

AGREEMENT TO FURNISH CONSULTING SERVICES
FOR BIOLOGICAL MONITORING OF THE REDLANDS SPORTS PARK PROJECT
CONSERVATION AREA

This agreement for consulting services is made and entered into this 6th day of June, 2006 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and Davenport Biological Services ("Consultant") who 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 baseline trapping of the San Bernardino Kangaroo Rat per the requirements of US Fish and Wildlife Service Biological Opinion for the Redlands Sports Park Project (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 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, the Americans with Disabilities Act, the Fair Employment and Housing Act and prevailing wage laws commencing at Labor Code section 1770 *et seq.* and non-discrimination laws including the American's with Disabilities Act. Pursuant to Labor Code section 1773.2, copies of the prevailing rates of per diem wages as determined by the Director of the California Department of Industrial Relations for each craft, classification, or type of worker associated with the performance of the Services are on file at the City of Redlands office of the Public Works Department, Civic Center, 35 Cajon Street, Suite 222 (P.O. Box 3005 mailing), Redlands, California 92373.
- 2.3 Consultant acknowledges that if it violates the Labor Code provisions relating to prevailing wage, that City may enforce those provisions by issuing a notice of the withholding of contract payments to Consultant pursuant to Labor Code section 1771.6.

- 2.4 If Consultant executes an agreement with a subcontractor to perform any of the Services, Consultant shall comply with Labor Code sections 1775 and 1777.7, and shall provide the subcontractor with copies of the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815. Consultant acknowledges that the statutory provisions imposing penalties for the 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.
- 2.5 Consultant and its subcontractors shall comply with the provisions of Labor Code section 1776 regarding payroll records' maintenance, certifications, retention and inspection.
- 2.6 Consultant acknowledges that eight (8) hours constitutes a legal day's work pursuant to Labor Code section 1810.
- 2.7 If applicable, Consultant shall comply with the provisions of Labor Code section 1777.5 relating to apprenticeships, and Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815.

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 will make reasonable provision for Consultant to enter upon City-owned property, as required by Consultant, to perform the Services.
- 3.3 City designates Bill Hemsley 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 the Services in a prompt and diligent manner and in accordance with the schedule set forth in Exhibit "B," entitled "Project Schedule."
- 4.2 At any time during the term of this Agreement, City may request that Consultant perform Extra Services. As used herein, "Extra Services" means any work which is determined necessary by City for the proper completion of the project or work for which the Services are being performed, but which the Parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Provided the Extra Work does not exceed twenty percent (20%) of the compensation to be paid by City to Consultant for the Services, such Extra Work may be agreed to by the Parties, by written amendment to this Agreement,

executed by City's City Manager. Consultant shall not perform, nor be compensated for, Extra Work without such written authorization from City.

ARTICLE 5 - PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of Forty Thousand Six Hundred Seventy-one Dollars and Seventy-six Cents (\$40,671.76). City shall pay Consultant on a time and materials basis up to the not to exceed amount, in accordance with Exhibit "A".
- 5.2 Consultant shall submit monthly invoices to City describing the work performed during the preceding month. 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. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultants's invoice, provided the Services reflected in the invoice were performed to the reasonable satisfaction of City in accordance with the terms of this Agreement, provided that the number of hours of Services set forth in the invoice reflect the amount of time ordinarily expended for such Services by members of the profession currently practicing in the same locality under similar conditions, and provided further that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of the Agreement.
- 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

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

Consultant

Arthur Davenport
Davenport Biological Services
PO Box 1692
Barstow, CA 92312

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 5.3.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

- 6.1 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. All insurance policies shall include a provision prohibiting cancellation of the policy 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 the duration of this Agreement in accordance with the laws of the State of California, with an insurance carrier acceptable to City.
- 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 waiver shall not apply to any damage resulting from the sole negligence of City, its employees or agents. 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 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 Consultant's and its officers', employees' and agents' sole negligent acts or omissions in performing the Services.
- 6.4 Assignment. Consultant is expressly prohibited from assigning any of the Services without the express prior written consent of City. In the event of agreement by the Parties to assign a portion of the Services, Consultant shall add the assignee as an additional insured and provide City with the insurance endorsements required by this Agreement prior to the performance of any Services by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in this Agreement.
- 6.5 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.

- 6.6 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.
- 6.7 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 7 - CONFLICTS OF INTEREST

- 7.1 Consultant covenants and represents that it does not have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the geographical area covered by this Agreement or any other source of income, interest in real property or investment which 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 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 permits, licenses, applications, certifications, approvals, orders or similar authorizations or entitlements;
 - (iii) authorizing 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 all 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 by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file the subject Form 700 with the City Clerk's office pursuant to the written instructions provided by the Office of the City Clerk.

ARTICLE 8 - GENERAL CONSIDERATIONS

- 8.1 **Attorneys' Fees.** 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 of the Parties at rates prevailing in San Bernardino County, California.
- 8.2 **Prohibition Against Assignment.** 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 **Documents and Records.** All documents, records, drawings, designs, cost estimates, electronic data files, databases and 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 request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.
- 8.4 **Independent Contractor Status.** Consultant is for all purposes under this Agreement an independent contractor and should perform the Services as an independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. 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. 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 Termination.

A. Unless earlier terminated, as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City.

B. This Agreement may be terminated by City, in its sole discretion, by providing five (5) business days prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate.

C. 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.

D. Upon receipt of a termination notice, Consultant shall immediately discontinue its provisions 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 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 Services completed up to the date of termination.

8.6 Books and Records. Consultant shall maintain any and all books, ledgers, invoices, accounts and all 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 all reasonable times for examination by City at the office of Consultant.

8.7 Entire Agreement/Amendment. 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.

8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

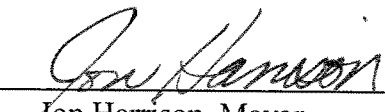
8.9 Severability. If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and

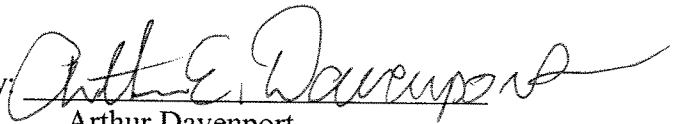
shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.

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

CITY OF REDLANDS

DAVENPORT BIOLOGICAL SERVICES

By: 
Jon Harrison, Mayor

By: 
Arthur Davenport

Attest:

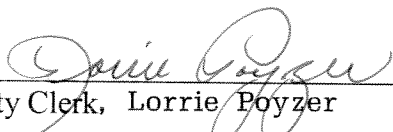

City Clerk, Lorrie Poyzer

EXHIBIT A

Davenport Biological Services
P.O. Box 1692
Barstow, California 92312

Date: May 28, 2006

From: Arthur Davenport
Davenport Biological Services

Mailing Address: P.O. Box 1692
Barstow, CA 92312

Phone: (619) 729-4242
E:mail: artdavenpo@aol.com

To: Bill Hemsley, City of Redlands

Subject: Response to Request for Estimate/Quote

Project: For 2006 and 2007, Determination of density of San Bernardino kangaroo rats (*Dipodomys merriami parvus*)(SBKR) within the Conservation Area. In addition, conduct bimonthly monitoring of the site and complete vegetation sampling.

Introduction:

Population Baseline

The development and implementation of a management plan was an integral component of the project description upon which the U.S. Fish and Wildlife Service (Service) based their biological opinion (1-6-05-F-2290; May 26, 2005). That is, the conclusion of the Service was based in large part, on the development and implementation of the management plan (Conservation Area Management Plan for the Redlands Sports Park Onsite Conservation Area; July 2005).

Per the management plan a baseline inventory was to be completed within three months of the relocation of San Bernardino kangaroo rats from the construction site of the sports park. Under section 6.5 of the management plan (i.e., SBKR Monitoring), a baseline inventory was to be completed within three months of the their relocation. To determine the baseline, five trapping grids (of 100 traps each) were to be placed in proximity to specific relocation sites.

EXHIBIT A

The baseline inventory is supposed to determine the species density (number of animals per unit area) within the Conservation Area (approx. 40 - 45 acres). Although the animals were initially released at five sites within the Conservation Area, animals are anticipated to have dispersed from their initial release points. Locating trapping grids at just the initial release sites will likely result in an inaccurate estimate of the density of SBKR across the site. Thus, the determination of this species density throughout the site is recommended.

To determine this species density across the entire site, nine trapping grids should be established. A stratified-random approach may be used in determining the location of the grids. However, five of the grids could be located in proximity to the initial release sites. The remaining four grids could be randomly or uniformly located throughout the remainder of the site. One-hundred (100) traps will be used per grid. Traps will be spaced 10 meters apart. Each grid will be trapped for five (5) consecutive nights. All SBKR will be uniquely marked (e.g., ear tags). The density of SBKR may be determined per grid based on the proportion of marked and non-marked animals at the end of the trapping session using a program such as MARK. In addition, the average density of SBKR across the site, including confidence intervals about the mean, will be provided.

One experienced biologist can complete the sampling in three, five day trapping sessions. Three grids will be sampled during each of the trapping sessions. In comparison, the methods outlined in the management plan would have taken a biologist ten field days to complete the fieldwork. However, the data would not have provided information regarding the density of animals across the entire Conservation Area.

Population Monitoring

Monitoring the population within the conservation area will follow the methodology used for determining the population baseline. However, the grids will likely be located at different locations.

Vegetation Monitoring

Vegetation monitoring and management will be a critical element in managing the population of San Bernardino kangaroo rats within the conservation area. Exotic annual and perennial plants can form thick stands of vegetation that are incompatible with the presence of this species. San Bernardino kangaroo rats tend to be found where vegetative cover is low (both perennial and annual). Thus, management of the site should be directed to replicate the conditions of high quality habitat (as reflected in the consistent presence of large populations of San Bernardino kangaroo rats).

EXHIBIT A

Vegetation monitoring will likely involve the use of both line and point-intercept data (depending on vegetation type). The vegetation data should be collected at or near the peak of the annual growing season (between mid April and June, depending on climatic conditions). Currently, October (2006) and April (2007) have been identified as sampling periods.

Bimonthly Monitoring

Monitoring of the general site conditions will be conducted every two months. A short letter report will be provided indicating conditions, problems, and potential needed management actions. Thus, for the remainder of 2006, the site will be monitored in August, October, and December. For 2007, the site will be monitored 6 times (February, April, June, August, October, and December).

Estimate/Quote

Determination of Population Baseline and Monitoring (2006 & 2007)

Field Work

Days	30 days
Cost	$(30)(480) = \$14,400.00$

Report Writing

Days	6 days
Cost	$(6)(480) = \$2,880.00$

Misc. Costs

Mileage	$1,650 @ 0.485/\text{mile} = \800.00
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Per Diem	$(28)(125.00) = \$3,500.00$
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Meetings

Days	$(5)(480) = \$2,400.00$
Mileage	$359 @ 0.485/\text{mile} = \174.11

Sub Total

\$24,154.11

EXHIBIT A

Plant Community Monitoring (2006 & 2007)

Field Work

Days 10 days
Cost $(10)(480) = \$4,800.00$

Report Writing

Days 6 days
Cost $(6)(480) = \$2,880.00$

Misc. Costs

Mileage $1,200 @ 0.485/\text{mile} = \582.00

Per Diem $(10)(\$43.00) = \430.00

Sub Total **\$8,692.00**

Site Monitoring (2006 & 2007)

Field Work

Days 9 days
Cost $(9)(480) = \$4,320.00$

Report Writing

Days 3 days
Cost $(3)(480) = \$1,440.00$

Misc. Costs

Mileage $1,080 @ 0.485/\text{mile} = \523.80

Meetings

Days $(3)(480) = \$1,440.00$
Mileage $210 @ 0.485/\text{mile} = \101.85

Sub Total **\$7,825.65**

Grand Total **\$40,671.76**

1 day (based on an 8 hour day) = \$480.00

Will use standard government mileage rates at time of task, not to exceed 0.485/mile

All hourly/daily rates are confidential

EXHIBIT "B"

PROJECT SCHEDULE

The Services shall commence on June 19, 2006 and shall be completed by December 20, 2007.