

AGREEMENT TO PERFORM TRAFFIC SIGNAL DESIGN SERVICES

This agreement for traffic signal design services ("Agreement") is made and entered into this 19th day of June, 2008 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and Lawrence S. Eisenhart ("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 perform traffic signal design services for four traffic signals to be located at Eureka Street at Stuart Avenue, Eureka Street at Colton Avenue, Sixth Street at the eastbound Interstate 10 on-ramp, and Sixth Street at the westbound Interstate 10 off-ramp (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," entitled "Scope of Services," 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.* 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 City's Municipal Utilities and Engineering Department, Civic Center, 35 Cajon Street, Suite 15A (P.O. Box 3005 mailing), Redlands, California 92373.
- 2.3 Consultant acknowledges that if it violates the Labor Code provisions relating to prevailing wage, 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 the maintenance, certification, retention and inspection of payroll records.
- 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 Tom T. Fujiwara as City's representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, and interpret 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," which is attached hereto and incorporated herein by reference.
- 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 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 Twenty-Eight Thousand Dollars (\$28,000.00). City shall pay Consultant on a time and materials basis up to such "not to exceed" amount based upon Consultant's hourly rate of One Hundred Fifty Dollars (\$150.00). City shall also pay to Consultant, as a reimbursable expense, the costs incurred by Consultant for reproducing bid documents associated with the construction of the traffic signals.
- 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, 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 Consultant's invoice, provided (1) the Services reflected in the invoice were performed to the reasonable satisfaction of City in accordance with the terms of this Agreement, (2) that the number of hours of Services set forth in the invoice reflects the amount of time ordinarily expended for such Services by members of the profession currently practicing in the same locality under similar conditions, and (3) that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of this 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

Tom T. Fujiwara
Municipal Utilities and Engineering Dept.
City of Redlands
35 Cajon Street, Suite 15A
PO Box 3005 (mailing)
Redlands, CA 92373

Consultant

Lawrence S. Eisenhart
2070 Locust Court
San Bernardino, CA 92404

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 Certificates and Endorsements. 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 or modification of the policy except upon thirty (30) days prior written notice to City.
- 6.2 Workers' Compensation and Employer's Liability. Consultant shall secure and maintain Worker's Compensation and Employer's Liability insurance throughout the duration of its performance of the Services in accordance with the laws of the State of California, with an insurance carrier acceptable to City.
- 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.
- 6.6.1 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 maintain 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 throughout the term of this Agreement. 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. Such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City.

ARTICLE 7 - CONFLICTS OF INTEREST

- 7.1 Consultant covenants and represents that it does not have any investment or interest in real property that may be the subject of this Agreement or any other source of income, interest in real property or investment which would be affected in any manner 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 by a Party.
- 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 shall 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 twenty (20) 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 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 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. Except as otherwise provided for herein, any amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.

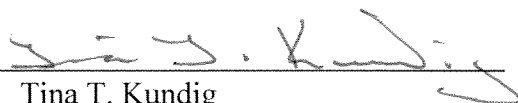
8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

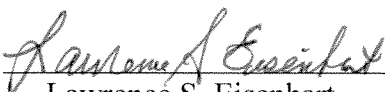
- 8.9 Severability. If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate 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 City and Consultant have signed in confirmation of this Agreement.

CITY OF REDLANDS

LAWRENCE S. EISENHART

By: 
Tina T. Kundig
Finance Director

By: 
Lawrence S. Eisenhart

Attest:

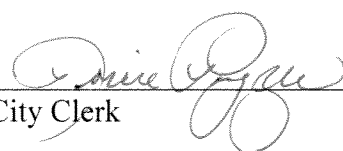

City Clerk

EXHIBIT “A”

SCOPE OF SERVICES

1. “Kick-off” meeting with City to discuss the following:
 - a. The type of controller preferred (Type 90 or Model 2070).
 - b. The type of battery backup preferred (Clary or Tesco).
 - c. The phasing for each intersection.
 - d. The type of interconnect (Hard wire or Spread Spectrum).
 - e. The type of Mast Arm Signs (I. I. S. N. S. or Reflective Sheeting).
 - f. The type of Luminaire (200W or 250W).
2. Research for referenced plans, maps and documents.
 - a. Obtain “As-Built” intersection plans for each intersection.
 - b. Obtain utility information and power sources from SCE.
3. Review the Traffic Impact Analysis Report for the Promenade Project.
4. Conduct field review.
 - a. Take photographs as required.
 - b. Take measurements as required.
5. Prepare base plans to scale with existing features and utility information.
6. Design and prepare Traffic Signal Plans, Striping Plans and Interconnect Plans.
 - a. The designs shall meet all City standards and CALTRANS standards for the ramp terminal signals.
7. Submit preliminary plans to City and furnish to CALTRANS for plan check.
8. Meet with City staff to review plan check comments and make required corrections within two weeks of receipt.
9. Attend meetings at City and CALTRANS during plan review process.
10. Prepare and final plans, construction special provisions and cost estimates
11. Meet with City staff and/or Contractor during construction to assist in resolving problems.

EXHIBIT “B”

PROJECT SCHEDULE

Consultant shall commence work immediately following authorization to proceed from City.

Consultant shall complete the design of the four traffic signals within four weeks from the date of authorization to proceed issued by the City.

Consultant shall review/correct City’s plan check within one week of the receipt of the plan check by Consultant per each traffic signal plan set and return it to City.

Consultant and City acknowledge that they will work earnestly toward meeting the above tentative schedule. Should the Scope of Services change or should problems arise during the work period which could affect the above schedule, it is understood that both Consultant and City will develop a revised schedule to address such scope changes and problems.

agreement to a construction and acquisition loan and authorized the Mayor to execute, and the City Clerk to attest to, the document on behalf of the City.

Resolution Nos. 6685-6686 - Landscape Maintenance District No. 1 - On motion of Councilmember Gilbreath, seconded by Councilmember Gallagher, the City Council unanimously adopted Resolution No. 6685, a resolution of the City Council of the City of Redlands giving preliminary approval of the Engineer's Report for Fiscal Year 2008-09 for Landscape Maintenance District No. 1. On motion of Councilmember Gilbreath, seconded by Councilmember Gallagher, the City Council unanimously adopted Resolution No. 6686, a resolution of the City Council of the City of Redlands declaring its intention to levy and collect assessments within Redlands Landscape Assessment District No. 1 for Fiscal Year 2008-09 pursuant to the Landscaping and Lighting Act of 1972, and establishing a time (July 15, 2008, at 7:00 P.M.) and place for hearing protests.

Resolution Nos. 6689-6690 - Street Lighting District No. 1 - On motion of Councilmember Gilbreath, seconded by Councilmember Gallagher, the City Council unanimously adopted Resolution No. 6689, a resolution of the City Council of the City of Redlands giving preliminary approval of the Engineer's Report for Fiscal Year 2008-09 for Street Lighting District No. 1. On motion of Councilmember Gilbreath, seconded by Councilmember Gallagher, the City Council unanimously adopted Resolution No. 6690, a resolution of the City Council of the City of Redlands declaring its intention to levy and collect assessments within Redlands Street Lighting District No. 1 for Fiscal Year 2008-09 pursuant to the Landscaping and Lighting Act of 1972, and establishing a time (July 15, 2008, at 7:00 P.M.) and place for hearing protests.

This approved
the appropriation
not the
agreement.

Funds - Traffic Signals - Promenade Project - Due to a potential conflict of interest, Councilmember Bean retired from the Council Chambers and did not participate in this matter; a Public Disclosure of Potential Conflict of Interest form is on file in the City Clerk's Office. On motion of Councilmember Gilbreath, seconded by Councilmember Gallagher, the City Council appropriated \$28,000.00 to the Local Transportation Fund for the design of traffic signals for the Promenade Project located on the west side of Eureka Street, south of the Interstate 10 freeway, with Councilmember Bean having abstained.

Lease Agreement - Redlands Hangar Owners' Association - On motion of Councilmember Gilbreath, seconded by Councilmember Gallagher, the City Council unanimously approved a lease agreement with the Redlands Hangar Owners' Association and authorized the Mayor to execute, and the City Clerk to attest to, the document on behalf of the City.

Safe Routes to School Grant Application - On motion of Councilmember Gilbreath, seconded by Councilmember Gallagher, the City Council

REQUEST FOR COUNCIL ACTION

SUBJECT: Appropriation of Funds to Design Traffic Signals for the Promenade Project

MOTION: I move to appropriate \$28,000.00 to Local Transportation Fund for the design of traffic signals for the Promenade Project.

STAFF RECOMMENDATION:

Staff recommends that Council appropriate \$28,000.00 to Local Transportation Fund for the design of traffic signals for Promenade Project.

DISCUSSION:

On April 15, 2008, City Council approved the Development Agreement (DA) between the City and Redlands Land Holding L.L.C. (RLH), who is the developer of the Promenade Project located on the west side of Eureka Street south of the Interstate 10 freeway. The DA requires the RLH to pay Development Impact Fees to the City, which includes the payment of traffic signal fees to share in the cost of the installation of certain master planned traffic signals affecting the project. In turn, the DA obligates the City to design and install these master planned traffic signals.

The Requests for Proposal were sent out to three qualified firms to provide the traffic engineering consulting services to design the traffic signals. After review of the proposals by the selection committee, Lawrence S. Eisenhart was selected as the best qualified consultant. Additionally, the professional design service cost proposal was the lowest proposal received and staff considers the fee reasonable. In accordance with City Code, Council approval of the consultant services agreement is not required (less than \$ 30,000) and the Finance Director will approve the contract if the additional appropriation is authorized.

FISCAL IMPACT:

The funds to pay for the consultant services come from the Development Impact Fee to be paid by the developer of the Promenade Project. Therefore, there will not be any impact on the City's General Fund and budget.

CITY OF REDLANDS REQUEST FOR ADDITIONAL APPROPRIATION

DATE OF REQUEST: 6/17/2008

FINANCE USE ONLY
TRANSACTION NO: _____
ACCOUNTING PERIOD _____

An additional appropriation is hereby requested as follows:

Department: MUED Program: 209300

Account Number: 209300.5190 Account Description: Local Transportation Fund

Amount: \$ 28,000.00

JUSTIFICATION: To pay for professional services to design traffic signals at four street intersections. The City
does not have qualified staff to conduct the traffic signal design work.

FINANCE USE ONLY	DEBIT	CREDIT

Requested By: _____
Department Head

Recommended By Finance Director:

Yes ☒ No ☐ Signed [Signature]

Recommended: [Signature]
City Manager

Comments: _____

Approved by City Council:

Date: _____

Signed: _____
City Clerk