

AGREEMENT TO PERFORM 125th ANNIVERSARY CELEBRATION MARKETING SERVICES

This agreement for the provision of the City of Redlands 125th anniversary marketing services ("Agreement") is made and entered into this 4th day of September, 2012 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and Pennington Designs ("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 marketing, production and sales of commemorative products related to fundraising and special events for City's 125th Anniversary Celebration (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 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 Notwithstanding any other provision of this Agreement or Exhibit "A," Consultant shall provide logos to any non-profit corporation who requests the same at no charge.
- 2.2 Consultant shall comply with 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.

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 Tommi Ng, Sr. Human Resources/Risk Management Analyst, 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 The term of this Agreement shall be for 18 months (the "Initial Term"), commencing upon the Effective Date of this Agreement. City shall have the option to extend the Initial Term for one (1) additional year (the "Extended Term") by providing written notice to Consultant at least ninety (90) days prior to the expiration of the Initial Term. The Initial Term and the Extended Term are together referred to herein as the "Term."

ARTICLE 5 - PAYMENTS

- 5.1 There shall be no compensation paid by City Consultant relating to the Services to be performed pursuant to this Agreement.
- 5.2 The Revenue Sharing Plan between the Consultant and the City regarding percentage and submittal of revenue to the City from the Consultant will be:
- A) A remittance of Twenty Percent (20%) of the gross sales, before taxes, to the City for all premade commemorative items for sale.
 - B) A remittance of Five Percent (5%) of the gross sales, before taxes, to the City for all specialty items ordered from the Consultant.
- 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

Tommi Ng
Human Resources Department
City of Redlands
P.O. Box 3005
Redlands, CA 92373

Consultant

Richard Pennington
Pennington Designs
19 East Citrus Avenue,
Suite 104
Redlands, CA 92373

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 5.3.

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 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; provided, however, the policies shall allow for ten (10) days notice for cancellation to City due to non-payment of premium.
- 6.2 Consultant shall secure and maintain Workers' 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 as

described in Exhibit "B," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference.

- 6.3 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 and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the 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.
- 6.4 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. 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.
- 6.5 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 any negligent act, omission or failure to act by Consultant, 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 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 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 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

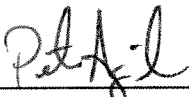
- 8.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a 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 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 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.
- 8.4 This Agreement may be terminated by City, in its sole discretion, by providing thirty (30) days' prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate. 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 reports and such other information and materials as may have been accumulated by Consultant in performing the Services.

- 8.5 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.
- 8.6 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.7 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.

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

CITY OF REDLANDS

By: 
Pete Aguilar, Mayor

PENNINGTON DESIGNS

By: 
Richard Pennington

Attest:


Sam Irwin, City Clerk

Pennington Designs

Richard Pennington, Owner
19 East Citrus, Suite 104
Redlands, CA 92373

1.2 Primary Objective

Allow Businesses, Schools, Nonprofits and Individual Citizens to participate by having their own version of the City of Redlands 125th Anniversary logo created and then allow them to use it on all types of media from plaques, postcards, mouse pads, t-shirts and more. This allows them to be written into the history books by having their own official version of the City's logo.

1.3 Recognition

Every version of the 125th Anniversary Logo could be recorded in a commemorative "Anniversary Book". A commemorative billboard or displays could be made and placed in public gathering spaces to give recognition to the participants. Each custom version can be printed and custom framed and given with purchase. Several options will be made available from very affordable to very elegant. We can even create computer monitor screen backgrounds or phone backgrounds.

1.4 Business Participation

Businesses will be able to use their custom logo to demonstrate their involvement and support of the community. They will also be allowed to utilize it on company apparel, letterhead and business cards. They can use it for promotional items such as employee gifts such as plaques and mouse pads or give away items like *mugs*, etc...

1.5 Fundraising Opportunities

Schools and nonprofit organizations could create their own versions of the logo which will allow them to actively participate in this historic event. Personalized clothing and promotional products would be created which they could sell to help raise money.

A coloring book version could be created that can be distributed to every school and youth organizations so that children could create their own versions. They could print their name across the banner, or list words that describe what Redlands means to them. Schools could select examples of the students' creations that could also be displayed in public areas such as city hall to the library etc. This would be a great way for teachers to help educate students on the history of our great city. Also participating in the fundraising aspects of the customized logos will be nonprofit organizations, service clubs, churches and more.

1.6 Benefits to the City of Redlands

Beyond the great community and business involvement would be the revenue sharing potential. Through the exclusive agreement the City is offering, the City would be guaranteed a percentage of revenue from every custom logo that is designed, frame that is made, to every commemorative mouse pad and promotional product sold, along with any printing from business letterhead to business cards with the logo on it.

4.1 Revenue Sources

Unique to Pennington Designs is our ability to offer revenue sharing opportunities from several different sources, Graphic Design, Printing (Digital, Offset & Large Format), Screen Printing, Embroidery & Promotional Products. Below are just a few examples of products that can be personalized with the logos;

Hoodies	Hats	Mouse	Mugs	Beer Steins
Puzzles	Coasters	Pads	Pennants	Shot Glasses
Tote Bags	Aprons	iPhone cases	Key Chains	Flags
Clocks	Ceramic Plates	Koozies	Paper Weights	License Plates
Jar Openers	T-Shirts	Plaques	Banners	Business Cards

Official 125th Anniversary products with the City's version will also be displayed and sold at Pennington Designs. We are in the process of moving to a new location in the Cope building which has more retail space and frontage to allow us to display the merchandise. Our new location located adjacent to the very popular A La Minute ice cream parlor should generate tremendous foot traffic and awareness.

EXHIBIT "B"

WORKERS' COMPENSATION INSURANCE CERTIFICATION TO PERFORM FOR THE CITY OF REDLANDS

Every employer except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurer duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code §1861).

PENNINGTON DESIGNS

By: _____

Richard Pennington

Date: _____

9/4/2012