

AGREEMENT TO PROVIDE IMAGE BASED ASSET AND  
PAVEMENT MANAGEMENT SERVICES

This agreement for the provision of GIS integrated asset and pavement management, mapping solutions, and IT consulting (“Agreement”), is made and entered into this 20<sup>th</sup> day of July, 2010 (“Effective Date”), by and between the City of Redlands (“City”) and Enterprise Information Solutions (“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 perform GIS integrated asset and pavement management, mapping solutions and IT consulting services for the City of Redlands (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 which Consultant shall perform are more particularly described in Exhibit “A,” entitled “Scope of Services,” which is attached hereto and incorporated herein by this reference.
- 2.2 Consultant shall comply with all applicable Federal, State and local laws and regulations in the performance of this Agreement including, but not limited to, the Americans with Disabilities Act, the Fair Employment and Housing Act and all applicable Labor Code and prevailing wage laws.

ARTICLE 3 - RESPONSIBILITIES OF AGENCY

- 3.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 3.2 City will make reasonable provision for Consultant to enter upon City-owned property, as required by Consultant, to perform the Services.
- 3.3 City designates David Hexem, the Director of City’s Innovation and Technology Department as City’s representative with respect to the 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 the Services in a prompt and diligent manner from time to time as requested by City.
- 4.2 At any time during the term of this Agreement, City may request that Consultant perform Extra Services. As used herein, "Extra Services" means any work which is determined necessary by City for the proper completion of the project or work for which the Services are being performed, but which the Parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Provided the Extra Work does not exceed twenty percent (20%) of the compensation to be paid by City to Consultant for the Services, such Extra Work may be agreed to by the Parties, by written amendment to this Agreement, executed by City's City Manager. Consultant shall not perform, nor be compensated for, Extra Work without such written authorization from City.

#### ARTICLE 5 - PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of Forty Eight Thousand Dollars (\$48,000). City shall pay Consultant on a time and materials basis up to the "not to exceed" amount in accordance with Exhibit "B," entitled "Fee Schedule" which is attached hereto and incorporated herein by this reference.
- 5.2 Consultant shall submit an invoice to City describing the Services performed upon the completion of Services. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed, the number of hours spent and by whom, and a description of reimbursable expenses, if any. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice, provided the Services reflected in the invoice were performed to the reasonable satisfaction of City in accordance with the terms of this Agreement.
- 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  
David Hexem, Director  
Department of Innovation and Technology  
City of Redlands  
35 Cajon Street  
P.O. Box 3005 (mailing)  
Redlands, CA 92373

Consultant  
Jason Dong  
Vice President  
Enterprise Information Solutions  
9002 Red Branch Road  
Columbia, MD 21045

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 who notices and payments are to be given by giving notice pursuant to this section 5.3.

## ARTICLE 6 - INSURANCE AND INDEMNIFICATION

- 6.1 Certificates and Endorsements. All 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 all required insurance listed below is obtained by Consultant. Consultant shall provide Agency with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. All insurance policies shall include a provision prohibiting cancellation of the policy except upon thirty (30) days prior written notice to City.
- 6.2 Workers Compensation and Employer's Liability. Consultant shall secure and maintain Workers Compensation and Employer's Liability insurance throughout the duration of this Agreement in accordance with the laws of the State of California, with an insurance carrier acceptable to City.
- 6.3 Hold Harmless and Indemnification. 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 Consultant's and its officers', employees' and agents' sole negligent acts or omissions in performing the Services.
- 6.4 Assignment. Consultant is expressly prohibited from assigning any of the Services without the express prior written consent of City. In the event of agreement by the Parties to assign a portion of the Services, Consultant shall add the assignee as an additional insured and provide City with the insurance endorsements required by this Agreement prior to the performance of any Services by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in this Agreement.
- 6.5 Comprehensive General Liability Insurance. Consultant shall secure and maintain in force throughout the term of this Agreement 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. Agency shall be named as an additional insured. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 6.6 Professional Liability Insurance. 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.
- 6.7 Business Auto Liability Insurance. Consultant shall have business auto 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. 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. Such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City.

#### 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 the Services, and shall not acquire any interest, direct or indirect, in any other source of income, interest in real property or investment which 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 permits, licenses, applications, certifications, approvals, orders or similar authorizations or entitlements by the City;
  - (iii) authorizing the 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 all 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 by completing and filing a Fair Political Practices Commission Form 700, Statement of

Economic Interests, Consultant shall file the subject Form 700 with the City Clerk's office pursuant to the written instructions provided by the City Clerk.

#### ARTICLE 8 - GENERAL CONSIDERATIONS

- 8.1 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 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 Prohibition Against Assignment. 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 Documents and Records. All documents, records, drawings, designs, cost estimates, electronic data files, databases and 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 Independent Contractor Status. Consultant is for all purposes under this Agreement an independent contractor and should perform the Services as an independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Consultant shall supply all tools and instrumentalities required to perform the Services. All personnel employed by Consultant are for its account only, and in no event shall Consultant or any 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 Termination.
- A. This Agreement shall terminate upon the completion and the acceptance by City of the Services; unless earlier terminated, as provided for below.
- B. This Agreement may be terminated by City, in its sole discretion, by providing five (5) business days prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate.
- C. 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.

D. 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 any 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 Books and Records. Consultant shall maintain any and all books, ledgers, invoices, accounts and all 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 all reasonable times for examination by City at the office of Consultant.
- 8.7 Entire Agreement/Amendment. 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 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.9 Severability. 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 any of 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 the City and Consultant have signed in confirmation of this Agreement.

THE CITY OF REDLANDS

By: \_\_\_\_\_  
Pat Gilbreath, Mayor

Attest:

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

Enterprise Information Solutions

By: \_\_\_\_\_  
Rick Garrett, Vice President of Finance

EXHIBIT "A"

SCOPE OF SERVICES



