

MINUTES

of a regular meeting of the City Council of the City of Redlands held in the Council Chambers, Civic Center, 35 Cajon Street, on June 7, 2005, at 3:00 P.M.

PRESENT

Susan Pepler, Mayor
Gilberto Gil, Mayor Pro Tem
Pat Gilbreath, Councilmember
Gary George, Councilmember
Jon Harrison, Councilmember

ABSENT

None

STAFF

John Davidson, City Manager; Daniel J. McHugh, City Attorney; Lorrie Poyzer, City Clerk; Beatrice Sanchez, Deputy City Clerk (evening session); Michael Reynolds, City Treasurer; Jim Bueermann, Police Chief; Mel Enslow, Fire Chief; Don Gee, Redevelopment Agency Director; Tina Kundig, Finance Director; Ronald C. Mutter, Public Works Director; Gary G. Phelps, Municipal Utilities Director; and Jeffrey L. Shaw, Community Development Director

The meeting was opened with an invocation by Mayor Pepler followed by the pledge of allegiance.

CONSENT CALENDAR

Minutes - On motion of Councilmember Gilbreath, seconded by Councilmember George, the minutes of the regular meeting of May 17, 2005, and the special meeting of May 31, 2005, were approved as submitted.

Bills and Salaries - On motion of Councilmember Gilbreath, seconded by Councilmember George, payment of salaries and bills was acknowledged.

Contract - Cost Claiming Services - On motion of Councilmember Gilbreath, seconded by Councilmember George, the City Council unanimously approved a contract with Maximus to provide comprehensive state mandated cost claiming services to the City of Redlands for fiscal years 2005-2006 through 2007-2008 and authorized the Mayor to execute, and the City Clerk to attest to, the document on behalf of the City.

Planning Commission Actions - On motion of Councilmember Gilbreath, seconded by Councilmember George, the report of the Planning Commission meeting held on May 24, 2005, was acknowledged as received.

Agreement - Tract No. 16556 - KB Homes, Applicant - On motion of Councilmember Gilbreath, seconded by Councilmember George, the City Council unanimously approved a subdivision improvement agreement for Tract No. 16556, a planned residential development subdividing 39.99 acres into

**AGREEMENT TO PROVIDE
PROFESSIONAL CONSULTING SERVICES
TO THE CITY OF REDLANDS**

THIS AGREEMENT, entered into this seventh day of June, 2005, by and between MAXIMUS, Inc. (hereinafter "Consultant") and the City of Redlands (hereinafter "City"),

WHEREAS, Article XIII B of the California State Constitution provides that local agencies may recover costs associated with carrying out programs mandated by the State of California; and

WHEREAS, City desires to maximize its reimbursement for costs incurred in carrying out State mandated programs, and has determined that engaging Consultant to assist in the mandated cost claim preparation process is the most economical and cost effective means for preparing City's state mandated cost claims; and

WHEREAS, Consultant is staffed with personnel knowledgeable and experienced in determining the costs of governmental programs and in the submission of cost claims to the State of California; and

WHEREAS, City desires to engage Consultant to assist in developing, submitting, and negotiating cost claims pertaining to state mandated programs.

NOW, THEREFORE, the parties hereto mutually agree as follows:

- (1) Engagement. City agrees to engage Consultant and Consultant hereby agrees to perform the following services.
- (2) Scope of Services. Consultant shall perform, and carry out in a professional manner the following services subject to the provisions of Section (8) below.
 - A. Prepare and submit cost claims pursuant to the Controller's 2005 annual claiming instructions that require claims to be submitted to the State by January 15, 2006.
 - B. Prepare and submit other new or first-time cost claims pursuant to the Controller's claiming instructions which are issued in accordance with parameters and guidelines received from the Commission on State Mandates and mailed to local agencies during the 2005-2006 fiscal year. For the purposes of this Agreement, claims covered under this section shall include all claiming instructions issued with due dates other than January 15, 2006.
 - C. Monitor the general payment status of all claims submitted on behalf of City pursuant to this Agreement.
 - D. Provide advice to the City regarding questions associated with any claims filed by Consultant from the State Controller's office. Test claims and incorrect reduction claims are not covered under this Agreement.

Cost claims submitted by Consultant may consist of both direct and indirect costs. Consultant may either utilize the ten percent (10%) indirect cost rate allowed by the State Controller or calculate a higher rate if City records support such a calculation. Consultant is not required to prepare a central service cost allocation plan or departmental indirect cost rate proposals for City.

- (3) Provision of Services. Consultant shall commence, carry on, and complete the services with all practicable dispatch, in a sound, economical, and efficient manner, in accordance with the provisions herein and all applicable laws. In providing services, Consultant shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by City.
- (4) Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified to perform the services described herein.
- (5) Term of Agreement. This Agreement shall become effective on July 1, 2005, and shall continue in full force and effect until both parties have completed performance as provided herein unless earlier terminated pursuant to Section 20, hereof.
- (6) Time of Performance. The services to be performed hereunder by Consultant shall be undertaken and completed in such sequence as to assure their expeditious completion in order to best carry out the purposes of this Agreement. All claim filing services required hereunder shall be completed by the required date for each specific claim. Provided however, Consultant shall not be liable for delays in performance that are caused in whole or in part by City, third parties over which Consultant does not have the legal right to control or forces de majeure.
- (7) Costs and Method of Compensation. For all of the above services provided, City agrees to pay Consultant compensation in a fixed fee in the amount of eight thousand four hundred dollars \$8,400.00. The fee shall be paid in four equal installments: Twenty-five percent (25%) or \$2,100.00 of the fixed fee shall be due and payable on September 1, 2005, December 1, 2005, March 1, 2006, and June 1, 2006.

Three-Year Option – Fixed Fee

The City may elect to secure a three-year fixed fee contract pursuant to Scope of Services 2.A. and 2.B. at a secured rate as follows:

2005-2006	\$8,400.00
2006-2007	\$8,400.00
2007-2008	\$8,820.00

Please check and initial here your choice for a three-year contract:

Yes for three-year option

AE (initials)

No for three-year option

_____ (initials)

- (8) Waiver of Submission of Claim(s) Pursuant to Section (2) A & B. Notwithstanding any other provisions of this Agreement, the submission of claims pursuant to Section (2) A and B may be waived as set forth below. Upon waiver exercised by either party, City shall pay Consultant for all work performed up to and until the effective date of waiver in an amount not to exceed the maximum dollar amount indicated in Section (7).

A. At City Option. At the sole discretion of City, City may instruct Consultant to not file a specific claim or claims pursuant to a specific State claiming instruction. Such instruction must be in writing and provided to Consultant at least thirty (30) days prior to the due date of the claim. The effective date of City's waiver shall be the date Consultant receives City's written instruction.

B. At Consultant Option. At the sole discretion of Consultant, Consultant may notify City of its intention to not pursue a specific claim and the reasons therefore. Such notification must be in writing and provided to City not less than thirty (30) days prior to the due date of the claim. The effective date of Consultant's waiver shall be the date Consultant mails its notification to City. Should Consultant not so notify City, City may expect Consultant to pursue the claim if it is above the minimum limit set by the State.

- (9) Services and Materials to be Furnished by City. Consultant shall provide guidance to City in determining the data required for claims submission. Consultant shall assume without incurring liability therefore that all data so provided is correct and complete. Consultant shall make its best effort to file claims timely. Consultant shall not be liable for claims that cannot be filed as a result of inadequate data, or data that is provided in an untimely manner.

For purposes of this Agreement, data that is requested by Consultant must be provided within three (3) weeks of the request, or three (3) weeks prior to the filing deadline, whichever comes first, to be deemed to have been received in a timely manner.

- (10) Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement in accordance to State law. During such period, City shall have free access at all proper times to such records, and the right to examine and audit the same and to make transcripts therefrom. City shall provide thirty (30) days written notice of its intent to inspect or audit any such records and shall conduct such inspection or audit only during Consultants normal business hours. Any City employee, consultant, subcontractor or agent who may have access to such records shall execute a non-disclosure agreement prior to be granted such access.

- (11) Third Party Obligations. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.
- (12) Copyright for Consultant's Proprietary Software. City acknowledges that the deliverables provided by Consultant to City are generated by Consultant's proprietary software. Nothing contained herein is intended nor shall it be construed to require Consultant to provide such software to City. City agrees that all ownership rights to the software lie with Consultant. City may use the deliverables for and on behalf of its operation.
- (13) When Rights and Remedies not Waived. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City while any such breach or default shall exist in no way impair or prejudice any right or remedy available to City in respect to such breach or default.
- (14) Consultant Liability if Audited. Consultant will assume all financial and statistical information provided to Consultant by City employees or representatives is accurate and complete. If audited, Consultant shall make workpapers and other records available to the State auditors. Any subsequent disallowance of funds paid to City under the claim(s) for whatever reason is the sole responsibility of City. However, if requested by City, Consultant shall provide reasonable assistance to the City in defending claims at the desk audit level if an audit results in a disallowance of at least ten percent (10%). Reductions of less than ten percent (10%) shall not be contested by Consultant. Nothing in this section or any part of this Agreement shall be construed to include Incorrect Reduction Claims preparation.
- (15) Independent Contractor. The parties intend that Consultant, in performing the services specified in this Agreement shall act as an independent contractor and shall have full control of the work and the manner in which it is performed. Consultant and Consultant's employees are not to be considered agents or employees of City for any purpose.
- (16) Insurance. Consultant shall maintain appropriate general liability insurance, workers' compensation insurance, automobile insurance, and professional liability insurance.
- (17) Limitation of Liability. In no event shall Consultant be liable for indirect, special, consequential or punitive damages. Consultant's liability to the City, for any reason whatsoever and whether foreseeable or not, shall not exceed the total amount paid to Consultant under this Agreement.
- (18) Changes. Either party may, from time to time, require changes in the scope of services to be performed hereunder. Such changes, which are mutually agreed upon by and between the parties, shall be incorporated in a written and mutually executed amendment to this Agreement.

- (19) Notices. Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid, to the address noted below:

Contact Name: Tina T. Kundig Title: Finance Director

Address: Civic Center
P.O. Box 3005
35 Cajon Street, Suite 30
Redlands, CA 92373-1505

Phone #: (909) 798-7543 Fax #: (909) 335-4735

Email Address: tkundig@cityofredlands.org

MAXIMUS, Incorporated
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841
(916) 485-8102 Fax: (916) 485-0111

Such notice shall be deemed delivered five (5) days after deposit in the U.S. mailbox.

- (20) Termination. This Agreement may be terminated by City, without cause, by providing ten (10) 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.

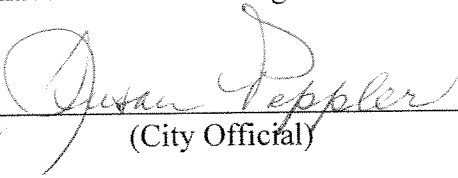
Upon receipt of a termination notice, Consultant shall (1) immediately discontinue all Services and (2) within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of any data, reports, summaries and such other information and materials as may have been accumulated or prepared by Consultant in performing the Services required by this Agreement. Consultant shall be compensated on a pro-rata basis for work completed up until notice of termination.

- (21) Severability. Should any part, term, portion, section or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the remaining parts, terms, portions, sections or provisions shall be deemed severable and shall remain in full force and effect.

- (23) Completeness of Agreement. This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.
- (24) Agreement Receipt. This Agreement must be signed and returned to Consultant by August 5, 2005. If executed Agreement is not received by that date, Consultant cannot warrant that claims will be submitted on a timely basis.
- (25) Signature Authority. Each individual signing this Agreement certifies that (i) he or she is authorized to sign this Agreement on behalf of his or her respective organization, (ii) such organization has obtained all necessary approvals to enter into this Agreement, including but not limited to the approval of its governing board, and (iii) when executed, this Agreement is a valid and enforceable obligation of such organization.

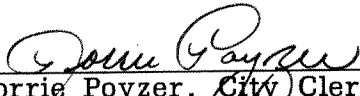
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IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement as of the date first written below.

By: 
(City Official)

Title: Susan Peppler, Mayor

ATTEST:

By: 
Lorrie Poyzer, City Clerk

MAXIMUS, Inc.

By: 
Allan Burdick, Vice President

Date: April 20, 2005