

AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the preparation of a Water Quality Management Plan (WQMP) and Erosion Control Plan for future improvements to the City of Redlands' Heritage Park ("Agreement") is made and entered in this 18th day of December, 2012 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and Tuttle 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 a Water Quality Management Plan (WQMP) and Erosion Control Plan for the design and construction of future improvements to City's Heritage Park (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 Consultant shall comply with applicable federal, state and local laws and regulations in the performance of this Agreement including, but not limited, to State 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 Christopher Boatman, Senior Project Manager, 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 Consultant shall perform the Services in a prompt and diligent manner, and complete the Services within ten (10) days from the Effective Date of the Agreement. The Services shall commence immediately upon the Effective Date of this Agreement.

- 4.2 If Consultant's Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with City Council adopted policy for the same. It shall be the obligation of Consultant to obtain a copy of such policy from City Staff.

ARTICLE 5 – PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall be in the amount of Four Thousand Five Hundred (\$4,500.00). City shall pay Consultant the fixed amounts for each respective task comprising the Services, in accordance with Exhibit "B," entitled Project Schedule and Rates, which is attached hereto and incorporated herein by this reference.
- 5.2 Consultant shall submit an invoice to City describing the work performed by Consultant upon completion of the Services. Consultant's invoice shall include a brief description of each task comprising the Services performed and the dates the Services were performed. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 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
Fred Cardenas, Director
Quality of Life Department
City of Redlands
35 Cajon Street, Suite 222
P.O. Box 3005 (mailing)
Redlands, CA 92373

Consultant
Warren Tuttle
Tuttle Engineering
1445 W. Redlands Blvd, Suite A
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 the 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.

- 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 "C," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference.
- 6.3 Consultant shall secure and maintain 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 such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 6.4 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.
- 6.5 Consultant shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit 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.
- 6.6 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 and 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 authorization or entitlements;
- (iii) authoring 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 officially determines that Consultant must disclose its financial interests, Consultant shall complete and file a Fair Political Practices Commission Form 700, State of Economic Interests with the City Clerks' office pursuant to the written instructions provided by 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 Project related documents, records, drawings, designs, cost estimates, electronic data files, databases and any 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.
- 8.4 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 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.

- 8.5 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City; provided, however this Agreement may be terminated by City, in its sole discretion, by providing five (5) days prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate. 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. 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 project related 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.
- 8.6 Consultant shall maintain books, ledgers, invoices, accounts and 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 reasonable times for examination by City at the office of Consultant.
- 8.7 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.
- 8.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.9 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 authorizes representative of the City and Consultant have signed in confirmation of this Agreement.

CITY OF REDLANDS

TUTTLE ENGINEERING

By: 
Tina T. Kundig, Finance Director

By: 
Warren D. Tuttle, President/ Owner

ATTEST:


Sam Irwin, City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

Scope of Services:

Water Quality Management Plan (WQMP)

Tuttle Engineering can prepare a WQMP which defines the sustained program to insure the quality of storm water discharged from the site. This plan will be developed to meet the State Water Quality Control Board directives and will be designed to treat the constituents of concern identified for the downstream watercourses.

Erosion Control Plan

Tuttle Engineering will prepare an erosion control plan in coordination with Best Management Practices. The plan shall identify the following:

- 1) Property and adjacent land boundaries.
- 2) Channels, ditches, watercourses, and wetlands.
- 3) The amounts and types of existing ground cover.
- 4) Drainage patterns on and adjacent to the site.
- 5) Locations and dimensions of utilities, roads and highways.
- 6) Locations of all 30% and steeper slopes on the site.
- 7) Locations and dimensions of land disturbances including driveways, buildings, and utilities.
- 8) Locations and dimensions of erosion control measures.

Exclusions to Scope of Services:

Engineered plans not listed within the Scope of Services.

Agency fees are excluded from the proposal.

Submittals, delivery and overnight services

Printing and reproduction costs for documents submitted to reviewing Agencies:	
Reproduction Costs	
8½" X 11" BW	\$0.10
8½" X 14" BW	\$0.15
11" X 17" BW	\$0.25
18" X 24" and 18" X 26" BW	\$2.00
24" X 36" BW	\$3.00
36" X 48" BW	\$3.50
36" X 60" BW	\$4.00
Reproductions requiring color will be sent to a local printing company and an additional 10% fee will be added to the charge.	

EXHIBIT "B"
PROJECT SCHEDULE AND RATES

SCHEDULE

Work will commence immediately upon receiving written authorization to proceed and will be completed within ten (10) days.

RATES

Water Quality Management Plan (WQMP)	\$2,500.00
Erosion Control Plan	\$2,000.00

Total: \$4,500.00

Meetings & Coordination

Tuttle Engineering will provide a maximum of five (5) hours of meetings and coordination time with the client. The Client explicitly understands additional meetings, coordination, if necessary, as well as travel expenses, will be billed on a time and material basis of \$150.00 per hour and will require a written amendment to this Agreement. The Client also assumes responsibility for the timely submittal and pickup of all plans.

EXHIBIT 'C'

WORKERS' COMPENSATION INSURANCE CERTIFICATION

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).

TUTTLE ENGINEERING

By: 
Warren D. Tuttle, President/Owner

12-18-12
Date: