

AGREEMENT TO FURNISH FINANCIAL CONSULTING SERVICES TO THE CITY OF REDLANDS RELATED TO CITY UTILITY MATTERS

This agreement for financial consulting services relating to the City of Redlands' water utility ("Agreement") is made and entered into this 24th day of August, 2010 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and R3 Consulting Group, 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 financial consulting services relating to City's water utility (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 "Scope of 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.

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 Rosemary Hoerning, its Municipal Utilities and Engineering 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 - PAYMENTS TO CONSULTANT

- 4.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of Twenty Eight Thousand Five Hundred Dollars (\$28,500). City shall pay Consultant on a time and materials basis up to the not to exceed amount and in accordance with Exhibit "B," entitled "Fee Proposal," which is attached hereto and incorporated herein by this reference.
- 4.2 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.
- 4.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City

Rosemary Hoerning
Municipal Utilities and Engineering Director
City of Redlands
P.O. Box 3005
Redlands, CA 92373

Consultant

Richard Tagore-Erwin
Principal
R3 Consulting Group, Inc.
4811 Chippendale Drive, Suite 708
Sacramento, CA 95841

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 4.3.

ARTICLE 5 - INSURANCE AND INDEMNIFICATION

- 5.1 Insurance; Generally. 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.

- 5.2 Workers Compensation and Employer's Liability. Consultant shall secure and maintain Workers 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 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 6 - CONFLICTS OF INTEREST

- 6.1 Consultant covenants and represents that it does not have any investment or interest in real property which might be the subject of 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.

6.2 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 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.

6.3 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 7 - GENERAL CONSIDERATIONS

7.1 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 by a Party.

7.2 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.

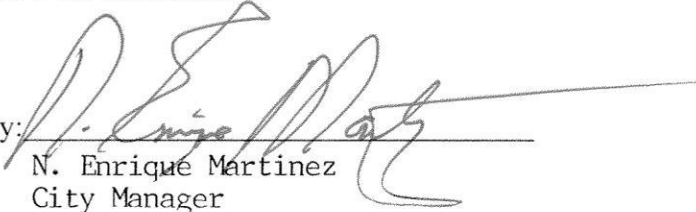
- 7.3 Documents and Records. All documents, records, drawings, designs, cost estimates, electronic data files, databases and other documents developed by Consultant in connection with its performance of the Services, and any copyright interest in such documents, shall become the property of City and 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.
- 7.4 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.
- 7.5 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 five (5) 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 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 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.
- 7.6 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.

- 7.7 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.
- 7.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 7.9 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

By: 
N. Enrique Martinez
City Manager

Attest:



Sam Irwin, City Clerk

R3 CONSULTING GROUP, INC.

By: 

Richard Tagore-Erwin

Scope of Services



Consulting Group, Inc.
Resources Responsibility Respect

4511 Colpoencade Drive, Suite 708
Sacramento, CA 95841
Tel: 916-576-0306
Fax: 916-331-9900
www.r3cgl.com

EXHIBIT 'A'

April 27, 2010

Dan McHugh
City Attorney
City of Redlands
P.O. Box 3005
Redlands, CA 92373

Subject: Water Utility Options

Dear Mr. McHugh:

Per our conversation on April 27, 2010, the following is a letter proposal to provide assistance to the City of Redlands (City) for options related to its water utility.

Our understanding is the City needs to make a determination related to the use of Mill Creek water rights purchased by the City with General Fund monies and used by the City's water utility for 1) the amount of monies owed to the General fund by users of the City's water utility, and 2) the best method to establish and maintain any such payments. In general terms, R3's assistance will include the following:

- Reviewing and updating prior documents associated with the Mill Creek water rights, the water utility budget, prior staff reports and any prior presentation materials.
- Conducting additional research on water rights purchases, formation of a JPA, and lease/transfer of municipal assets.
- Meeting with various community groups related to any such payments and payment options.
- Preparing a letter report outlining conclusions and recommendations regarding the amounts and payment methods that best meet the City's needs.
- Presenting options to the City Council for their direction.

We propose to bill the City on a time and materials basis with a total not-to-exceed cost of \$28,500, including all reimbursable expenses. Our 2010 billing rates are as follows:

Richard J. Hutchinson • Richard Rogers-Bowlin • William Schoen

Fee Proposal

EXHIBIT 'B'

Billing Rates and Charges: January 2010 – December 2010

Technical Services

Principal	\$175 per hour
Project Manager	\$175 per hour
Senior Manager	\$155 per hour
Manager	\$150 per hour
Senior Associate	\$140 per hour
Associate II	\$120 per hour
Associate I	\$100 per hour
Administrative Support	\$70 per hour

Reimbursable Costs

Consultants/Subcontractors	cost
Lodging and meals	cost
Travel — Private or company car	\$0.55 per mile
Travel — Other	cost
Delivery and other expenses	cost

Payments

Unless otherwise agreed in writing, fees will be billed monthly at the first of each month for the preceding month and will be payable within 30 days of the date of the invoice.

Escalation

Fees will be escalated annually in accordance with the change in the Consumer Price Index.

I look forward to assisting the City on this very important project. Please feel free to call at (916) 576-0306 or e-mail me at rterwin@r3cqi.com if you have any questions.

Sincerely,

R3 CONSULTING GROUP



Richard Tagore-Erwin
Principal

Ordinance No. 2678 - Purchasing Policy - Finance Director Kundig reviewed the proposed ordinance which updates policies for effective procurement by the City and clarifies ambiguous language, updates the dollar limits for public and nonpublic contracts and provides authorization for approval of contracts. Councilmember Bean felt the \$50,000.00 limit for approval and award of contracts or purchases was too high. City Manager Martinez offered to provide quarterly reports to the City Council with bids and contracts approved at staff level. Councilmembers concurred to add this provision to the ordinance. The amended version of Ordinance No. 2678, an ordinance of the City of Redlands amending Chapter 2.16 of the Redlands Municipal Code relating to City purchases and deleting Chapter 3.74 of the Redlands Municipal Code, was read by title only by City Clerk Poyzer, and on motion of Councilmember Gilbreath, seconded by Councilmember Aguilar, further reading of the ordinance text was unanimously waived, and Ordinance No. 2678 was introduced and laid over under the rules with adoption scheduled for February 19, 2008, with Councilmember Bean voting NO.

Ordinance No. 2689 - Uniform Fire Code - Fire Marshal Leonard Temby reviewed the proposed ordinance adopting the most current Uniform Fire Code in print. Ordinance No. 2689, an ordinance of the City of Redlands amending Chapter 15.20 of the Redlands Municipal Code, and adopting, with certain amendments, the 2006 Edition of the International Fire Code, incorporating the 2007 Edition of the California Fire Code, Part 9 of Title 24 of the California Code of Regulations, was read by title only by City Clerk Poyzer, and on motion of Councilmember Gilbreath, seconded by Councilmember Gallagher, further reading of the ordinance text was unanimously waived, and Ordinance No. 2689 was introduced with unanimous Council approval and laid over under the rules with adoption scheduled for February 19, 2008.

Ordinance No. 2690 - California Building Code - Interim Community Development Director Dalquest reviewed the proposed ordinances to update our Building Code, Plumbing Code, Electrical Code and Mechanical Code. Richard Pepper, Chief Building Official, answered questions. Ordinance No. 2690, an ordinance of the City of Redlands amending Chapter 15.04 of the Redlands Municipal Code relating to the adoption of the 2007 California Building Code (California Code of Regulations, Title 24, Part 2) by reference and making amendments thereto, was read by title only by City Clerk Poyzer, and on motion of Councilmember Gilbreath, seconded by Councilmember Gallagher, further reading of the ordinance text was unanimously waived, and Ordinance No. 2690 was introduced with unanimous Council approval and laid over under the rules with adoption scheduled for February 19, 2008.

Ordinance No. 2691 - California Plumbing Code - Ordinance No. 2691, an ordinance of the City of Redlands amending Chapter 15.08 of the Redlands

