

AGREEMENT TO PERFORM SENATE BILL (SB) 90 STATE MANDATED REIMBURSEMENT CLAIMING SERVICES

This agreement for Senate Bill (SB) 90 State Mandated Reimbursement Claiming Services (“Agreement”) is made and entered in this 30th day of September, 2013 (“Effective Date”), by and between the City of Redlands, a municipal corporation (“City”) and MGT of America, Inc. (“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 SB 90 State Mandated Reimbursement Claiming Services to prepare and file all eligible SB 90 Claims with the California State Controller due during Fiscal Year 2013-2014 and the subsequent two Fiscal Years, 2014-2015 and 2015-2016.
- 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 the Services.

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 Tina T. Kundig, Finance Director, 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.

- 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 be paid on an all-inclusive not to exceed amount of twenty five thousand dollars (\$25,000) for the three year term of this Agreement, with a fixed fee of \$9,000 for Fiscal Year 2013-2014 and \$8,000 for each of the Fiscal Years 2014-2015 and 2015-2016, as provided in the Fixed Fee Cost Proposal attached hereto as Exhibit "B."
- 5.2 Consultant shall submit quarterly invoices to City describing the Services performed during the preceding quarter. 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. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant'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.
- 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

Tina T. Kundig, Finance Director
City of Redlands
Finance Department
35 Cajon Street, Suite 10
Redlands, CA 92373

Consultant

J. Bradley Burgess, Vice President
MGT of America, Inc.
Costing Services Division
2001 P Street, Suite 200
Sacramento, CA 95811

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.

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 professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made.
- 6.3 Consultant shall have 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.
- 6.4 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, to the extent arising from injury or death to persons or damage to property occasioned by any negligent act or omission by, or the willful conduct of, Consultant, and 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, State of Economic Interests with the City Clerks' 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 All documents, records, 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 Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor 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.
- 8.10 In connection with this Agreement, Consultant may have access to or be exposed to information of City that is not generally known to the public, such as information pertaining to software, data, reporting, pricing, and trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, should to be treated as confidential (collectively, "Confidential Information"). Confidential Information may not be shared with third parties unless such disclosure is to Consultant's personnel, including employees, affiliates, agents, and subcontractors, on a "need-to-know" basis in connection with this Agreement, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein. Consultant agrees to take the necessary precautions to maintain the confidentiality of City's Confidential Information by using at least the same degree of care as such Party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that Consultant can show through written records (1) was known by it before its receipt from City; (2) is or becomes public knowledge through no fault of Consultant; or (3) is rightfully received by Consultant from a third party without a duty of confidentiality. If Consultant is required

by a court or government agency to disclose Confidential Information, Consultant shall, subject to any specific lawful restrictions, provide advance notice to City before making such a disclosure. The obligations with respect to Confidential Information shall survive any termination of the Agreement and continue for five (5) years from the date of disclosure. All Confidential Information relating to City's technological and telecommunications systems that is provided by City to Consultant, or which Consultant obtains as a result of the performance of its Services, shall be held strictly confidential by Consultant and shall not be used for any purpose other than for Consultant's performance of the Services under this Agreement. Consultant hereby acknowledges and agrees that any disclosure or improper use by Consultant of Confidential Information could cause City substantial damages, and also irreparable injury for which there is not an adequate remedy at law. Therefore, in the event of any such action, City shall be entitled in addition to all other remedies which it may have hereunder or at law or in equity, to a temporary and/or permanent injunction with a decree for specific performance of the terms hereof without being required to furnish a bond or other security. Jurisdiction in any action for injunctive relief shall be a court of competent subject matter jurisdiction in California, with venue in San Bernardino, California.

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

CITY OF REDLANDS

MGT OF AMERICA, INC.

By: 
Tina T. Kundig, Finance Director

By: 
~~J. Bradley Burgess, Vice President~~
FRED SEAMON, SENIOR PARTNER

ATTEST:



Sam Irwin, City Clerk

Exhibit “A”

SCOPE OF SERVICES:

SB 90 State Mandated Reimbursement Claiming Services Project Approach and Work Schedule

Project Approach & Work Schedule

Understanding of the Project

The City of Redlands is a California public agency that wishes to supplement existing revenue sources by filing state mandate cost claims (SB 90 claims) with the California State Controller's Office (SCO). Like many public agencies in California, the City of Redlands has weathered a significant economic downturn over the past decade. Generating sufficient revenue to offset the growing demands for service and increased costs in many areas of government remains a challenge.

It is our understanding that the City of Redlands would like to partner with a consulting firm that specializes in SB 90 consulting to do the following:

- Prepare and file all eligible SB90 claims for annual claims and associated ICRPs due during Fiscal Year 2013-2014 and the subsequent two Fiscal Years, 2014-2015 and 2015-2016.
- Prepare and file all eligible SB 90 claims for all new or first-time mandates and associated ICRPs, which have claiming instructions issued by the State Controller's office during Fiscal Year 2013-2014 and the subsequent two Fiscal Years, 2014-2015 and 2015-2016.
- Assist the City with all aspects of remittance tracking including annual claim receipts and claims paid reports.
- Provide assistance to the City in responding to inquiries about and/or defending claims filed by the City that are audited by the State Controller's office.
- Provide guidance to the City in determining the data required for claims submission and about new claiming opportunities including knowledge transfer and training related to the SB 90 process at the state level.

Following is the MGT of America plan to accomplish your request on time and on budget.

Annual, New and Initial Claims: Preparation and Submission

- Establish schedule and approach needed to complete all annual claims due to the state by February 15, 2014. This includes on-site interviews with all applicable City department personnel.
- Identify new claims that are expected to become mandated programs during FY 2013-2014, and the departments likely to be affected by these claims. As part of this step, MGT will provide early claim summaries and data collection requirements to provide a head start on documentation strategies.
- Work with the City, as new claiming instructions are issued by the SCO, to establish schedules and approaches needed to complete all new or first-time claims due during the Fiscal Year.
- Facilitate department interviews where staff describe how the City complies with the specific mandated programs and assist the City to determine eligible costs based on the following criteria:

- The test claim's Statement of Decision
- The California Commission on State Mandates approved Parameters and Guidelines
- The SCO's claiming instructions
- How other agencies around the state are complying with and interpreting the mandate
- Prepare all necessary department-wide ICRPs in accordance with OMB A-87. MGT consultants have prepared thousands of ICRPs over the past 25 years. We believe that our experience has developed a depth of understanding that is unmatched in the field.
- Prepare all eligible claims for the City's SB 90 programs, and review the claims for completeness, propriety, and eligibility of costs.
- Perform a quality assurance review of the City's SB 90 claims to ensure that they mesh with the associated department ICRPs and verify that no direct costs are double counted.
- Discuss any potential or necessary changes with the appropriate City staff member.
- Provide the completed claims and ICRPs to the City for review and signature at least three weeks prior to the claiming deadline.
- File the signed claims with the SCO prior to the deadline.

Project Coordination

MGT views the SB 90 process as a partnership between Redlands and our firm. We understand and recognize the City's need to conserve internal resources and we will always approach the City's SB 90 engagement from that perspective. We will keep the City apprised of everything we are doing, but will manage all aspects of project coordination. We will consistently:

- Provide the City with a list of all eligible claims, as well as Claim Summary sheets and Data Collection forms. All of these concise summaries and forms are available in a variety of electronic formats to make use and disbursement of claiming information as easy as possible.
- Work in concert with Redlands's SB 90 Coordinator to coordinate the City's overall claiming process. Once again, minimal reliance will be placed on the City's SB 90 Coordinator in this process.
- Coax departments to ensure that all data is provided in a timely manner to avoid the 10 percent penalty. It is critical to work with the departments after the on-site interviews to ensure that all questions are answered and deadlines met.
- Ensure that all eligible claims are filed on time, and provide the City with written documentation explaining why the City will not file certain claims upon request, if applicable.

Data Collection

The three components of data collection related to this engagement include: direct cost program data, indirect cost data, and supporting documentation.

Direct Cost Program Data Collection

- Conduct individual meetings with departments to discuss all reimbursable mandated activities.
- Develop a schedule and plan for mining the necessary data to ensure claims are completed well before the claiming deadlines.

Departmental Indirect Cost Data Collection

- Gather salary and benefit data from the City or the individual departments for all required fiscal years.
- Collect certain pages from the City's cost allocation plan.
- Gather information required to prepare OMB A-87 compliant ICRPs. This will be carried out in concert with department interviews. It is important that this step occur each year because departments reorganize, assignments shift, new personnel is hired, or personnel retire.

Supporting Documentation Collection

- MGT will work with City departments to determine the documentation that must be submitted to the state as attachments to claims, and what documentation should be maintained in the City's files in case of an SCO inquiry or field audit.

Orientation and Training for City Department Staff

We believe there is no cookie cutter approach to successful orientation and training. Some of the Redlands's department personnel are undoubtedly savvy and experienced with SB 90 claiming, while others are likely to be new to the process. MGT will tailor its level of training to meet the needs of each department. We will consistently:

- Provide electronic notification on upcoming mandate claims as soon as the Parameters and Guidelines for these programs are approved. This will be done primarily via e-mail and will provide both the key department personnel, as well as your Coordinator, the most complete view of upcoming SB 90 programs.
- Provide on-site training for both program and fiscal staff. It is important that both parts of each affected department understand the state's requirements and any specific issues related to the particular mandate from a programmatic and fiscal standpoint. In addition, we will provide a history and overview of the SB 90 program to any department staff that are new to the process.
- Assist the City to establish relevant, defensible source documentation standards for each claim within each of the City's claiming departments. Our goal for each of the City's claims is to ensure that documentation exists to establish that the mandate was performed and personnel costs are adequately documented.
- Provide perspectives related to how other agencies are interpreting and claiming each mandate to ensure nothing is missed. Provide guidance on the current acceptable range of



costs being claimed by similar agencies so the City will be aware of any foreseeable exposures existing at the claiming stage.

Claim Preparation

Once data has been received from the City, MGT will prepare all eligible claims on behalf of the City using required SCO claim forms.

Direct Costs

- Prepare all claims that apply to single departments. Once again, our experience will ensure that no cost components are misinterpreted or omitted.
- Coordinate and prepare all multi-departmental claims. Simply gathering data for mandates that span different departments is not enough. The data must be cross-referenced and analyzed to ensure that each department is capturing cost data for the same cases and are not misclassifying certain cases, a very common occurrence.

Indirect Costs

- Prepare ICRPs for all claiming departments. The ICRPs provide an approved method for claiming departmental indirect costs. At this step, it is vital to ensure that no staff time being claimed as a direct cost in the claim is also included in the ICRP. We will ensure that all costs are treated consistently throughout this process.

Filing Procedures

MGT will provide the City's SB 90 Coordinator with a clear, understandable process for receiving the completed claims/ICRPs and obtaining the necessary signatures.

- MGT will perform one final quality control check to ensure that the City has signed two original coversheets, all parts of the claim are included, and required documentation is attached.
- MGT will hand deliver all signed claims received from the City to the SCO on or before the stated deadline. We will also provide the SCO with a Declaration of Service form, as well as Claims Receipts for their staff to sign and return for your records.
- MGT submits hard copies of all claims to the SCO. However, many of our clients prefer to share claims and ICRPs prior to claim submission electronically by converting all claims and ICRPs into Adobe PDF documents. We believe sharing documents results in many positive benefits. Sharing information between the City and MGT is very easy using e-mail. Adobe PDF claims can be stored electronically with both the consultant and the City. This process saves paper which is environmentally friendly, and also makes sharing claims with your claiming departments effortless.

Remittance Tracking

MGT will assist the City with all aspects of remittance tracking throughout the entire fiscal year. We will consistently:

- Provide copies of all claims receipts, declarations, and summary claiming reports to the City.
- Assist the City with tracking claim payments made by the state. We will provide an annual **MGT Mandate Report**® for the City. This full-color summary claiming report will provide a breakdown of what claims have been filed, what the state has paid and what the state still owes. In past reports, we have also displayed Dollars claimed per department, Total claims per department, and Dollars claimed for the current fiscal year compared to the past year.

Ongoing Support and Status Updates

The claiming process is obviously the key aspect of this engagement, but the ongoing support services that MGT offers are important complimentary services to continuously upgrading the City's knowledge base, relations, and communications with the state and contract agencies, and anticipation of changes to the claiming process.

Liaison Assistance

- MGT will also provide liaison assistance with the SCO at the desk review level. The SCO will call requesting additional information, or duplicate documentation that may have gotten lost in their offices. We will field these calls and fulfill all appropriate requests without the City's need to get involved. In addition, our staff has extensive experience preparing local agencies for field audits and assisting in their representation beyond the exit conference. MGT offers assistance and response on any current or future field audit that may result from claims filed in the past.

Status Updates

- The SB 90 process is constantly changing and evolving. MGT will provide targeted, relevant communication on statewide issues, interpretations, and actions at the state capitol relating to the SB 90 process throughout the fiscal year via **MGT Instant Updates**®, a series of e-mail communiqués designed to keep our clients up to date with the latest mandate legislation, California Commission on State Mandates decisions, and state agency interpretations. MGT will sift through all of the pertinent activity to provide the City with the most relevant information throughout the year, saving the City time and resources.

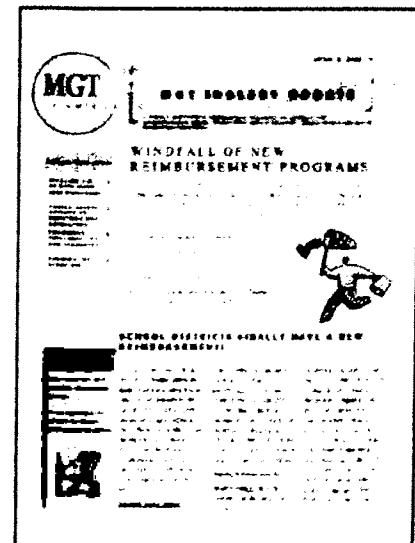


Exhibit “B”

SB 90 PROFESSIONAL FIXED FEE COST PROPOSAL

CLAIMS COVERED	PROPOSED FEE	PAYMENT TERMS
2012-13 Annual & New Claims issued during 2013-2014	Fixed Fee equal to \$9,000	Payable 30 days upon receipt of quarterly invoices
2013-14 Annual & New Claims issued during 2014-2015	Fixed Fee equal to \$8,000	Payable 30 days upon receipt of quarterly invoices
2014-15 Annual & New Claims issued during 2015-2016	Fixed Fee equal to \$8,000	Payable 30 days upon receipt of quarterly invoices

The price quoted for services is all inclusive. There are no caps on number of claims, number of phone calls, audit support, or site meetings/visits, or any other related service—consultant level of customer service to City is unlimited. MGT will not bill City for travel expenses, additional time for on-site meetings, or extra claims.