

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 15th day of February, 2005 between the City of Redlands, a municipal corporation ("City") and James Smothers MAI, ASA, SRA ("Consultant").

City is considering the acquisition of real property for use as a sports park (hereinafter referred to as the Project), including the parcels described herein in **Attachment 1** (hereinafter referred to as Subject Property).

In the event that City elects to adopt a Resolution of Necessity to acquire Subject Property, the City is required to have a fair market appraisal of Subject Property in order for it to (1) establish the amount of probable compensation pursuant to California Code of Civil Procedure section 1255.010 prior to obtaining an Order of Possession and (2) establish an amount that it believes to be just compensation pursuant to California Government Code section 7267.2(a) before the initiation of negotiations with the Owners.

The City requires valuation consulting services for the above purposes.

In consideration of the mutual promises, covenants and conditions hereinafter set forth, City and Consultant agree as follows:

AGREEMENT

1. Specification of the Purpose and Use of the Appraisal. The fair market value appraisal and the "written statement of, or summary of the basis for the appraisal" are required by the California eminent domain law in order that City may determine the probable amount of compensation as required by Chapter 6 of the Code of Civil Procedure sections 1255.010 *et seq.* in the event that the Governing Board of City elects to adopt a Resolution of Necessity for the acquisition of said Parcel(s) by eminent domain.

2. The Appraisal Format and Required Summary. Consultant is to prepare and deliver a self-contained appraisal report (full narrative report) in the format required by the Uniform Standards of Professional Appraisal Practice (USPAP) together with an Appraiser's Statement of the Basis for the Appraisal as required by Code of Civil Procedure section 1255.010(b) using as a guide the format ("Guide") described in **Exhibit A**. The Statement shall be on Appraiser's stationery, and the Appraiser shall modify the Guide where its provisions are inapplicable or do not accurately reflect the Appraiser's process. The submitted Statement should reflect the appraisal process actually used by the Appraiser where such process is different from the process described in the Guide. The process described in the Guide, attached as Exhibit A, was prepared by the City using the general appraisal process described in *The Appraisal of Real Estate*, published by the Appraisal Institute to develop a uniform Statement format, and not to impose a requirement that the Appraiser necessarily follow the process described in the Guide.

3. Personal Nature of Contract: Delegation and Subcontractors. Consultant's obligation to provide valuation services to City hereunder is personal in nature, and may not be delegated.

- a. Prior Approval of Subcontractors. The parties understand that studies may be needed requiring expertise not within the ordinary expertise of a real estate appraiser that may require the assistance of third party consultants. In the event that Consultant proposes to retain such persons, Consultant agrees that prior written City approval will first be obtained.
- b. Subcontracts Shall Contain Provisions of Prime Contract. Any subcontract, if approved, shall contain all the required provisions of this prime contract.

4. Warranty That No One Retained to Solicit This Agreement. The Consultant warrants that s/he has not employed or retained any company, firm, or person, other than a bona fide employee working solely for him/her, to solicit or secure this Agreement, and that s/he has not paid or agreed to pay any company, firm, or person, other than a bona fide employee working solely for him/her, any fee commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability.

5. Indemnification. The Consultant agrees to indemnify, defend, and save harmless the City, its officers, agents, and employees from any and all claims and losses accruing or resulting thereto, that arise out of the claimed negligence of the Consultant in the performance of the valuation services required hereunder.

6. Consultant an Independent Contractor. The Consultant, and the agents, employees, and subcontractors of Consultant, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of the City.

7. Duty of Care. Consultant shall perform all services required under this Agreement in a careful, diligent, and professional manner and shall be responsible for negligence, errors, and omissions for services performed by Consultant, its employees, agents, and subcontractors under the terms of this Agreement.

8. Availability of Financial Documents for Inspection and Audit. Consultant, and any subcontractor, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred on the services and shall make all such materials available at any reasonable time during the term of work on the services and for three (3) years from the date of final payment to Consultant by City for work performed by Consultant on the services as authorized by City. It is understood that the project may be funded, in whole or part, with State and/or Federal funds. The City, State, and Federal Highway Administration, U.S. Department of Transportation, and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of Consultant that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions. Also, records supporting cost proposals shall be available for review

by authorized representatives of the City, State, and Federal government, and if such data is used to support a contract entered into with City, it shall be subject to a three-year retention period.

9. Definition of Billable Costs. The cost principles and procedures for use in the determination of the allocation of individual items of cost shall be those set forth in 48 CFR, Part 31, Chapter 1, and are herein incorporated by reference.

10. Commencement of Work. Consultant shall commence work on the services required herein upon receipt of a written notice to proceed from the Agency. This Agreement will be considered terminated upon completion of said services by Consultant or by March 15, 2005 or by notice to stop work by City, whichever occurs first unless extended in writing by the City. The City assumes no liability for work performed or costs incurred prior to the beginning date or subsequent to the Agreement termination date.

11. Consulting Fee. City agrees to pay Consultant a sum for the appraisal not to exceed \$8,000

a. Consultant further understands that if the required appraisal and appraisal summary is not delivered within the time provided herein, the City may be required to retain a second appraiser to deliver the requisite report and summary to assure that there will be no project delay. Consultant understands that once the City elects to retain a second appraiser, Consultant's work may be of no use to the City. The parties agree that Consultant shall make a written request for an extension of time in the event that Consultant cannot submit the required appraisal and summary in the time provided herein. City may either grant the extension if, in its sole judgment, the acquisition schedule is not compromised thereby or, in its sole option, deny the extension and require submission on the date provided for herein. In the event that the appraisal and summary is submitted after either (1) the date provided for herein if no extension is applied for or the request for extension is denied; or (2) the agreed-upon extended date, then Consultant shall not be entitled to any payment for services unless City elects, at its sole option, to use said appraisal and summary as the approved appraisal for purposes of complying with either or both Code of Civil Procedure section 1255.010 and Government Code section 7267.2.

In the event that additional consulting services are required, the Consultant shall be paid at an hourly rate of \$175.00 per hour for the performance of such additional services as may be required hereunder. This sum shall cover the cost of all staff time and all work of employees as well as any consultants or subcontractors to the Consultant approved by City prior to the execution of this Agreement. In the event that Consultant is designated by City as an expert valuation witness or is otherwise required to testify in court in regard to Subject Property, an hourly rate of \$ 350.00 shall be paid for court testimony, deposition testimony, and preparation time.

b. Payments to Consultant shall be made upon invoices submitted by Consultant to City for review and approval. Invoices will be paid by the City within a reasonable time after said approved invoices are received from Consultant.

c. Consultant agrees that, in no event, shall City approve or be required to pay any sum payable hereunder prior to receipt by City of all final documents as described herein on or before March 15, 2005 acceptable in form and content as required by this Agreement. Final payment shall be made not later than seventy-five (75) days after presentation of final documents by Consultant and acceptance thereof by City.

d. If major changes in the scope, character, or total cost of services are made necessary by reason of written instructions from the City, the City and Consultant shall negotiate a Supplemental Agreement mutually acceptable to the parties hereto.

e. Payments for updating any report or service by Consultant, when requested in writing by City and not included in Consultant's proposal, shall be paid on a reimbursement basis in accordance with the fee schedule as set forth in this Agreement. Payment for additional services shall be made by City in accordance with invoices submitted by Consultant, and such invoices shall be paid by City within a reasonable time after said invoices are received and approved by agency.

13. Duty of City to Supply Data. City agrees to provide Consultant the following:

a. Such information, as requested by Appraiser, as is generally available from City files applicable to the project.

b. Assistance, if necessary, in obtaining information from other governmental agencies. However, it shall be Consultant's responsibility to make initial contact with respect to the gathering of such information.

14. Additional Provisions

a. Notification of Owner

Consultant is required to give the Owner or the designated representative an opportunity to accompany the appraiser during the initial inspection of the property. This notice shall be in the form of a written letter to the Owner in a form substantially as follows: I have been retained by City to make an independent appraisal of your property required by California law.

I am advised that City has sent you a Notice of Decision to Appraise explaining that City is considering the acquisition of (a part of) your property, but that no final decision to acquire has yet been made.

I am writing to invite you or your designated representative to accompany me on my initial site visit. I am interested in hearing your views regarding market value and, particularly, any factual information that you might have relating to the value of the property.

I currently plan to make my initial site visit to your property on , at .m. Please call me to either confirm that time should you wish to accompany me or to arrange another mutually convenient time.

b. Date of Value and Definition of Fair Market Value. Consultant is to complete a fair market value appraisal of subject property. The date of value will be the date of the submission of the appraisal report.

Market Value is defined by California Code of Civil Procedure section 1263.320(a) as follows:

The fair market value of the property... is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

c. Parcel Diary. The appraiser will initiate and include a parcel diary in the appraisal report. Include in the diary that the appraiser invited the Owner or his/her authorized representative to accompany the appraiser during the appraiser's inspection of the property together with a record of activities undertaken during the course of making the appraisal.

d. Photography. Consultant agrees to take extensive color-print photographs of subject property near the time of the initial site visit, as well as the comparable sales that were relied upon. If Consultant uses a video camera, Consultant shall also provide a video record of site observations.

e. Inspection of Properties. Comparable sales that were relied upon in arriving at the fair market value estimate will be: (1) personally inspected in the field by Consultant, and all dates of inspection will be shown in the appraisal report and entered in the Appraisal Diary; and (2) confirmed with either the seller, buyer, or selling broker. All properties appraised will be personally inspected in the field by the Consultant, and all dates of inspection will be shown in the appraisal report and entered into the Appraisal Diary.

f. Hazardous Waste. If there is surface, subsurface, or groundwater contamination on Subject Property, Consultant shall appraise the property [indicate whether the appraiser is to appraise either "as contaminated" or "as is free of contamination"].

g. Limiting Conditions. The consultant shall include in the appraisal report a statement of appropriate contingent and limiting conditions, if any.

h. Certification and Signature. The certification, signature and date of signature of the appraiser shall be included in the Appraisal in the form set forth in Exhibit B.

15. Notices. Any and all notices, demands, invoices, and written communication between the parties hereto shall be addressed as set forth in this paragraph. The below-named individuals furthermore shall be those persons primarily responsible for the performance by the parties under this Agreement.

City

John Davidson, City Manager
City of Redlands
PO Box 3005
Redlands, CA 92373

Consultant

James Smothers
1809 North D Street
San Bernardino, CA 92405

Any such notices, demands, invoices, and written communications by mail shall be deemed to have been received by the addressee forty-eight (48) hours after deposit thereof in the United States mail, postage prepaid and properly addressed as set forth above.

16. Confidentiality. Consultant understands and agrees that this Agreement, the consulting services, conclusions, and appraisal report are confidential in nature. Neither the appraisal report nor the opinions therein shall be disclosed to anyone other than the city attorney or public entity staff assisting legal counsel. The appraisal reports, together with any other documents required by this Agreement, shall be submitted to the city attorney in the same manner as notices are given as required by paragraph 14, except that appraisal reports shall be delivered either personally, or by Federal Express by delivery requiring a delivery signature. Consultant understands and agrees that his/her duty of confidentiality does not terminate upon the termination of this Agreement.

17. Number of Copies of Appraisal Reports and section 1255.010(b) Statements to Be Delivered. Consultant shall deliver five (5) copies of the Appraisal Report and the Code of Civil Procedure section 1255.010(b) Appraiser's Statement of the Basis for the Appraisal required by this Agreement.

18. Termination. This Agreement may be terminated by the City upon the giving of a written Notice of Termination to Consultant at least fifteen (15) days prior to the date of termination specified in said Notice. In the event that this Agreement is so terminated, Consultant shall be compensated either at Consultant's applicable rates as set forth in paragraph 11 for the number of hours of work performed by Consultant or on a pro rata basis with respect to the percentage of the project completed as of the date of termination, whichever measure yields the lower result. Consultant shall provide to City any and all documents, diaries, data, studies, surveys, drawings, maps, photographs, and reports, whether in draft or final form, prepared by Consultant as of the date of termination. Termination of this Agreement pursuant to this paragraph shall not terminate the obligation of confidentiality set out in paragraph 15 herein.

19. Dispute Resolution. Any dispute arising from a question of fact in connection with this Agreement shall be resolved in accordance with the Government Code provision involving claims against public entities.

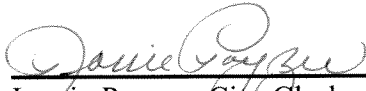
20. Civil Rights Act Compliance. The Consultant shall comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23, Code of Federal Regulations section 710.405(b) are made applicable by reference and are considered a part of this Agreement.

21. Written Agreement Contains the Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party that is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be enforceable and binding. Any modification of this Agreement shall be effective only if it is in writing and signed by all parties.
City of Redlands



Susan Pepler, Mayor

Attest:



Lorrie Poyzer, City Clerk



James Smothers, MAI, ASA, SRA

Attachment No. 1

Assessor Parcel Nos:

0167-021-19, 20, 24, 07

0167-031, 03, 04, 05, 06, 07, 08, 09, 14

Exhibit "A"
Statement of and Summary of the Basis for Appraisal
Code of Civil Procedure § 1255.010(b)
The Amount Established as Just Compensation
Government Code § 7267.2(a)

The following is a Statement of and Summary of the Basis for the Appraisal and the Amount That [name of public agency] Established as Just Compensation ("summary") required by the California Eminent Domain Law. The appraisal on which this summary is based was made in connection with establishing the amount of compensation as required by Code of Civil Procedure section 1255.010. The appraisal on which this summary is based was made in accordance with accepted appraisal principles, consistent with California valuation law. A statement and summary describes the basis for the appraisal from which [name of public agency] established compensation. There follows the Statement of and Summary of the Basis for the Appraisal and the Amount Established as Just Compensation ("summary"):

Appraisal Summary

Fair market value of the parcel (s) proposed for acquisition \$
(where applicable, set out separate valuations for each parcel)

Use the following only for partial acquisitions:

Severance Damages to the Remaining Property \$ *(or none)*

Offsetting Benefits \$

(If no severance damages were found, then: Since there are no severance damages, there can be no offsetting benefits.)

Summary of Basis

(A) Property Identification

Owner of Record

Assessor's Parcel Number (APN)

Property Address

Recorded Date of Acquisition

If acquisition date within last 5 years,

IRS Stamps: \$

Purchase price, if known: \$

General Character of Interest Being Appraised (e.g., fee, easement, etc.):

The Proposed Acquisition. The proposed acquisition is [all, a part] of an Entire Ownership:

Size of Proposed Acquisition

Improvements Pertaining to Realty

Topography

Shape

Access

Utilities

Environmental Conditions (whether or not valuation is premised on the assumption that property is free and clear of contamination):

Date of Valuation

Highest and Best Use. *Highest and best use* is defined as the reasonably probable and legal use of land that is legally permissible, physically possible, and financially feasible that results in the highest value. Highest and best use analysis is used in the appraisal process to identify comparable properties and, where applicable, to determine whether the existing improvements should be retained, renovated, or demolished.

Highest and Best Use

Present Use

If different from Highest and Best Use

Applicable Zoning

General Plan Designation

Reasonably probable legal land use designation in the near future (if different from present use or zoning):

(B) *Alternative 1, where only the sales comparison approach was used*

The Principal Transaction Used in the Sales Comparison Approach

The three accepted approaches to value are the sales comparison approach, the income approach (capitalization analysis) and the cost approach (reproduction or replacement cost analysis). The sales comparison approach was used as the best indication of market value. The sales comparison approach is one of the three accepted approaches to value. *The income approach and the cost approach were not considered to be applicable to this appraisal problem because* _____ *(delete if approach (es) used).*

The sales comparison approach is used to derive a value indication by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments to the comparables based on the elements of comparison. This is the preferred method of valuation when comparables sales data are available. A number of sales were examined. However, the principal transactions relied upon were:

Location

Seller/Buyer

Date Recorded

Recording Data

Sale Price

Alternative 2, where cost and/or income approach also used: delete references in Alternative 1 that cost and/or income approach not used. Then add the following)

In addition to the sales comparison approach, the income approach (capitalization analysis) and the cost approach (reproduction or replacement cost analysis) were used.

The Income approach (capitalization analysis). The income approach is a set of procedures through which a value indication for income-producing property is derived. The income

approach converts the anticipated net income (rent) into an indication of property value. The income approach is based on a consideration of comparable rents and of capitalization rates. The income approach analysis is summarized as follows:

The cost approach (reproduction or replacement cost analysis). The cost approach is a set of procedures through which a value indication is derived for the fee simple interest in the property by estimating the current cost of replacement new for the existing structure; deducting accrued depreciation from the replacement cost; and adding the estimated land value. The cost approach analysis is summarized as follows:

Use the following only for a partial taking:

(C) Severance Damages/Benefits Analysis

In addition to determining the market value of the parcel [s] sought to be acquired an analysis of severance damages, if any, was made. The basis for this determination is whether or not the remainder would be diminished in value by reason of the proposed acquisition and/or by the construction of the improvement in the manner proposed. Where severance damages are found, then whether or not there are offsetting benefits is determined. Benefits are any increases in value of the remainder by reason of the construction of the improvement in the manner proposed. If there are no severance damages, then whether or not there are benefits is inapplicable, since benefits can only be offset against severance damages by reason of California eminent domain valuation law.

Use the following if no severance damages are found:

No severance damages were found for the following reasons:

Since no severance damages were found there can be no offsetting benefits.

Use the following where severance damages are found:

Severance damages were found in the amount of \$

A narrative summary of the reasons for this conclusion, together with the calculations of the "before" and "after" value, follow:

Use the following only if benefits were found. If severance damages were found but no benefits, then insert: No offsetting benefits were found.

Benefits were found in the amount of \$

A narrative summary of the reasons for this conclusion follow:

Severance Damages/Benefits Summary

Remainder Before: Value of remainder "less" the value of the interest proposed for acquisition as part of the whole property: \$

Remainder After Before Consideration of Benefits: Value of remainder "after" the proposed acquisition and after the construction of the improvement in the manner proposed (but before consideration of benefits:

	\$	
Severance Damages:	\$	
Offsetting Benefits:	\$	<i>(Insert amount or "n/a")</i>
Net Severance Damages after Offset for Benefits:	\$	<i>(Insert amount or "n/a")</i>

**Value of Remainder After Considering
Both Severance Damages and Benefits:** \$

Dated

The above is a summary of my appraisal prepared at the request of to be used by [public entity] to comply with Code of Civil Procedure section 1255.010. My appraisal that is the basis for this summary was made in accordance with accepted appraisal principles, consistent with California Valuation Law.

By:
(signature of appraiser)