

AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of consulting services associated with the operations of the City of Redlands' Hillside Memorial Park ("Agreement") is made and entered in this 7th day of April, 2015 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and Ryan M. Lee, Mortuary Consultants ("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 consulting associated with the operation of City's Hillside Memorial Park cemetery (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.
- 1.3 The term of this Agreement shall be for one hundred eighty (180) days commencing on the Effective Date of this agreement and ending on October 4, 2015 (the "Initial Term"). City shall have the unilateral right to extend the Initial Term of this Agreement, on its same terms and conditions, for two thirty (30) day periods (each, "a Renewal Term") by providing Consultant with written notice of City's intent to extend the Initial Term, not less than five (5) days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term and the Renewal Terms are hereafter together referred to as the "Term" of this Agreement. Such written notice may be provided to Consultant by City staff without further action by the Redlands City Council.

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, Field Services 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 "Deliverable Schedule & Available Calendar Dates for Ryan Lee, Project Manager Only" which is attached hereto and incorporated herein by reference.
- 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 during the Term of this Agreement shall not exceed the amount of one hundred four thousand four hundred fifty dollars (\$104,450). Consultant's compensation for the Initial Term shall not exceed the amount of eighty nine thousand four hundred forty dollars (\$89,440) and Consultant's compensation for any Renewal Term shall not exceed the amount of fifteen thousand ten dollars (\$15,010). City shall pay Consultant up to the not to exceed amounts, in accordance with Exhibit "C" entitled "Project Costs." Exhibit "C" 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, and a description of reimbursable expenses related to the Services. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 5.3 Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a party may provide notice in accordance with this section:

City
Fred Cardenas, Director
Quality of Life Department
City of Redlands

Consultant
Ryan M. Lee, Mortuary Consultants
Ryan M. Lee
4607 Lakeview Canyon Road, #219

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 Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that Consultant is self-insured or exempt from the workers' compensation laws of the State of California. Consultant shall provide City with Exhibit "D," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to occupancy of the Premises.
- 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 by, or the 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 may qualify as a designated employee within the meaning of the Political Reform Act because Consultant may be deemed as serving 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 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 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 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. This Agreement may be terminated by City, in its sole discretion, by providing not less than five (5) days prior written notice to Consultant 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 all 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. Except as otherwise provided for herein, an 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

RYAN M. LEE MORTUARY
CONSULTANTS

By: _____
Paul W. Foster, Mayor

By: _____
Ryan M. Lee

Attest:

Sam Irwin, City Clerk

EXHIBIT “A”
Cemetery Consultant Scope of Work

Item 1

Provide full onsite management services (30 hour-three day work weeks) to maintain and operate on a daily basis Hillside Memorial Park in compliance with all applicable state, county and City laws commencing April 8, 2015 and ending on October 4, 2015, with option by City to extend on a month to month basis for two additional months through December 3, 2015. The Consultant, Ryan Lee, shall provide a total of 108 days on-site management during the six months, and shall identify the Consultant’s employee who will be providing the Services required by this Agreement in Consultant’s absences (dates of Consultant’s absence noted in Exhibit B to this Agreement). The Consultant shall also provide full on-site management services

Item 2

Recommend, in writing, new and/or revised regulations for operations of the cemetery for consideration by City staff and the City Attorney, deliverable date May 4, 2015.

Item 3

Provide written and electronic recommendation plans of all daily operational cemetery activities including, but not limited to, standard operating procedures, administration and field staffing requirements, marketing plan, customer service plan, automation of all cemetery records, cash management plan, hours of operations, deliverable date July 8, 2015.

Item 4

Provide written and electronic recommendation plans for all new and existing staff duties and responsibilities and repurposing current staff including, but not limited to, proposed cemetery organizational chart, Cemetery Manager job description, job descriptions for support field and administrative staff, required crematory licensing, certifications for repurposed staff, industry salary ranges and benefits for consideration by the City’s Quality of Life Director and Human Resources Director, deliverable date May 8, 2015,

Item 5

Implementation of years one and two of the ten-year Capital Improvement Plan presented to the City Council on March 17, 2015 including, but not limited to, project plans and specifications, project design/build agreements, all CIP’s must be in accordance with all applicable Federal and State laws, and the City of Redlands’ written procurement policy for public work projects, implementation dates April 8, 2015 through July 8, 2015.

Item 6

Provide written and electronic documentation plans and definitions of “basic, traditional, and premium” properties and “good, better, best” including but not limited to definitions, maps, locations, pricing rates and schedules, deliverable date April 27, 2015,

Item 7

The consultant shall meet with the Quality of Life Director bi-weekly, at times and dates established by the Director, to discuss operation and maintenance activities including, but not limited to, staff assignments, weekly sales, status of work order requests, cemetery financials, CIP statuses, other applicable activities, deliverable report dates April 8, 2015 through October 8, 2015,

Item 8

The consultant shall attend City Council meetings as requested by the Director, meet with outside vendors as needed, interact with departmental staff as needed, and provide bi-weekly written and electronic reports to the Quality of Life Director, and maintain the historical integrity and value of the cemetery by coordinating CIP's with the City's Historical and Scenic Preservation Commission and the Redlands Historical Society,

Item 9

Provide a written and electronic plan of a public outreach program for placement of a crematory on cemetery property with all affected neighbors, commencement of the plan by the Consultant is April 8, 2015, deliverable plan date May 8, 2015, assist in the preparation of Council report slated for June 2, 2015 Council meeting.

Item 10

Identify, apply, and submit on behalf of the City of Redlands grant applications in the collective minimum amounts of \$150,000, application deliverable dates April 8, 2015 through July 8, 2015.

Requirements for Submittals from Consultant:

- All documents shall be formatted prior to submittal, and shall be provided in a .docx digital format for City review and/or acceptance.
- Deliverables shall not be submission of an iteration of a document previously prepared in the City's cemetery Business Plan.

DELIVERABLE SCHEDULE AND AVAILABLE CALENDAR DATES FOR RYAN LEE, PROJECT MANAGER ONLY

Per Exhibit "B"

PROJECT COSTS

Per Exhibit "C"

2015 Calendar

January 2015						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
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February 2015						
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March 2015						
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April 2015						
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May 2015						
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June 2015						
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July 2015						
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August 2015						
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September 2015						
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October 2015						
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November 2015						
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29	30					

December 2015						
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EXHIBIT “C” PROJECT COSTS

Items 1, 2, 3, 4, 5, 6, 7, 8, and 9 listed in Exhibit B of this Agreement shall be paid for on a flat rate of Seven Thousand Five Hundred Five Dollars (\$7,505) for each consecutive thirty (30) day period of the Term of this Agreement during which consultant’s Services are provided in accordance with this Agreement. Payments shall be submitted at the end of each such thirty day period, pursuant to Section 5.2 of this Agreement.

Item 10 listed in Exhibit B of this Agreement (the grant fee of Twenty Five Thousand Dollars \$25,000, less the Six Thousand Two Hundred Fifty Dollars (\$6,250) hereinafter described) shall be paid for only upon actual receipt (deposited in the City’s account) by the City of grant funds in an amount up to One Hundred Fifty Thousand Dollars (\$150,000). The City shall pay the Consultant Six Thousand Two Hundred Fifty Dollars (\$6,250), in two equal installments; the first installment to be due and payable on, or before in the City’s sole discretion, the date thirty (30) days after the Effective Date of this Agreement and the second installment to be due and payable on, or before in the City’s sole discretion, the date sixty (60) days after the Effective Date of this Agreement. The remaining sum of Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750) shall be paid on a pro-rated basis proportional to the percentage of grant funds actually received by the City in excess of Thirty Thousand Seven Hundred Fifty Dollars (\$37,500), and up to the amount of One Hundred Fifty Thousand Dollars (\$150,000). Notwithstanding any other provision of this Agreement or its exhibits, in the event the City fails to actually receive any grant funds within one year from the Effective Date of this Agreement, the Consultant shall refund to the City the amount of Six Thousand Two Hundred Fifty Dollars (\$6,250).

Business-related expenses incurred by the Consultant in connection with performance of the Services shall not exceed the amount of Fifteen Thousand Six Hundred Fifteen Dollars (\$15,615) and shall be paid only as the expenses are incurred and in accordance with Section 5.2 of this Agreement, per the following rate schedule: lodging up to \$169 per night, meals up \$65 per day, travel up to \$1.00 per mile, document copying/printing and faxes, at cost. Mileage shall only be reimbursed for one round trip occurrence between the Consultant’s place of business and Hillside Memorial Park per week. All expenses shall be provided in a report and include copies of receipts as an attachment to the report.

The Consultant’s Services also include training of staff at a fee of Three Thousand Seven Hundred Ninety Five Dollars (\$3,795), and shall be paid only after all training sessions have been completed to the satisfaction of the City. The City in its sole discretion shall determine whether the Consultant shall implement the training.

EXHIBIT "D"

WORKERS' COMPENSATION INSURANCE CERTIFICATION

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.

CHECK ONE

____ 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 and activities required or permitted under this Agreement. (Labor Code §1861).

____ I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

Mortuary Consultant

Date: _____

By: _____
Ryan M. Lee