

## AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of professional engineering services associated with the City of Redlands' A.K. Smiley Library ("Agreement") is made and entered in this 15<sup>th</sup> day of April 2014 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and Design West Engineering ("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 professional engineering services for City's A.K. Smiley Public Library (the "Services").
- 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.

### ARTICLE 2 – SERVICES OF CONSULTANT

- 2.1 The Services that Consultant shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by reference.
- 2.2 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 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 3.2 City designates Chris Boatman, Senior Project Manager, 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 4 – PERFORMANCE OF SERVICES

- 4.1 Consultant shall perform and complete the Services in a prompt and diligent manner in accordance with the schedule set forth in Exhibit "B," entitled "Project Schedule," which is attached hereto and incorporated herein by reference. The Services shall commence within ten (10) days of the Effective Date of this Agreement.

- 4.2 If Consultant's Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with City Council adopted policy for the same. It shall be the obligation of Consultant to obtain a copy of such policy from City Staff.

#### ARTICLE 5 – PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of Fifty Two Thousand Three Hundred Fifty Dollars (\$52,350). City shall pay Consultant in accordance with Exhibit "C", entitled "Fee Proposal, which is attached hereto and incorporated herein by this reference.
- 5.2 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. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 5.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City

Fred Cardenas, Director  
Quality of Life Department  
City of Redlands  
35 Cajon Street, Suite 222  
P.O. Box 3005 (mailing)  
Redlands, CA 92373

Consultant

Robert Cronk – Principal  
Design West Engineering  
275 W. Hospitality Lane Suite 100  
San Bernardino, California 92408

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 5.3.

#### ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 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.
- 6.2 Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of its performance of the Services in accordance with the laws of the State of California, with an insurance carrier acceptable to City as

described in Exhibit “C,” entitled “Workers’ Compensation Insurance Certification,” which is attached hereto and incorporated herein by this reference.

- 6.3 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.
- 6.4 Consultant shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made.
- 6.5 Consultant shall have 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.
- 6.6 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 7 – CONFLICTS OF INTEREST

- 7.1 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.
- 7.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:
  - A. Does not make or participate in:
    - (i) the making or any City governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;
    - (ii) the issuance, denial, suspension or revocation of City permits, licenses, applications, certifications, approvals, orders or similar authorization or entitlements;

- (iii) authoring City to enter into, modify or renew a contract;
- (iv) granting 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) granting City approval to a plan, design, report, study or similar item;
- (vi) adopting or granting 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.

7.3 In the event City officially 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 8 – GENERAL CONSIDERATIONS

- 8.1 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.
- 8.2 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.
- 8.3 Project related documents, 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.
- 8.4 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.

- 8.5 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City; provided, however this Agreement may be terminated by City, in its sole discretion, by providing ten (10) days prior written notice to Consultant (delivered by certified mail, return receipt requested) 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 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.
- 8.6 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.
- 8.7 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. Any amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.
- 8.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.9 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 City and Consultant have signed in confirmation of this Agreement.

CITY OF REDLANDS

DESIGN WEST ENGINEERING

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

By: \_\_\_\_\_  
Robert Cronk, Principal

ATTEST:

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

# Exhibit A

## Scope of Work

The scope of work contains five separate parts. The deliverables for each milestone are as follows:

### Part One – Site Assessment

The goal of this portion of the project is gain a thorough understanding of the condition of the building HVAC system in order to develop a program for how this project should proceed. The condition of the system will be investigated to better understand if it provides adequate cooling, heating, air movement, temperature control, thermal comfort, and is compliant with current Title 24 building code requirements. Additionally, this phase may involve interaction and coordination with our sub-consulting Architectural Historian who will be responsible for investigation of how proposed activities will impact the historical significance of the building. The Architectural Historian will make recommendations for each activity accordingly.

For this phase to proceed, we plan to:

- 1) Obtain and review any available existing building HVAC and electrical plans and other related planning documents from the City pertinent to the project.
- 2) Attend a project kick-off meeting with City Staff to ensure all parties are agreed on project scope.
- 3) Review the maintenance schedules that have been active for the existing equipment for the last several years.
- 4) Perform the necessary field investigations to identify the existing condition of all HVAC equipment and to determine feasible strategies within the limitations of the existing building itself, to include:
  - a. Interview of building occupants to fully understand the conditions and limitations within the building while on site doing the investigation.
  - b. Analysis the existing cooling towers and water system to understand the issues causing a need for constant water treatment.
  - c. Analysis the existing controls system including the pneumatics and the bridging systems that have been installed for the old equipment to be able to interface with new digital thermostats
  - d. Analysis of the internal state of each Air Handler as well the couple of existing rooftop package units.
  - e. Hot and Cold water lines, sufficiency of existing electrical service, and any other HVAC components
- 5) Coordinate with the Architectural Historian on findings and potential solutions (optional)
- 6) Prepare a written report which identifies all of the findings in the site investigation and proposes the best solutions including a preliminary cost estimate for each solution.

### Part Two – System Design Recommendations

The goal of this second part is to determine a course of action and solution with the city. There will undoubtedly be multiple potential plans to review and each will come with different costs attached. It is our desire to help the city understand each of the different solutions and impacts on first cost, comfort, operating cost, maintenance, schedule for installation, and the historical integrity of the facility.

For this phase to proceed, we plan to:

- 1) Conduct a findings meeting with the City Staff (to potentially include the architectural historian) to present the report of findings and review current conditions, various proposed solutions, estimated costs and timeframes
- 2) Decide with city on a project solution and begin to make preparations for preliminary design
- 3) Determine with the city the best project approach and project delivery method
- 4) Review and solidify the project schedule and staffing requirements for subsequent phases
- 5) Begin research for plan check submittal and securing of permits

### Part Three – Technical Specifications and Plans

The goal of part three is to prepare the necessary level of construction documents needed for the City to bid this project package and select an appropriate qualified contractor. Technical specifications will include all disciplines necessary to achieve the intended project scope that was determined in the second phase, Part 2.

For this phase to proceed, we plan to:

- 1) Develop specifications
- 2) Perform building loads and make initial final equipment selections
- 3) Engage all necessary design disciplines to complete the intended scope
- 4) Perform the following tasks at the appropriate milestone(s) decided upon in Phase 2
  - a) Conduct design coordination meeting(s) both internally with design sub-consultants and with the City
  - b) Produced itemized cost estimates
  - c) Submit construction documents to the City and to other agencies and utility companies for review and to obtain preliminary approvals
  - d) Complete drawings to a point where all elements of a substantial design are present so that the City may review the set for overall scope content
  - e) Address any comments from the City generated from previous meetings or plan reviews
  - f) Submit package in print (three sets) and electronic (CD) formats for review, including previous plan checks

#### **Part Four – Construction/Project Management (Optional)**

The goal of part four is to provide the city with option of utilizing our services to be Construction Manager as opposed to the standard services of construction administration support or as a contractor's design partner in a design build effort.

For this phase to proceed, we plan to:

- 1) Develop a plan and specify the number of necessary meetings/site visits to complete this task.
- 2) Aid the City in tabulating and evaluating construction bids.
- 3) Assist the City in preparing the bid addenda as required to provide clarification to drawings and specifications and respond to Requests for Information (RFIs) and/or Requests for Clarification (RFCs)
- 4) Respond to all clarifications of drawings and specifications.
- 5) Attend the pre-bid meeting on site to review the plans and specifications with bidding contractors to answer any questions they may have
- 6) Conduct construction meetings at pre-determined intervals
- 7) Provide addenda as required to clarify drawings and specifications
- 8) Provide the commissioning guidelines, final acceptance, and quality assurance support services
- 9) Provide final project closeout guidelines and closeout procedure and performance testing checklist of the system redesign.
- 10) Provide preparation and delivery of final inspection and a performance testing report.
- 11) Review the project record, operations and maintenance manual and "as-built" drawing submittals.

#### **Part Five – Field Test**

The goal of part five is to perform field observation services consisting of visits to the site at intervals appropriate to the stage of construction to review and report the progress and quality of the work and to determine in general if the work is proceeding in accordance with the intended design goals and objectives.

For this phase to proceed, we plan to:

- 1) Verify that the specified systems are functioning in accordance with the design intent and in accordance with the Contract Documents.
- 2) Coordinate the system documentation, equipment start-up, control system calibration, testing and balancing (TAB), performance testing and verification, and training.
- 3) Resolve non-conformance or deficiencies with the contractor and/or city if needed.



## Exhibit B

### Project Schedule

The following is a preliminary schedule of milestones to deliver a successful project at a typical pace. Some time frames are bracketed in the proposed schedule in the later parts of the project. This is due to the fact that each of the 5 parts associated with this project build on subsequent parts. Because of this, there are still several unknowns as to the specific project scope and what a realistic schedule will involve. It is our intent to provide you at the city with information on some of the different courses this project could take and how that will impact the time frames to complete.

#### Part One – Site Assessment

Timeline is based on the Notice to Proceed date of May 15 as stated in the RFP. If the award date moves up, the schedule can move up accordingly.

Notice to Proceed	-	May 15
Kick Off Meeting with City	1 Week	May 22
Complete Site Investigation	1 Week	May 29
Coordinate with Architectural Historian (Optional)	1 Week	June 5
Final Report	1 Week	June 12

#### Part Two – System Design Recommendations

Times for City Reviews are estimated on the part of the City. If the City anticipates longer or shorter time frames for response, the schedule can react accordingly.

Report Presentation to the City	-	June 12
City Review and Response Time	1 Week	June 19
Solidify Project Plan for Parts 3, 4, 5	1 Week	June 26

#### Part Three – Technical Specifications and Plans

Depending on the course of the project as determined following Part 2, the Project scope, plan, and fees associated may can be solidified and executed. A particular point of scope that would significantly impact the design timeframe is replacement of Air Handler Units (and how many is also still unknown). These bracketed time frames are estimates to hopefully give the City a reasonable understanding of what could be involved. An option for Design Build is included.

Internal Design Team Kickoff Meeting	-	June 26
Present 50% Plans or Complete Design Build Bridging Docs	2-3 Weeks	July 10 – July 17
Present 95% Plans to the City	2-3 Weeks	July 24 – Aug 7
City Review and Response Time	1 Week	July 31 – Aug 14
Completion of Construction Documents	1 Week	Aug 7 – Aug 21

#### Part Four – Construction

Much like Part 3, the schedule for Construction weighs heavily on the determinations made in Part 2. Some key potential construction tasks are listed in order of time required for Installation. Not all of these tasks will necessarily be completed. A hypothetical Bid Award date is established at Sept 4, but this can move up if subsequent tasks finish sooner.

Bid Advertisement	-	Aug 7 – Aug 21
Bid Award	2-4 Weeks	Sept 4
Control Valves (Lead Time)	3 Weeks	Sept 25
Control Work (Installations)	1 Week	Oct 2
Fluid Cooler/Cooling Tower (Lead Time)	8 Weeks	Oct 30
Fluid Cooler/Cooling Tower (Installation)	1 Week	Nov 6
Boiler Replacement (Lead Time)	8 Weeks	Oct 30

**Part Four – Construction Continued**

Boiler Replacement (Installation)	1 Week	Nov 6
Air Handler Units (Lead Time)	12 Weeks	Nov 26
Air Handler Units (Installation for Unknown Number)	2-8 Weeks	Dec 11 – Jan 22

**Part Five – Field Test**

Final Test	-	Oct 2 – Jan 22
Resolution of Issues, if any	0-2 Weeks	Oct 2 – Feb 5

## Exhibit C

### *Fee Proposal*

Date: April 10, 2014  
Agency: City of Redlands  
Quality of Life Department  
Attention: Chris Boatman  
Subject: A.K. Smiley Library  
HVAC Modernization and Repair  
Our Proposal #

Please find below our fees for the above referenced project. We have itemized the costs by phase commensurate with the RFP. Please note that due to the preliminary nature of the fee proposal relative to a complete diagnosis of the HVAC system, we have listed a range of fees for the Document Preparation phase of work. We will of course be glad to refine these numbers as the scope becomes evident. This fee proposal corresponds to the scope of work identified in the

<b>Part One – Site Assessment</b>	
Mechanical and Electrical Engineer	\$5,000.00
Historian Architect (Optional)	<u>\$2,000.00</u>
Total	\$7,000.00
<b>Part Two – System Design Recommendations</b>	\$2,000.00
<b>Part Three – Construction Documents and Specifications**</b>	
Mechanical – minimal scope identified:	\$7,500.00
Electrical – minimal scope identified:	\$3,000.00
Structural – minimal scope identified:	\$2,500.00
Architectural – minimal scope identified:	<u>\$2,500.00</u>
Sub-Total	\$15,500.00
Mechanical – possible additional scope:	\$6,000.00
Electrical – possible additional scope:	\$1,000.00
Structural – possible additional scope:	\$ 500.00
Architectural – possible additional scope:	<u>\$2,000.00</u>
Sub-Total	\$9,500.00
Plan Check	\$1,350.00
Total:	\$16,850.00 - \$26,350.00
<b>Part Four– Construction Management (Optional)**</b>	\$12,500.00
<b>Part Five – Field Testing**</b>	\$4,500.00

**\*\*Subject To Revision After Part Two**

EXHIBIT "D"

WORKERS' COMPENSATION INSURANCE CERTIFICATION  
FOR INSPECTION 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.

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).

DESIGN WEST ENGINEERING

By: \_\_\_\_\_

Robert Cronk

\_\_\_\_\_

Date: