

AGREEMENT TO FURNISH TRAFFIC ENGINEERING SERVICES FOR A TRAFFIC IMPACT ANALYSIS FOR THE CHURCH STREET WIDENING PROJECT

This Agreement is made and entered into this 6th day of August, 2002, by and between the City of Redlands, a municipal corporation ("City") and Kunzman Associates ("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") for the Traffic Impact Analysis on Church Street between Colton Drive and Citrus Avenue (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 "Traffic Engineering Services for Church Street Widening Project" which is attached hereto and incorporated herein by this reference.
- 2.2 Consultant hereby agrees to abide by 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 Traffic Engineering Services for Church Street Widening Project."

ARTICLE 5 - PAYMENT AND NOTICE

- 5.1 For the performance of the Services, City will pay Consultant a fee not to exceed \$8,390.00 for the engineering services as described in Exhibit "C," which is attached hereto and incorporated herein by this reference.
- 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: William Kunzman
Kunzman Associates
III Town & Country Road, Ste. 34
Orange, CA 92868

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 within fifteen (15) days of execution of this Agreement, or prior to commencement of work, whichever occurs first.

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 the 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 within fifteen (15) days of execution of this Agreement or prior to commencement of work, whichever occurs first.
- B. Consultant expressly waives all rights to subrogation against the City, its officers, employees and volunteers 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 is 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 covered by this Agreement without the express written consent of City. In the event of mutual agreement between parties to sublet a portion of the Services, the Consultant will 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 within fifteen (15) days of execution of this Agreement or prior to commencement of work, whichever occurs first.
- 6.6 Professional Liability Insurance. Consultant represents it has professional liability insurance throughout the duration of this Agreement in the amount of one million dollars (\$1,000,000) per claim made. A certificate evidencing such liability insurance shall be delivered to City prior to commencement of work. Because Consultant's insurance expires December 1, 2002, Consultant, in lieu of obtaining an endorsement extending the reporting period twelve (12) months beyond the current policy expiration date of December 1, 2002, shall provide City with a certificate of liability insurance at least fifteen (15) days prior to the beginning of the new policy period for the next twelve (12) month policy period of December 1, 2002 to December 1, 2003.
- 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 within fifteen (15) days of execution of this Agreement or prior to commencement of work, whichever occurs first.

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:

William Kunzman
Carl Ballard

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 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 Engineering 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 and any prior negotiations, proposals or oral agreements are superseded by this written Agreement. Any amendment to this Agreement, to be effective, 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

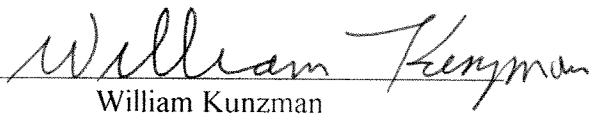
ATTEST:

By 
Mayor


Deputy City Clerk

Date August 19, 2002

KUNZMAN ASSOCIATES

By  Date 7-31-02
William Kunzman