

DEVELOPMENT PROJECT AND ENVIRONMENTAL REVIEW FUNDING AGREEMENT

This development project and environmental review funding agreement ("Agreement") is made and entered into this 17th day of December, 2019, by and between the City of Redlands, a municipal corporation ("City"), and Property One, LLC, a California limited liability company ("Property Owner"). City and Property Owner are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

RECITALS

WHEREAS, Property Owner intends to file one or more development applications for entitlements with City for development projects (the "Projects") proposed within the City of Redlands; and

WHEREAS, City, at the request of Property Owner, intends to enter into an agreement with a private consulting firm ("Consultant") to provide professional planning and environmental services for City to expedite City's processing and review of the development applications submitted by Property Owner; and

WHEREAS, City, as Lead Agency, will be required to process and approve all environmental studies and documents for Property Owner's Projects which are permitted or required pursuant to the applicable provisions of the National Environmental Policy Act, the California Environmental Quality Act ("CEQA"), and other applicable environmental laws (collectively, "Environmental Documents"); and

WHEREAS, Property Owner agrees to advance payment for all reasonable costs and expenses that Property Owner approves and City incurs in utilizing the Consultant's services in connection with the processing of the applications for entitlements for Property Owner's Projects and any related Environmental Documents;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City of Redlands and Property One, LLC agree as follows:

AGREEMENT

Section 1. Funding Obligations.

A. Within ten (10) days of the date of written request of City and subject to Property Owner's prior written approval of any estimate, Property Owner shall deposit the sum requested in writing (the "Entitlements Deposit") by City to engage the Consultant to commence its services with respect to the completed development entitlement applications submitted to City by Property Owner for each of the Projects submitted by Property Owner to City. The cost of the Consultant's services will be estimated after Property Owner has filed completed applications for a Project and provided to Property Owner for its review and approval. In addition, Property Owner shall pay City's actual costs, as represented by their respective fully

burdened hourly rates, for each employee of City who performs administration and review of the Consultant's services related to Property Owner's Projects. The Entitlements Deposit will be applied towards the total cost of the Consultant's services. Property Owner shall thereafter make payments to City for the balance of City's costs for the Consultant's services within ten (10) days of the date City submits written invoices to Property Owner. If the Entitlements Deposit is exceeded, additional funds will be requested by City; if the deposit is not entirely spent, any remaining funds will be returned to Property Owner. Property Owner's Entitlement Deposits shall not be applied to, nor shall Property Owner be required to pay, any City Development Services Department permit processing fees associated with Property Owner's Projects submitted to City for processing pursuant to this Agreement.

B. Within ten (10) days of the date of written request of City and subject to Property Owner's prior written approval of any estimate, Property Owner shall deposit the sum requested in writing (the "Environmental Deposit") with City to engage the Consultant to commence work on the Environmental Documents for Property Owner's Projects. The cost of the Environmental Documents will be estimated after Property Owner files completed applications for the Project and provided to Property Owner for its review and approval. The Environmental Deposit will be applied towards the total cost of the Environmental Documents. In accordance with City's fee resolution, City will assess an additional ten percent (10%) of the total cost of the Consultant's environmental services to compensate City for its administration and review of the Consultant's environmental work product related to the processing of Property Owner's Project. Property Owner shall thereafter make payments to City for the balance of City's costs for preparation of the Environmental Documents within ten (10) days of the date City submits written invoices to the Property Owner. When the Environmental Deposit is reduced to approximately twenty five percent (25%) of the amount initially deposited, additional funds will be requested from Property Owner by City; if the deposit is not entirely spent, any remaining funds will be returned to Property Owner. Property Owner's deposits shall not be applied to, nor shall Property Owner be required to pay, any City Development Services Department environmental processing fees associated with Property Owner's Projects submitted to City pursuant to this Agreement.

Section 2. Compensation of Consultant. The Consultant services for Property Owner's Projects shall be compensated in accordance with the agreement that is attached hereto as Exhibit "A" and incorporated herein by this reference. Reimbursable expenses of the Consultant, if any, shall be billed by City to Property Owner at the Consultant's actual cost.

Section 3. Term. The term of this Agreement shall commence on January 15, 2020 and shall be effective until such time either party exercises their right to terminate pursuant to Section 4 hereof.

Section 4. Termination. This Agreement may be terminated by either Party, in its sole discretion, by providing not less than five (5) days prior written notice to the other Party. The Consultant shall be compensated by City on a pro-rata basis for Services completed up to the date of termination.

Section 5. Compliance Required. Property Owner acknowledges that City may require Property Owner to supply data and information to determine whether Property Owner's Project

application is complete, whether Property Owner's Project may have a significant effect on the environment, or to assist City and the Consultant in preparing the Environmental Documents. Property Owner shall promptly comply with all such requests by City.

Section 6. Failure to Comply. If, at any time, Property Owner unreasonably delays in failing to provide City with information or data requested pursuant to Section 5 hereof, such unreasonable delay shall suspend the running of the time periods described in State CEQA Guidelines sections 15107 and 15108 for the period of such unreasonable delay. Alternatively, Property Owner acknowledges and agrees that City may, without liability to Property Owner, disapprove the Project for Property Owner's delay in satisfying City's requirements.

Section 7. Notices. Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

City:

Brian Desatnik
Development Services Director
35 Cajon Street, Suite 20
P.O. Box 3005 (mailing)
Redlands, CA 92373
bdesatnik@cityofredlands.org
909-798-7593

Property Owner

Donald J. Berry, Jr.
Property One, LLC
P.O. Box 7538
Redlands, CA 92375
dberry@esri.com
(909) 793-2853 x2252

Section 8. 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 costs and any other relief, be entitled to recovery of its reasonable attorneys' fees, including fees for use of in-house counsel by the Parties.

Section 9. Entire Agreement/Amount. This Agreement represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, proposals or verbal agreements are superseded by this Agreement. Any amendment to this Agreement shall be in writing, approved by the City Council of City and signed by authorized representatives of City and Property Owner.

Section 10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 11. Defense and Indemnity. Property Owner shall defend, indemnify and hold harmless City, and its elected officials, officers, employees and agents, from and against any and all actions, claims, demands, lawsuits, losses and liability for damages to persons or property, including costs and attorneys' fees, that may be asserted or claimed by any person,

firm, entity, corporation, political subdivision or other organization arising out of or in connection with City's processing of Property Owner's Projects.

Section 12. No Third Party Beneficiary. Property Owner acknowledges and agrees that City's agreement with the Consultant to prepare the Environmental Documents for Property Owner's Projects is for the benefit of the public and undertaken in compliance with City's obligations under CEQA, and is not for the benefit of Property Owner.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF REDLANDS

PROPERTY ONE, LLC
a California limited liability company
BY ITS MANAGER:
JUDSON & BROWN, LLC,
a Nevada limited liability company

By: 
Paul W. Foster, Mayor

By: 
Donald J. Berry, Jr., Manager

ATTEST:


Jeanne Donaldson, City Clerk