

CONSULTANT AGREEMENT

AGREEMENT made this 19th day of December, 1989, between THE CITY OF REDLANDS, a municipal corporation (hereinafter "City"), and ROBERT R. MCKAUGHAN, P.E. (hereinafter "Consultant").

R E C I T A L S:

WHEREAS, City is in need of retaining the services of an experienced individual to check plans for various structures and construction pursuant to various state and local fire regulations; and

WHEREAS, Consultant is experienced and knowledgeable to do plan check work and has been so engaged and is capable and experienced to do such work as required by City;

NOW, THEREFORE, City hereby engages Consultant to perform the services of plan checking under the following terms and conditions:

AGREEMENT

1. Term: This Agreement shall be for an unspecified period of time until termination by either party by giving thirty (30) days' prior written notice to the other party of such termination. In the event of such termination, any work assigned to Consultant as of the date of the notice of termination shall be completed forthwith. During the thirty-day notice period, Consultant shall continue to perform services for City under this Agreement and shall complete any work given to him expeditiously and with diligence. Termination need not be for cause.

2. Services: Services to be rendered by Consultant to City shall be to check various plans, whether for new construction, remodeling, alteration, or for any other reason, for compliance with requirements under the following regulatory enactments: (a) California Code of Regulations, Title 19; (b) California Code of Regulations, Title 24; (c) Uniform Fire Code; and (d) the Redlands Municipal Code. Consultant shall exercise diligence and best efforts to perform and complete plan check services within two weeks from the time that the document to be checked is delivered to Consultant. It is recognized that in all instances the two-week expected completion date may not be achieved, but best efforts and diligence will be exercised by Consultant to comply with this time limitation.

3. Fee: For the services to be rendered under this Agreement, Consultant shall be paid a fee of Forty Dollars (\$40.00) per hour for direct services in plan checking. Fees for meetings with contractors, designers or occupants shall be \$100.00 per meeting. Consultant shall bill on a calendar month basis and upon receipt of such billing, City will process it expeditiously for payment. City agrees to meet and confer with Consultant at reasonable intervals during the term of this Agreement, not more often than annually, regarding possible modification of Consultant's hourly fee for services. Such discussions regarding adjustment of the Consultant's fee will be done in good faith and, if an adjustment agreed upon, will be submitted to the Redlands' City Council for approval.

4. Independent Contractor: City retains Consultant on an independent contractor basis and Consultant is not an employee of the City. The personnel performing the services under this Agreement, if any, on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law, and shall be responsible for all reports and obligations respecting them, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

5. Personal Services: Consultant's services are retained with the expectation that all plan check work will be performed by Consultant personally. Consultant shall not engage the services of agents or assistants but shall personally perform the services hereunder. This Agreement may not be transferred or assigned.

6. Standard of Care; Licenses: Consultant shall perform the services under this Agreement in a skillful and competent manner. Consultant shall be responsible to City for any errors or omissions in its execution of the work specified under this Agreement. Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatever nature that are legally required to practice its profession. Consultant further represents and warrants that it shall keep in effect all such licenses, permits and other approvals during the term of this Agreement.

7. Work Facilities: Consultant shall provide adequate facilities, supplies, and equipment to perform the services under this Agreement and shall not seek any addi-

tional compensation nor any other assistance from City therefor.

8. Insurance: Consultant shall obtain, at its own cost, a policy or policies of liability insurance of the type and in the amounts described below and satisfactory to the City Attorney. Such policies signed by a person authorized by that insurer to bind coverage on its behalf must be filed with City prior to exercising any right or performing any work pursuant to this agreement. Except for worker's compensation insurance, the City, its elected officials, officers, and employees shall be added as insureds on all policies required under this agreement, but only with respect to operations of the Consultant relating to the performance its duties under of this agreement. The Contractor's insurance coverage shall be primary insurance as respects the City, its elected officials, officers, and employees. Any insurance or self-insurance maintained by the City, its elected officials, officers, and employees shall be excess of the Consultant's insurance and not contribute with it.

A. Prior to the commencement of any services hereunder, Consultant shall provide certificates of insurance with original endorsements, and copies of policies if requested, of the following insurance with Best's Class B or better carriers:

a. Worker's Compensation Insurance covering all employees of the Consultant in the amount required under the laws of the State of California.

b. Commercial General Liability Insurance covering third party liability risks, including contractual liability, in a minimum amount of \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate shall apply separately to this project or the general aggregate limit shall be twice the occurrence limit.

c. Professional Liability Insurance covering the professional acts of the Consultant in an amount of \$1,000,000 per occurrence.

B. Said policy or policies shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits except after thirty (30) days prior notice has been given in writing to City. Consultant shall give to City prompt and

timely notice, of claim made or suit instituted arising out of Consultant's operations hereunder. Consultant shall also procure and maintain, at its own cost and expense, any additional kind and amounts of insurance, which in its own judgment may be necessary for its proper protection in the prosecution of the work.

9. Indemnification: Consultant shall indemnify, save harmless, and defend City, its elected officials, officers and employees from all liability, loss, damage or injury arising out of or incident to Consultant's performance under this Agreement including, without limitation, all consequential damages.

10. Availability: City is retaining Consultant with the expectation that Consultant will be available at all reasonable times to perform the services required of Consultant under this Agreement. If during the term of this Agreement Consultant shall be unavailable for any reason for a period of five (5) days or more, Consultant shall provide City with written notice at least five (5) days prior to such unavailability of the period during which Consultant will be unavailable, including the date that Consultant will again become available to provide services under this Agreement. Any period of unavailability in excess of ten (10) consecutive working days must be agreed to, in advance, between Consultant and City. City is relying upon the availability of Consultant to provide the necessary plan check services that the City is expected to perform and will need an opportunity to obtain alternate plan check services in the event of any extended unavailability of Consultant.

11. Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

12. Attorneys' Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that

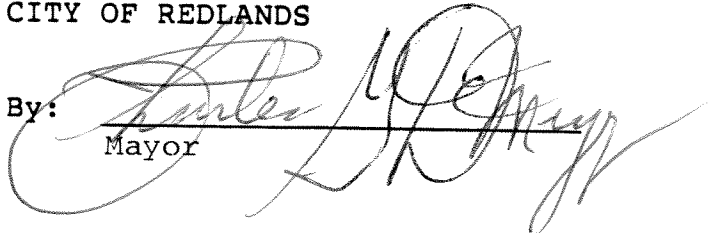
purpose, in addition to any other relief to which he may be entitled.

CONSULTANT:

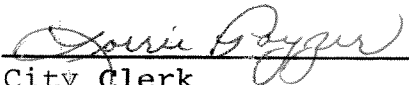

ROBERT R. MCKAUGHAN, P.E.

CITY OF REDLANDS

By:


Mayor

ATTEST:


City Clerk