of the Services shall not exceed the amount of Fourteen Thousand, Nine Hundred Forty Five Dollars (\$14,945).

EXHIBIT "D"
RATE SCHEDULE

		KTU+A			Coastal SAGE	TOTAL
		Mike Singleton	John Holloway	Jacob Leon	Joy Lyndes	
		\$165.00	\$135.00	\$95.00	\$150.00	
Task	Description					
1	Team Review of Existing Agreements	1	8		16	\$3,845.00
2	Prepare Draft Management and Maintenance Plan		8	10	20	\$5,030.00
3	City Staff Review of Draft Plan		1		2	\$435.00
4	Incorporate Staff Comments into Pre-Final Plan		1	3	8	\$1,620.00
5	Conservancy Review of Pre-Final Plan		1		2	\$435.00
6	Incorporate Conservancy Comments into Pre-Final Plan		1	2	2	\$625.00
7	Present Plan at City Council Meeting	1	6	3	6	\$2,160.00
8	Finalize Plan		1	3	2	\$720.00
	Reimbursables (Mileage)					\$275.00
Hours Summary		2	27	21	58	
Consultant Subtotal		\$330.00	\$3,845.00	\$1,995.00	\$8,700.00	\$14,945.00
						\$14,945.00

EXHIBIT 'E'
WORKERS' COMPENSATION INSURANCE CERTIFICATION

Every employer except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurer duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code §1861).

KTU&A

By: _____

Susan Calling, Corporate Treasurer, C.F.O

9/4/2013

Date: _____