

AGREEMENT FOR THE INSTALLATION OF LIGHT POLES
AT THE CITY CORPORATION YARD

This agreement for the installation of light poles at the City of Redlands' corporation yard ("Agreement") is made and entered into this 15th day of December, 2009 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and J & L Flemington Electric ("Contractor"). City and Contractor are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

In consideration of the mutual promises contained herein, City and Contractor agree as follows:

Article 1

ENGAGEMENT OF CONTRACTOR

1.1 City hereby retains Contractor to install light poles at City's corporation yard, which is more particularly described in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference ("Services").

1.2 Contractor and its subcontractors shall possess all appropriate State contractors' licenses required for the work to be performed in connection with the information technology work, and shall not be debarred pursuant to Labor Code sections 1777.1 and 1777.7.

Article 2

RESPONSIBILITIES OF CONTRACTOR

2.1 Contractor shall comply with all applicable federal, state and local laws and regulations in the performance of the Services including, but not limited, to all applicable Labor Code and non-discrimination laws, including the Americans with Disabilities Act. Pursuant to Labor Code section 1773.2, copies of the prevailing rates of per diem wages as determined by the Director of the California Department of Industrial Relations for each craft, classification or type of worker needed to perform the Services are on file at City's Municipal Utilities and Engineering Department, located at the Civic Center, 35 Cajon Street, Suite 15A (Mailing: P.O. Box 3005), Redlands, California 92373.

2.2 Contractor acknowledges that if it violates the Labor Code provisions relating to prevailing wages that City may enforce such provisions by withholding payments to Contractor or its subcontractors pursuant to Labor Code section 1771.6.

2.3 If Contractor executes an agreement with a subcontractor to perform a portion of the Services, Contractor shall comply with Labor Code sections 1775 and 1777.7, and shall provide the subcontractor with copies of the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815. Contractor acknowledges that the statutory provisions establishing penalties for failure to comply with state wage and hour laws and to pay prevailing wages may be enforced by City pursuant to Labor Code sections 1775 and 1813.

2.4 Contractor and its subcontractors shall comply with the provisions of Labor Code section 1776 regarding payroll records maintenance, certifications, retention and inspection.

2.5 Contractor acknowledges that eight (8) hours constitutes a legal day's work pursuant to Labor Code section 1810.

2.6 Contractor shall comply with the provisions of Labor Code section 1777.5 as to apprenticeships, and Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815.

2.7 Pursuant to Public Contract Code section 7104, if the Services involve digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in Health and Safety Code section 25117, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions at the work site differing from those indicated by information about the site made available to Contractor prior to entering into this Agreement; or (3) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement. City shall promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste and cause a decrease or increase Contractor's cost of, or the time required for, performance of any part of the Services, and shall issue a change order under the procedures described in this Agreement. If a dispute arises between City and Contractor as to whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Services, Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under this Agreement. Contractor shall retain any and all rights provided either by this Agreement or by law which pertain to the resolution of disputes between the Parties.

2.8 Pursuant to Labor Code section 6705, if the Services require any trench five feet or more in depth, Contractor shall submit, subject to City's approval, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

2.9 Prior to and during any excavation, Contractor shall comply with Government Code section 4216 et seq.

2.10 Because this Agreement was exempt from competitive bidding, prior to commencement of any Services, Contractor shall provide City with the information required by Public Contract Code section 4104.

2.11 Pursuant to Public Contract Code section 7103.5(b), Contractor offers and agrees to assign to City all rights, title and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (Chapter 2 (commencing with section

16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Agreement

Article 3

PERIOD OF SERVICE

3.1 Contractor shall commence the Services upon City's delivery to Contractor of a written "Notice to Proceed."

3.2 Contractor shall complete the Services within Sixty (60) calendar days from and after the date of the City's issuance to Contractor of the Notice to Proceed.

Article 4

PAYMENT AND NOTICE

4.1 City shall pay Contractor an amount not to exceed the sum of Fourteen Thousand Twenty-Five Dollars (\$14,025.00) as compensation for the Services.

4.2 Payments by City to Contractor shall be made within thirty (30) days after City's receipt and approval of Contractor's invoice, by warrant payable to Contractor.

4.3 All notices shall be made in writing and shall be given by personal delivery or by mail. Notices sent by mail shall be addressed as follows:

City:

Rudy Victorio, Associate Engineer
Municipal Utilities and Engineering Department
City of Redlands
P.O. Box 3005
Redlands, CA 92373

Contractor:

Jack Flemington, Owner
J & L Flemington Electric
1510 Helena Lane
Redlands, CA 92373

When so addressed, such notices shall be deemed given upon deposit in the United States mail; in all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this section 4.3.

4.4 Pursuant to Government Code section 4215, City assumes the responsibility for the timely removal, relocation or protection of existing main or trunkline utility facilities located on the

work site, if such utilities are not identified by City in the plans and specifications attached as part of Exhibit "A." City shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy and for equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay in completion of the Services, when such delay was caused by the failure of City or the owner of the utility to provide for removal or relocation of such utility facilities. However, City is not required to indicate the presence of existing service laterals or appurtenances whenever presence of such utilities on the Project site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the work site, provided that City must identify main or trunklines in any plans and specifications attached as part of Exhibit "A."

Article 5

INSURANCE AND INDEMNIFICATION

5.1 Contractor's Insurance to be Primary. All insurance required by this Agreement shall be maintained by Contractor throughout Contractor's performance of the Services, and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City.

5.2 Workers' Compensation and Employer's Liability. Contractor shall secure and maintain Workers' Compensation and Employer's Liability insurance for its employees throughout the performance of the Services pursuant to Labor Code sections 3700 and 1860, in an amount which meets statutory requirements, with an insurance carrier acceptable to City. The insurance policy shall include a provision prohibiting the policy's cancellation except upon thirty (30) days prior written notice to City. Contractor shall execute and deliver to City a Worker's Compensation Insurance Certification in the form attached hereto as Exhibit "B" prior to commencement of any services.

5.3 Hold Harmless and Indemnification. Contractor shall indemnify, hold harmless and defend City and its elected officials, employees and agents from and against any and all claims, losses and liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent or intentionally wrongful act or omission of Contractor, and its officers, employees and agents, in performing the services.

5.4 Assignment. Contractor is expressly prohibited from assigning any of the work Services without the express prior written consent of City. In the event of agreement by the Parties to assign a portion of the Services, Contractor shall add the assignee as an additional insured to its insurance policies and provide City with the insurance endorsements prior to any work being performed 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. Contractor shall secure and maintain in force throughout its performance of the Services comprehensive general liability insurance, with carriers acceptable to City, with 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. City shall be named as an additional insured and the insurance policy shall include a provision

prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Services.

5.6 Business Auto Liability Insurance. Contractor shall secure and maintain in force throughout its performance of the Services business automobile 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 Contractor owned vehicles used on the Project, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Services.

5.7 Liquidated Damages. The failure of Contractor to complete the Services within the time allowed will result in damages being sustained by City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Contractor shall pay to City, or have withheld from monies due it, the sum of Two Hundred Fifty Dollars (\$250.00) for each consecutive calendar day in excess of the specified time for completion of the Services. Execution of this Agreement shall constitute agreement by City and Contractor that Two Hundred Fifty Dollars (\$250.00) per day is the estimated damage to City caused by the failure of Contractor to complete the Services within the allowed time. Such sum represents liquidated damages and shall not be construed as a penalty, and may be deducted from payments due the Contractor if such delay occurs.

Article 6

GENERAL SERVICES

6.1 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 recover its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.

6.2 All documents, records, drawings, electronic data files and data base, photographic prints and negatives, designs and specifications, cost estimates, and other Project documents developed by Contractor in connection with the Services shall become the property of City and shall be delivered to City upon completion of the Services.

6.3 Contractor is, for all purposes under this Agreement, an independent contractor with respect to its performance of the Services and not an employee of City. All personnel employed by Contractor to perform the Services are for its account only, and in no event shall Contractor 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. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties.

6.4 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City.

6.5 City may terminate this Agreement for any reason, at any time at its sole discretion, upon five (5) calendar days prior written notice to Contractor.

6.6 Upon receipt of a termination notice, Contractor shall (1) promptly discontinue all work associated with the Services and (2) deliver or otherwise make available to City, copies of any data, design calculations, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing the Services. Contractor shall be compensated on a pro-rata basis for any work completed up until notice of termination.

6.7 This Agreement, including the exhibits incorporated by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein and any prior negotiations, proposals and agreements relating to the subject matter hereof are superseded by this Agreement. Any amendment to this Agreement shall be in writing and approved by City and Contractor.

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

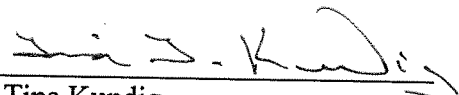
6.9 Claims by Contractor in the amount of Three Hundred Seventy-Five Thousand Dollars (\$375,000) or less shall be made by Contractor and processed by City pursuant to the provisions of Part 3, Chapter 1, Article 1.5 of the Public Contract Code (commencing with section 20104). All claims shall be in writing and include the documents necessary to substantiate the claim.

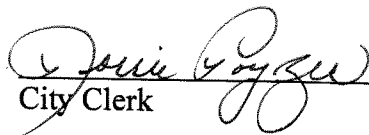
6.10 If any provision or of this Agreement is held to be void or unenforceable under any law or regulation, it shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor.

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

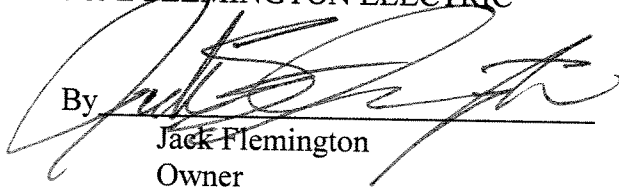
CITY OF REDLANDS

ATTEST:

By 
Tina Kundig,
Finance Director


City Clerk

J & L FLEMINGTON ELECTRIC

By 
Jack Flemington
Owner

Date 12-15-09

F
R
O
M

J&L Flemington Electric

1510 Helena Ln.

Redlands, CA 92373

EXHIBIT "A"

PROPOSAL

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of 1 Pages

PROPOSAL SUBMITTED TO:

NAME City of Redlands

PHONE (909) 798-7548

DATE 12/02/09

STREET 35 Cajon Street, Suite 25

JOB NAME City Yard Parking Improvements

CITY Redlands

STREET Park Street

STATE CA 92373-1505

CITY Redlands

STATE CA

We hereby submit specifications and estimate for:

(C-10 #319622)

ATT: RUDY F. VICTORIO, JR.

(EXCLUDED)

Permits, Fees, and Bonds

Furnish and Install 2 - 20' steel poles with 2 - 400 W HPS
fixtures each at 180 degrees controlled by photo cell.
Install underground conduit to feed from existing light poles
trench and backfill asphalt patch.
Install 1" conduit between new lights for Cameras.

We hereby propose to furnish labor and materials - complete in accordance with the above specifications, for the sum of
Twelve Thousand Seven Hundred Fifty dollars (\$ 12750.00) with payment to be made as follows:

material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or
above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the
amounts contingent upon strikes, accident or delays beyond our control. This proposal subject to acceptance 30 days and it is void
after at the option of the undersigned.

Authorized Signature

ACCEPTANCE OF PROPOSAL

above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made
outlined above.

EPTED:

Signature

12/02/09

Signature

EXHIBIT "B"

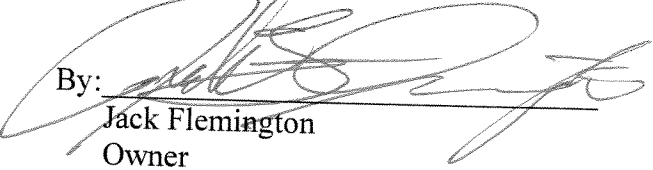
(a) By being insured against liability to pay compensation in one or more insurer duly authorized to write compensation insurance in this State.

(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).

J&L Flemington Electric

Date: 12-15-09

By: 

Jack Flemington
Owner