

AGREEMENT FOR DESIGN AND CONSTRUCTION OF PUBLIC RIGHT-OF-WAY IMPROVEMENTS

This agreement for the design and construction of public right-of-way improvements (Agreement) is made and entered into this 18th day of October, 2005 ("Effective Date") by and between the City of Redlands, a municipal corporation (City), and Mountainview Power Company, LLC (Company), who are sometimes herein individually referred to as a Party, and collectively as the Parties.

RECITALS

- A. On October 17, 2000, City and Company entered into a Development Agreement pursuant to Government Code section 65864 *et seq.* which requires Company to design and construct certain street, right-of-way and other public improvements along the frontage of Company's properties located on San Bernardino Avenue in the City of Redlands. Company's properties are hereby referred to as Parcels A and B, and are depicted on "Exhibit 1" which is attached hereto and incorporated herein by this reference.
- B. City has planned to construct certain street, right-of-way and other public improvements, as identified in City's Municipal Code, General Plan and other City standards, along the frontage of Southern California Edison Company's property located on San Bernardino Avenue in the City of Redlands. Southern California Edison Company's property is hereby referred to as Parcel C, and is depicted on "Exhibit 1."
- C. For purposes of efficiency and economy, City and Company, by this Agreement, wish to coordinate their respective efforts and design and construct all of the street right-of-way and other public improvements along the San Bernardino Avenue frontage for Parcels A, B and C as one single, managed construction project (the Project). Parcel "A" and Parcel "B" road frontages equate to 773.82 lineal feet, and Parcel "C" frontage equates to 817.51 lineal feet.

Therefore, in consideration of the mutual promises contained herein, and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the City of Redlands and Mountainview Power Company, LLC agree as follows:

AGREEMENT

1. Project Design. Company shall prepare and complete, at Company's sole cost, all drawings, specifications, design and engineering plans, right-of-way legal descriptions and plat maps (the "Plans") for construction of the Project in accordance with City standards and applicable State and local laws to the extent necessary to successfully fulfill the plan check requirements of the City. Design revisions that take place up until the award of a construction contract for the Project by the City, shall be a part of the "Plans." Design revisions that occur after the award of the construction contract for the Project, and/or change order revisions to the Project after award, are excluded from the definition of "Plans." The Plans shall be delivered to City within five (5) months of the Effective Date of this Agreement if possible, or some other reasonable timeframe as negotiated between Company and City.

2. California Labor Code Compliance. Company acknowledges that, pursuant to California Labor Code section 1720, the term construction, for purposes of prevailing wage payments and other requirements, includes work performed during the design and preconstruction phases of construction for the Project including, but not limited to, inspection and land surveying work. Accordingly, Company further acknowledges that its preparation of the Plans may constitute a public work for which prevailing wages may be required to be paid pursuant to California Labor Code sections 1720, *et seq.* Company waives any and all rights it may have pursuant to California Labor Code sections 1726 and 1781 in the event its preparation of the Plans is deemed a "public work" by any governmental agency having authority to make such a determination, or by any court of competent jurisdiction.

3. Grant of Right-of-Way. Company shall grant to City easements for public right-of-way purposes in and over Parcels A and B, and execute and deliver to City any and all necessary subordination and other documents required by City to ensure City's priority of title for such easements, to facilitate construction of the Project. The easement deeds shall be in a form substantially as set forth in "Exhibit 2" hereof, which is incorporated herein by this reference.

4. Company's Payment of Construction Costs.
 - a. City shall solicit, at City's sole cost, competitive bids for construction of the Project in accordance with all applicable laws. Upon request of City, and prior to City's award of a contract for construction of the Project, Company shall pay to City its estimated prorated share of the total construction cost of the Project. The term "Total Construction Costs" is defined as only the amounts paid the contractor under the contract to be awarded by City to

construct the Project, and excludes all other costs, including but not limited to the construction management costs set forth in Section 7 of this Agreement.

- b. Company's prorated share of the Total Construction Costs is for 773.82 linear feet of a total of 1591.33 linear feet or 48.6%, as set forth in subsection (d) below. Such prorated share, plus an additional ten (10) percent of Company's estimated prorated share, for contingencies, shall be deposited by City into an interest bearing account from which City, as construction manager, shall be authorized to withdraw such sums as may be necessary to pay for costs directly related to the Project.
- c. City's prorated share of the Total Construction Costs is for 817.51 linear feet of the total of 1591.33 linear feet or 51.4%, as set forth in subsection (e) below. City shall fund its estimated prorated share of the total construction cost of the Project from its collection of street improvement fees which have been deposited within City's Local Transportation Fund account. City shall maintain an accounting of Project costs which will be available for audit by Company. Prior to requesting additional contributions to the account, City will advise Company in writing of the necessity for such additional contributions and then Company shall have right to review and consent to the additional contributions, as set forth in Section 6 of this Agreement. Promptly after giving such consent, the Company will contribute the necessary amounts in proportion to its obligation for total Project costs as set forth herein. The City will fund its portion of the additional contribution as set forth above. Upon completion of the Project, any excess monies remaining in the account shall be returned to Company in proportion to its contribution to the account.

The allocated contributions by City and Company to the construction account and financial obligations for funding the total construction cost of the Project shall be as follows:

- d. Frontage of Parcels A and B: Any portion of the Project which is located within or abutting Parcels A and B shall be considered the allocated Project cost and financial obligation of Company. Parcel A and Parcel B comprise 773.82 lineal feet of road frontage.
- e. Frontage of Parcel C: Any portion of the Project which is located within or abutting Parcel C shall be considered the allocated Project cost and financial obligation of City. Parcel C contains 817.51 lineal feet of road frontage.

- f. The prorated allocation of construction costs applies to the overall Project. If specific site conditions are encountered which are germane to one parcel only, then costs occurring due to those conditions are to be prorated against that parcel only.

5. City Review of Plans. City shall review and approve the Plans prepared by Company prior to commencement of construction of the Project to determine compliance with City requirements, to obtain all governmental permits and easements necessary for construction of the Project, and to facilitate construction inspection for the Project. Any design revision or correction of the Plans required by City prior to the award of the Project construction contract shall be made by Company at the sole cost of Company. Any design revision or correction of the Plans required after the award of the Project construction contract shall be made at the sole cost of City.

6. Company Review of Construction Documents. Company shall have the right to review and consent to, which consent shall not be unreasonably withheld, all construction documents for the Project, including, but not limited to, bid documents and change orders.

7. City Obligation of Construction Management.

a. City shall provide construction management services for the Project at City's sole cost. Such services shall include, but not be limited to, reviewing and approving the Project Plans, developing a construction schedule, soliciting competitive bids and awarding a construction contract for the Project, obtaining all required permits for the Project, providing overall construction oversight and management, management of Project Construction change order work, providing inspection of the Project and certifying the completion of the Project.

b. Notwithstanding subparagraph A, above, City shall not be responsible for construction means, methods, techniques and procedures employed by the contractor for the Project, and shall not be liable to Company for the failure of the contractor to carry out its work in accordance with the bid and contract documents, or with law.

8. Defense and Indemnity.

a. City shall defend, indemnify and hold harmless Company, its parent and their affiliates, and each of their officers, employees and agents from and against any and all actions, damages, losses, causes of action and liability imposed or claimed relating to the injury or death of any person or damage to any property, including attorneys' fees and other legal expenses, arising directly or indirectly from the breach of

this Agreement by City, or from any negligent or wrongful act or omission of City in performing or failing to perform its obligations under this Agreement.

b. Company shall defend, indemnify and hold harmless City and its officials, officers, employees and agents from and against any and all actions, damages, losses, causes of action and liability imposed or claimed relating to the injury or death of any person or damage to any property, including attorneys' fees and other legal expenses, arising directly or indirectly from any negligent or wrongful act or omission of Company in performing its obligations under this Agreement.

9. Notices. All notices required or otherwise given pursuant to this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid, and addressed as provided in this section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States mail. Notices shall be addressed as follows, unless a written change of notice is filed by Company with City:

NOTICE TO CITY:

Public Works Director/City Engineer
City of Redlands
P.O. Box 3005
Redlands, CA 92373

NOTICE TO COMPANY:

Russell Koelsch
MVL Project Manager
Mountainview Power Company, LLC
2492 West San Bernardino Avenue
Redlands, CA 92374

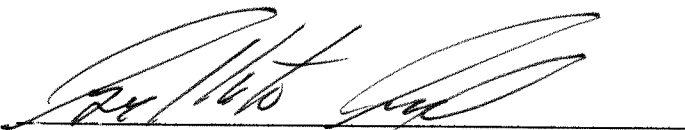
10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Company Not Agent or Employee. Neither Company nor Company's employees or agents are, or shall be considered to be, employees or agents of City in connection with Company's performance of its obligations under this Agreement.

12. Entire Agreement/Amendment. This Agreement represents the entire agreement of the Parties hereto as to the matters contained herein, and any prior negotiations, and verbal agreements relating to such matters are superseded by this Agreement. Any amendment to this Agreement shall be in writing and approved by the City Council of City and executed by authorized representatives of City and Company.

13. 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 in-house counsel of the Parties at rates prevailing in San Bernardino County, California.

CITY OF REDLANDS



Gilberto Gil, Mayor Pro Tem

October 18, 2005

ATTEST:



Beatrice Sanchez, Deputy City Clerk

October 18, 2005

MOUNTAINVIEW POWER COMPANY, LLC.



By: Russell Koelsch, Project Manager

EXHIBIT 1

Development Agreement Map

KCT Consultants, Inc.
December 1, 1999

DEVELOPMENT AGREEMENT MAP

9130

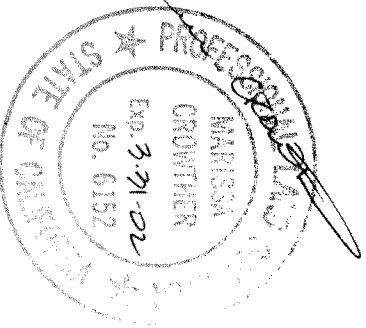
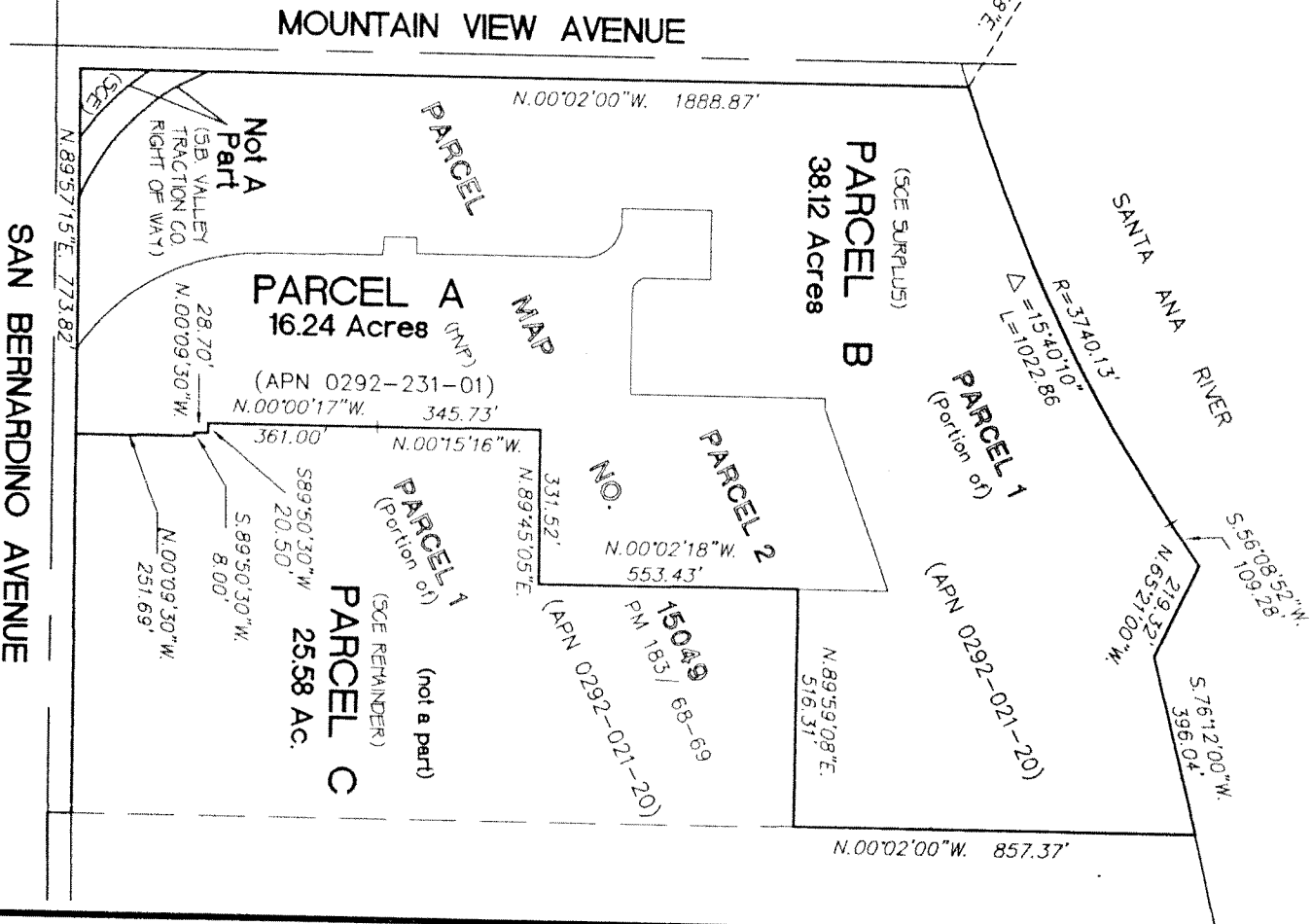
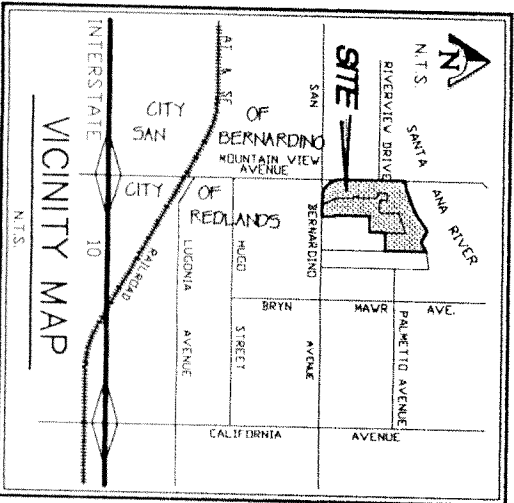
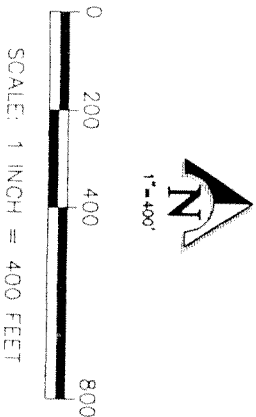
OF PARCEL 2 AND A PORTION OF PARCEL 1 OF PARCEL MAP 15049, AS SHOWN BY MAP ON FILE IN BOOK 183, PAGES 68 AND 69, OF PARCEL MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

OWNER / APPLICANT

MOUNTAIN VIEW POWER COMPANY, LLC
25770 SAN BERNARDINO AVENUE
SAN BERNARDINO, CALIFORNIA 92408
PHONE: (909) 478-7900
FAX: (909) 478-7910
APN: 0292-231-01

SURPLUS PROPERTY OWNER

SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVENUE
ROSEMead, CALIFORNIA 91770
PHONE: (626) 302-4508
FAX: (626) 382-2517
APN: 0292-021-20 (portion of)



SAN BERNARDINO AVENUE

BOUNDARY INFORMATION SHOWN HEREON IS RECORD DATA AND DOES NOT REFLECT AN OFFICIAL SURVEY OF THE PROPERTY.



KCT CONSULTANTS, INC.

Civil Engineers - Surveyors - Planners
P.O. Box 5706 Riverside, CA 92517-5706
4441 Latham St., Suite 200, Riverside, CA 92501
Phone 951-511-8640 Fax 951-511-8645 Email kctinfo@kctinc.com