

AGREEMENT TO FURNISH PROFESSIONAL SURVEYING SERVICES FOR THE MENTONE BOULEVARD SEWER PIPELINE PROJECT

This agreement for consulting services ("Agreement") is made and entered into this 21st day of November, 2006 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and O'Bryant Surveying ("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 furnish professional surveying services in connection with City's Mentone Boulevard Sewer Pipeline 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," entitled "Specific 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.* and non-discrimination laws including the Americans 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 Wen Huang 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 two thousand seven hundred eighty dollars (\$2,780). City shall pay Consultant on a fixed fee basis up to the not to exceed amount, in accordance with Exhibit "C" entitled "Payment Schedule", and based upon the hourly rates shown in Exhibit "D," entitled "Rate Schedule." Both Exhibits "C" and "D" are attached hereto and incorporated herein by this reference.
- 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 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, 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

Wen B. Huang
Municipal Utilities Department
City of Redlands
35 Cajon Street, Suite 15A
PO Box 3005 (mailing)
Redlands, CA 92373

Consultant

Michael O'Bryant
O'Bryant Surveying
821 W. Colton Avenue
Redlands, CA 92374

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 Worker's 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.
- 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 thirty (30) 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.

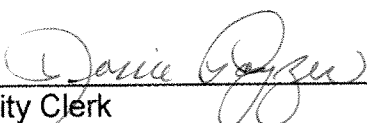
CITY OF REDLANDS

O'BRYANT SURVEYING

By: 
Jon Harrison, Mayor

By: 
Michael O'Bryant, Owner

Attest:


City Clerk

**AGREEMENT TO FURNISH PROFESSIONAL SURVEYING SERVICES
FOR
THE MENTONE BOULEVARD SEWER PIPELINE PROJECT**

**EXHIBIT A
SPECIFIC SERVICES**

Exhibit "A"

Scope of Work

1. Pipeline Staking
 - a. Stage 1 Mentone Boulevard, Wabash Avenue, Chrystolite Avenue, and Jasper Avenue, One set of offset stakes placed at 25 foot intervals per Approved Plans. Includes staking of angle points, grade breaks and manholes.
 - b. Stage 2 Mentone Boulevard and Opal Way, One set of offset stakes placed at 25 foot intervals per Approved Plans. Includes staking of angle points, grade breaks and manholes.
2. Pre-construction Meeting
Attend a pre-construction meeting at a time and place to be determined by the City's representative.
3. Potholes
As directed by the City's representative, locate those existing utilities exposed by potholing.
4. Additional Reports
Preparation of any additional reports, documents or exhibits not specifically listed in the Scope of Work.
5. Additional Meetings
Attend any additional meetings requested by the City's representative.
6. Restaking and Extra Work
Restaking is considered to be any staking required to replace the first set of construction stakes. Extra work is any function not listed in the Scope of Work.

Conditions

1. A minimum of three working days notice shall be provided prior to dispatching field crews.
2. Copies of the cut sheets shall be available on the day following the performance of the work.
3. In the event of the discovery of an error in the plans, the responsible engineer shall correct the plans and provide the surveyor with a revised copy of their plans.
4. Any invoice outstanding for more than 60 days will cause the suspension of all work until the account is brought current.
5. Item 1 of the Scope of Work is to be performed on a fixed fee basis, and will be billed based on the percentage completed. Any additional work required by the City will be invoiced on a time and materials basis at the rate set forth in Exhibit "D".
6. A minimum of one activity as outlined in the Scope of Work, shall be completed per survey request.
7. Only those items of work specifically listed in the Scope of Work are covered by this agreement.
8. The City shall make available a copy of the aerial control used to prepare these plans
9. Staking shall commence only after the Contractor has set up his traffic control.

Exhibit "A"

Exclusions

1. As-built plans
2. Staking of sewer laterals
3. Reproduction costs
4. Agency fees
5. Encroachment Permits
6. Perpetuation of existing survey monuments.

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**EXHIBIT B
PROJECT SCHEDULE**

Exhibit "B"

Schedule

The schedule for this project is to be determined by agreement of concerned parties at the pre-construction meeting.

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EXHIBIT C

PAYMENT SCHEDULE

Exhibit "C"

Fees

- | | | |
|----|--------------------------|----------|
| 1. | Pipeline Staking | |
| | a. Stage 1 | 1,280.00 |
| | b. Stage 2 | 1,280.00 |
| 2. | Pre-construction Meeting | 220.00 |

Total Proposed Fee	\$	2,780.00
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- | | | |
|----|--------------------------|--------------------|
| 3. | Potholes | Time and Materials |
| 4. | Additional Reports | Time and Materials |
| 5. | Additional Meetings | Time and Materials |
| 6. | Restaking and Extra Work | Time and Materials |

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**EXHIBIT D
RATE SCHEDULE**

Exhibit "D"

Standard Hourly Rates

Licensed Personnel	\$ 88.00
Computer Aided Drafting	\$ 76.00
Senior Survey Technician	\$ 66.00
Junior Survey Technician	\$ 52.00
Secretarial Services	\$ 34.00
One-Man Field Crew	\$ 116.00
Two-Man Field Crew	\$ 160.00
Three-Man Field Crew	\$ 204.00

Overtime:

Overtime will be charged at 135 percent of the hourly rate except that Sundays, holidays, and hours in excess of 11 per day will be charged at 165 percent of the standard hourly rates.

Reimbursable Expenses

Mileage	\$ 0.42 per mile
Subsistence	\$94.00 per day per employee
Printing and Reproduction	Cost plus 10 percent
Agency Fees	Cost plus 10 percent