

authorized acceptance of the FY2007 Emergency Management Assistance Program grant award of \$9,788.00 from the San Bernardino County Operational Area Office of Emergency Services and authorized the expenditure of that amount for the City of Redlands Disaster Preparedness Program administered by the Fire Department.

Funds - Agreement - Safety Hall Retrofitting - On motion of Councilmember Gilbreath, seconded by Councilmember Gil, the City Council unanimously approved a consultant agreement with W. Tan Engineering and authorized the Mayor to execute, and the City Clerk to attest to, the document on behalf of the City. On motion of Councilmember Gilbreath, seconded by Councilmember Gil, the City Council unanimously approved an additional appropriation not to exceed \$33,000.00 from the Public Facilities Development Fund to fund the engineering services for the retrofitting of Safety Hall, 212 Brookside Avenue.

Settlement Agreement - Ruptured Water Main - On motion of Councilmember Gilbreath, seconded by Councilmember Gil, the City Council unanimously approved a Settlement and Release Agreement with State Farm General Insurance Company, USAA Casualty Insurance Company, Mary Deborah Johns and Kurtis F. Barnes for a ruptured water main located near the corner of a residential construction site bordered by San Canyon Road and 16th Street in Yucaipa and authorized the Mayor to execute, and the City Clerk to attest to, the document on behalf of the City.

PLANNING AND COMMUNITY DEVELOPMENT

Residential Development Allocations - Third Quarter - Assistant Community Development Director Dalquest reviewed the following application for residential development allocations for the third quarter of 2007 as recommended by the Planning Commission, the Historic and Scenic Preservation Commission, the Housing Commission, City departments and the Redlands Unified School District:

1. RDA 2007-III-01 - Zigrossi Company, Inc., Applicant - Tentative Tract No. 17693, an approved 77-unit TOWNHOME RESIDENTIAL DEVELOPMENT project on a 6.7 acres site located on the northeast corner of Alabama Street and Orange Avenue in the EV2500-RM (Multiple-Family Residential - 2500) District of the East Valley Corridor Specific Plan.

Assistant Community Development Director Dalquest reported the applicant did not receive the minimum 90 points making them ineligible for an allocation of building permits. On behalf of the applicant, the architect addressed the City Council at length reviewing their proposed project and additional points he felt they should be granted. Councilmembers discussed the new process that will be

AGREEMENT TO FURNISH STRUCTURAL DESIGN DRAWINGS AND CALCULATION SERVICES

This agreement for design and calculation services ("Agreement") is made and entered into this 2nd day of October, 2007 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and W. Tan Engineering ("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 prepare structural design drawings and calculations to improve seismic anchorage of walls and roof for City's Police Department located at 212 Brookside Avenue (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," 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 all applicable Labor Code 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 will make reasonable provision for Consultant to enter upon City-owned property to perform the Services.
- 3.3 City designates Deputy Chief Clete Hyman 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 City shall pay Consultant the sum of Twenty-Eight Thousand Dollars (\$28,000) in accordance with the payment schedule set forth in Exhibit "B," entitled "Compensation," 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, in the case of a request for extra services pursuant to section 4.7.
- 4.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by United States mail should be addressed as follows:

City

Deputy Chief Clete Hyman
Redlands Police Department
City of Redlands
PO Box 3005
Redlands, CA 92373

Consultant

Weiquan Tan, P.E.
W. Tan Engineering
155 W. Hospitality Lane, Suite 165
San Bernardino, CA 92408

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 4.3.

- 4.4 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 - INSURANCE AND INDEMNIFICATION

- 5.1 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.
- 5.2 **Workers Compensation and Employer's Liability.**
- A. 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.
- 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.
- 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 Two Million Dollars (\$2,000,000) annual aggregate.
- 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 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.
- 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 of 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.

- 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 of the Parties.
- 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 work product of Consultant, such as, but not limited to, documents, records, drawings, designs, cost estimates, electronic data files, databases and other documents developed by Consultant in connection with the performance of the Services (collectively "Work Product"), and any copyright interest in such Work Product, shall remain the property of Consultant. Notwithstanding the foregoing, Consultant hereby grants City an irrevocable non-exclusive license, in perpetuity, to use such Work Product in carrying out and completing the retro-fitting and reconstruction of City's Police Department facilities, and to disclose and reproduce such Work Product as reasonably required to perform the same and as otherwise may be required by law.
- 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. Either Party may terminate this Agreement, in its sole discretion, by providing five (5) business days prior written notice to the other Party (delivered by certified mail, return receipt requested).

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.

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.

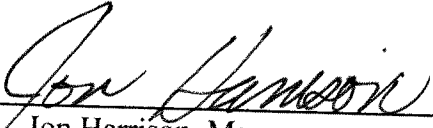
7.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

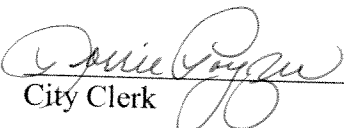
and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.

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

CITY OF REDLANDS

By: 
Jon Harrison, Mayor

Attest:


City Clerk

W. TAN ENGINEERING

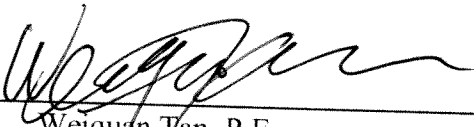
By: 
Weiquan Tan, P.E.

Exhibit "A"

Scope of Services

The location of the Project is 212 Brookside Avenue, Redlands, California ("the Building"). On Wednesday, August 15, 2007, Consultant, and his contract advisor, Gary Swanson, met with Deputy Chief Clete Hyman of the Redlands Police Department, and Denise Asherman, Support Services Supervisor. The "as built" drawings were briefly reviewed and it was agreed that the present anchorage of masonry walls and tilt-up walls to the roof diaphragm and the roof diaphragms were inadequate. It was acknowledged that in the event of a severe earthquake, significant property damage, personal injury, or death, could occur. It was further acknowledged that the entire Building would need a seismic retrofit. Deputy Chief Hyman requested a proposal for professional services for the circular structure presently being converted to a dispatch center, and a separate proposal for the entire Building.

However, after reviewing the "as-built" structural drawings, retrofit can not be limited to the circular portion of the Building. It is necessary to retrofit the anchorage of the masonry walls and tilt-up walls to roof diaphragm and roof diaphragm for the entire Building.

It is the City's desire to improve the existing seismic anchorage of masonry walls and tilt-up walls to roof diaphragm, and the roof diaphragm of the Building.

W. Tan Engineering ("Consultant") will provide professional services to the City consisting of the preparation of structural design drawings and calculations for retrofitting the anchorage of masonry walls and tilt-up walls to the roof diaphragms and roof diaphragm of the Building.

Consultant estimates that its engineering work associated with the Services will be ready for the first City plan check review approximately within two (2) months after approval of this Agreement, a notice to proceed, and as-built architectural and structural drawings, and the retainer payment specified in Exhibit "B". More time will be required if new California building code is used.

The City agrees to employ Consultant to perform all the required structural observations. Whether or not an observation is required will be determined by either the Consultant or the building authority or both. Consultant estimates a rate of \$75 per hour or \$300 per visit, whichever is greater.

When retrofitting existing buildings it is difficult to make observations of the existing structural elements due to ceiling covering, roof covering, partition walls and wall covering. Therefore, structural observations must be made during the course of work. Structural analyses and designs may need to be redone at added expense.

Exhibit "B"
Compensation

Compensation for Work and Completion of Work

Compensation for the Services shall be a lump sum fee of Twenty-eight Thousand Dollars (\$28,000).

Payment shall be as follows:

1. Upon the City's approval of this agreement, Nine Thousand Dollars (\$9,000) is due. The retainer is non-refundable.
2. Nine Thousand Five Hundred Dollars (\$9,500) is due upon Consultant's submission of fifty percent (50%) of the required preliminary drawings to City for review.
3. Nine Thousand Five Hundred Dollars (\$9,500) is due upon Consultant's submission of structural calculations and drawings to the City for building permit application.
4. The costs incurred for printing, copying, binding, plotting (including original drawing plotting) and shipping cost, plus 15% of this reimbursement total, shall be reimbursed to Consultant.

Examples of these costs are as follows:

1. Drawing plotting: \$6.00 per sheet
2. Drawing reproduction prints: \$2.50 per sheet
3. 8 ½ X 11" prints: \$0.12 per sheet.

Additional services, outside the Scope of Services agreed upon shall not be performed without the written authorization of City. When so authorized, Consultant shall provide such additional services at the rate of \$120 per hour for design and \$75 per hour for structural observations.