

## AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of broadcast system upgrade consulting services ("Agreement") is made and entered in this 1st day of December, 2014 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and PlanNet Consulting ("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 provide certain phone system and network integration services for City's Innovation and Technology Department (the "Services") as set forth in Exhibit "A," entitled "Scope of Services, which is attached hereto and incorporated herein by reference.
- 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.
- 1.3 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 2 – RESPONSIBILITIES OF CITY

- 2.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 2.2 City designates Danielle Garcia, Chief Innovation Officer, 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 3 – PERIOD OF SERVICE

- 3.1 This Agreement shall commence on its Effective Date and shall continue until the Services have been accepted as complete by City.

### ARTICLE 4 – PAYMENT AND NOTICE

- 4.1 Compensation for Consultant's performance of Services shall not exceed the amount of Twenty Three Thousand Two Hundred and Seventy Eight dollars (\$23,278). City shall pay Consultant on a time and materials basis up to the not to exceed amount, in accordance with Exhibit "B" entitled "Project Costs," and based upon the hourly rates

shown in Exhibit "C," entitled "Rate Schedule." Both Exhibits "B" and "C" are attached hereto and incorporated by this reference.

- 4.2 Consultant shall submit monthly invoices to City describing the Services performed during the preceding month. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed, and the number of hours spent and by whom, and a description of reimbursable expenses related to the project. City shall pay consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 4.3 At any time during the term of this Agreement, City may request that Consultant perform Extra Services. As used herein, "Additional 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 the City Manager. Consultant shall not perform, nor be compensated for, Extra Work without such written authorization from City. Examples of Extra Work include: additional billable hours to accomplish in-scope items in the event that the amount of hours budgeted is not sufficient to complete tasks based on in-situ conditions related to the antiquated phone system.
- 4.4 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 day 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 part may provide notice of in accordance with this section:

City

Danielle Garcia, Chief Innovation Officer  
Department of Innovation and Technology  
City of Redlands  
35 Cajon Street, Suite 222  
P.O. Box 3005 (mailing)  
Redlands, CA 92373

Consultant

Bob Otoupalik, Principal  
PlanNet Consulting  
2951 Saturn Street, Suite E  
Brea, CA 92821

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 4.4.

## ARTICLE 5 – INSURANCE AND INDEMNIFICATION

- 5.1 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.
- 5.2 Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that Consultant is self-insured or exempt from the workers' compensation laws of the State of California. Consultant shall provide City with Exhibit "D," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to occupancy of the Premises.
- 5.3 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.
- 5.4 Consultant shall secure professional liability insurance in the amount of One Million Dollars (\$1,000,000) per claim made.
- 5.5 Consultant shall secure 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.
- 5.6 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 any negligent act or omission, or willful misconduct, of Consultant, or its officers, employees and agents in performing the Services.

## ARTICLE 6 – CONFLICTS OF INTEREST

- 6.1 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.
- 6.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:
- A. Does not make a governmental decision whether to:
- (i) approve a rate, rule or regulation, or adopt or enforce a City law;
  - (ii) issue, deny, suspend or revoke any City permit, license, application, certification, approval, order or similar authorization or entitlement;
  - (iii) authorize the City to enter into, modify or renew a contract;
  - (iv) grant 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) grant City approval to a plan, design, report, study or similar item;
  - (vi) adopt or grant 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.
- 6.3 In the event City determines that Consultant must disclose its financial interests, Consultant shall complete and file a Fair Political Practices Commission Form 700, Statement of Economic Interests, with the City Clerk's office pursuant to the written instructions provided by the City Clerk.

## ARTICLE 7 – GENERAL CONSIDERATIONS

- 7.1 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.
- 7.2 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.

- 7.3 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.
- 7.4 Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or Consultant's employees, except as herein set forth. Consultant shall supply all 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 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 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion of the services; provided, however this Agreement may be terminated by City, in its sole discretion, by providing ten (10) days prior written notice to Consultant 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.
- 7.6 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.
- 7.7 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.

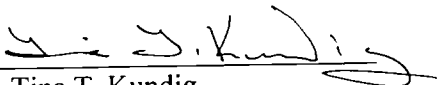
7.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

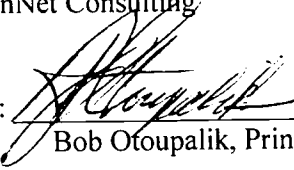
7.9 If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate the remaining 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 authorized representatives of the City and Consultant have signed in confirmation of this Agreement.

CITY OF REDLANDS

PlanNet Consulting

By:   
Tina T. Kundig

By:   
Bob Otoupalik, Principal

ATTEST:

  
Sam Irwin, City Clerk

## EXHIBIT "D"

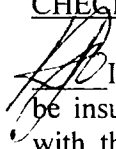
### WORKERS' COMPENSATION INSURANCE CERTIFICATION

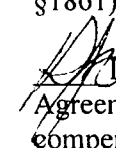
Broadcast System Upgrade Consulting Services

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 by one or more insurers 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.

#### CHECK ONE

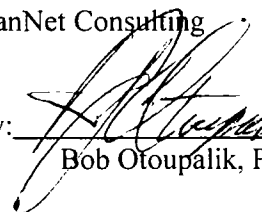
 I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work and activities required or permitted under this Agreement. (Labor Code §1861).

 I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

PlanNet Consulting

Date: 12-2-14

By: 

Bob Otoupalik, Principal

# City of Redlands and PlanNet Exhibits

## **Exhibit A**

### **Scope of Services**

#### **Project Background**

PlanNet's understanding of the projects is as follows:

The City of Redlands (City) has a need to replace the current broadcast system as a result of its age and serviceability. The designated upgrades cover four main components:

- Cameras
- Broadcast switcher
- Editing station
- Storage

The current broadcast components are between 7 and 8 years old. The City is upgrading the system to achieve multiple goals: Update hardware that is past its service life, increase reliability and redundancy of the system, upgrade filming to HD-SDI quality from the current SD cameras, and increase productivity and efficiency of the editing station.

Programming includes City Council and Planning Commission meetings and select special events and informational videos highlighting city services and programs. Redlands TV is available to cable television subscribers through Time-Warner cable (Channel 3) or Verizon cable (Channel 35) services.

City Council and Planning Commission meetings are televised live on Tuesdays and replayed the following Wednesday morning at 9 a.m. and Thursday evening at 6 p.m. Informational videos are televised hourly whenever a meeting or other special event is not scheduled.

### **Scope of Services**

PlanNet understands that the City of Redlands wishes to hire an independent consulting firm for the development of a design for upgrades to the Channel 3 broadcast system such that the design is sufficient to solicit informal bids from audio-visual contractors. The level of detail should be sufficient enough to include recommendations on which elements to upgrade and why; specify equipment and its placement; the required integration with existing equipment and cabling; and any other information necessary to facilitate informal bids from contractors in a uniform manner.

This proposal is submitted for your consideration with the objective to provide the City with independent, impartial representation and design services which includes:

Programming, creation of a Basis of Design, budgets, and Performance Specification, assist with competitive bid based on BoD/Performance Specification (the selected integrator will create the detailed design using the Performance Specification), and review bidders' proposals.

## **Exhibit B**

### **Project Costs**

PlanNet Consulting will conduct this project on a fixed not-to-exceed fee plus expenses as indicated below:

| Phase                           | Fixed Not-to Exceed Fee |
|---------------------------------|-------------------------|
| Design Development              | \$14,644                |
| Construction Documents          | \$3,636                 |
| Bidding                         | \$4,848                 |
| <b>Total Fees</b>               | <b>\$23,128</b>         |
| <b>Estimated Expenses</b>       | 150                     |
| <b>Total, Fees and Expenses</b> | <b>\$23,278</b>         |

### **Level of Effort**

#### **Hourly Effort by Phase**

| Phase                  | Danny Kim<br>Project Manager | Scott Walsh<br>Eric Lockwood<br>Sr. Audiovisual<br>Consultants | Totals     |
|------------------------|------------------------------|----------------------------------------------------------------|------------|
| Design Development     | 19                           | 67                                                             | 86         |
| Construction Documents | 4                            | 18                                                             | 22         |
| Bidding                | 5                            | 24                                                             | 29         |
| <b>Total Hours</b>     | <b>28</b>                    | <b>109</b>                                                     | <b>137</b> |

### **Service Level Agreement**

PlanNet's fee includes all deliverables identified in the "Scope of Work" and "Level of Effort" sections.

### **Expenses**

Expenses (mileage, parking) will be billed at PlanNet's cost.

## **Exhibit C**

### **Hourly Rates**

PlanNet Consulting hourly rate schedule by role for Time and Materials work is as follows:

| Role                      | Hourly Rate |
|---------------------------|-------------|
| Project Principal         | \$195       |
| Project Manager           | \$185       |
| Sr. Subject Matter Expert | \$165       |
| Jr. Subject Matter Expert | \$130       |