

MEDIATION CONFIDENTIALITY AGREEMENT

This Mediation Confidentiality Agreement (“Agreement”) is made and entered into this 17<sup>th</sup> day of December, 2013 (“Effective Date”), by and between Christine Smith (“Plaintiff”) and the City of Redlands (“Defendant”). Plaintiff and Defendant are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

WHEREAS, Plaintiff brought a lawsuit against Defendant in the matter of *Smith v. City of Redlands*, San Bernardino County Court Case Number CIVDS1311312 (the “Lawsuit”), on September 16, 2013; and

WHEREAS, the Parties agree that it could be productive to undertake discussions that may lead to a resolution of the matters that are the subject of the Lawsuit; and

WHEREAS, the Parties have agreed to meet on December 19, 2013, to commence said discussions; and

WHEREAS, the Parties agree that the ability to speak freely pertaining to the matters in the Lawsuit is vital in order for said discussions to be useful and productive; and

WHEREAS, the Parties further agree that the discussions should be afforded the same protection (with non-admissibility of the matters discussed) as would a formal mediation or any other communications for purposes of settlement under California law;

NOW, THEREFORE, the Parties, intending to be legally bound, and in consideration of the mutual promises and undertakings set forth herein, hereby agree as follows:

1. For purposes of the meeting between the Parties on December 19, 2013, and for all subsequent related discussions regarding the Lawsuit, the Parties agree to abide and be governed by the terms of California Evidence Code section 1119, which states that:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

2. All offers, promises, conduct and statements, whether oral or written, by either Party or their representatives related in any way to the December 19, 2013, meeting regarding the Lawsuit are confidential, including but not limited to, follow up discussions relating to said meeting.

3. Any and all offers, promises, conduct and statements, whether oral or written, shall be considered both a communication “for the purpose of, in the course of, or pursuant to a mediation or a mediation consultation” within the meaning of California Evidence Code section 1119 and an “offer to compromise” within the meaning of California Evidence Code section 1152, and shall not be admissible or discoverable for any purpose in any arbitration, litigation or other proceeding between the Parties.

4. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof, and any prior verbal or written understandings, acknowledgements or agreements between the Parties with respect to the same are null, void and of no effect.

5. In the event any action or proceeding is commenced by a Party to interpret or enforce any term, provision or condition of this Agreement, the prevailing Party in such action shall be entitled to recover, in addition to any costs and other relief, its reasonable attorneys’ fees, including fees for use of in-house counsel by a Party.

IN WITNESS WHEREOF, duly authorized representatives of the Parties have executed this Agreement as of its Effective Date.

CITY OF REDLANDS

CHRISTINE SMITH

By: \_\_\_\_\_  
Pete Aguilar, Mayor

\_\_\_\_\_

ATTEST:

BORTON PETRINI, LLP

\_\_\_\_\_  
Sam Irwin, City Clerk

\_\_\_\_\_  
Daniel L. Ferguson  
Attorneys for CHRISTINE SMITH