

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 6th day of September, 2005 by and between the City of Redlands ("City") and James Smothers ("Consultant") who are sometimes herein individually referred to as a "Party," and collectively as the "Parties."

A. City is considering the acquisition of real property ("Subject Property") located in the County of San Bernardino for a pipeline project.

B. The City is required to have a fair market appraisal of the Subject Property in order for it to (1) 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 property owners.

C. The City requires valuation consulting services for the above purposes.

Therefore, the Parties agree as follows:

1. Purpose and Use of the Appraisal. In the event that the City elects to adopt a Resolution of Necessity for the acquisition of the Subject Property by eminent domain, the fair market value appraisal and a "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 code of Civil Procedure sections 1255.010 *et seq.*

2. Appraisal Format and Required Summary. Consultant is to prepare and deliver a complete appraisal and summary report in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and California eminent domain principles.

3. Personal Nature of Contract. Consultant's obligation to provide valuation services to City hereunder is personal in nature, and may not be delegated without City's prior written consent.

4. Consultant's Insurance to be Primary. All insurance required by this Agreement shall be maintained by Consultant during the term of this Agreement, and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City. Consultant shall provide City with Certificates of Insurance and endorsements evidencing such insurance prior to commencement of any Appraisal Services.

4.1 Workers' Compensation and Employer's Liability

A. Consultant shall secure and maintain Workers Compensation and Employer's Liability insurance for its employees throughout the term of this Agreement pursuant to California Labor Code sections 3700 and 1860 and in amounts which satisfy statutory requirements with an insurance carrier acceptable to City. The insurance policy shall include a provision prohibiting cancellation of the policy except upon thirty (30) days prior written notice

to City. A certificate of insurance evidencing such policy shall be delivered to City prior to commencement of the Appraisal Services.

B. Consultant waives all rights to subrogation against City, its elected officials, officers and employees for losses arising from work performed by Consultant for City by also waiving Consultant's immunity for injuries to Consultant's employees. Consultant agrees that the obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by, or in behalf of, any employee of Consultant. This waiver is mutually negotiated by the parties. This Section shall not apply to any damages resulting from the sole negligence of City, its agents and employees. To the extent any damages referenced herein were caused by, or resulted from, the concurrent negligence of City, its agents or employees, the obligations provided herein to indemnify, defend and hold harmless are valid and enforceable only to the extent of the negligence of Consultant, its officers, agents and employees.

4.2 Comprehensive General Liability Insurance. Consultant shall secure 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. The insurance policies shall include provisions prohibiting cancellation of the policy except upon thirty (30) days prior written notice to City. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. Certificates of insurance and endorsements shall be delivered to City prior to commencement of the Appraisal Services.

4.3 Professional Liability Insurance. Consultant shall secure and maintain professional liability insurance throughout the duration of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate.

4.4 Business Auto Liability Insurance. Consultant shall secure 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. The coverage shall include all Consultant-owned vehicles, hired and non-owned vehicles and employee non-ownership vehicles used in connection with the Appraisal Services. A certificate of insurance shall be delivered to City prior to commencement of the Appraisal Services.

4.5 Assignment and Insurance Requirements. Consultant is expressly prohibited from subletting or assigning any of the Appraisal Services covered by this Agreement without the express written consent of City.

5. Indemnification. The Consultant agrees to indemnify, defend, and save harmless the City, its elected officials, 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. Independent Contractor. The Consultant, and the agents and employees 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, and agents under the terms of this Agreement.

8. Availability of Financial Documents for Inspection and Audit. Consultant 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.

9. Commencement of Work. Consultant shall commence work on the services required herein upon receipt of a written notice to proceed from the City. This Agreement will be considered terminated upon completion of said services by Consultant or upon termination pursuant to paragraph 16 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.

10. Consulting Fee. City agrees to pay Consultant the total sum of \$ 4,500 for the appraisal.

11. Payment Terms.

(a) Payment on Invoice. 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.

(b) Withholding of Final Payment. 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 (date in paragraph 11a) 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.

(c) Payment for Changes in Orders. 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.

(d) Payments for Updating Reports or Services. Payments for updating any report or service by Consultant, when requested in writing by City and not included in Consultant's proposal, shall be submitted for reimbursement in accordance with Section 10(a) of this Agreement.

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

(a) Copies of maps, preliminary reports of title, geometrics and designs, and maps, together with any other data within the possession of the City reasonably needed to complete this assignment and requested by Consultant in writing.

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

(c) 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.

13. 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.

14. 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:

City of the City of Redlands
Municipal Utilities Department
35 Cajon Street, Suite 15-A
P.O. Box 3005 (mailing)
Redlands CA 92373-1505
(909) 335-4755

CONSULTANT:

James Smothers
1807 North "D" Street
San Bernardino, CA 92405
(909) 881-1864

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.

15. 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 special counsel 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 or special counsel in the same manner as notices are given as required by paragraph 13, except that appraisal reports shall be delivered either personally, or by Federal Express by delivery requiring a delivery signature, or by U.S. Postal Express mail 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.

16. 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

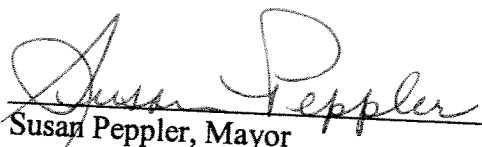
17. Termination. This Agreement may be terminated by the City upon the giving of a written Notice of Termination to Consultant. This Agreement terminates upon Consultant's actual receipt of the Notice of Termination. In the event that this Agreement is so terminated, Consultant shall be compensated on a pro rata basis with respect to the percentage of the project completed as of the date of termination. 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 14 herein.

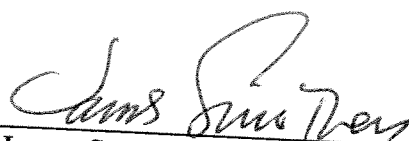
18. Dispute Resolution. Any dispute arising from a question of fact in connection with this Agreement shall be resolved in accordance with the Government Code provision involving claims against public entities.

19. 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.

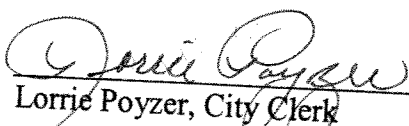
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first set forth above.

CITY OF REDLANDS

By: 
Susan Pepler, Mayor

By: 
James Smothers

ATTEST:

By: 
Lorrie Poyzer, City Clerk