

AGREEMENT TO FURNISH PROFESSIONAL
REAL ESTATE ADVISORY SERVICES

This agreement for the provision of professional real estate advisory services (“Agreement”) is made and entered into this 6th day of March, 2012, by and between the City of Redlands (“City”), and Kosmont & Associates, Inc. doing business as Kosmont Companies (“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 professional real estate advisory services for various City projects as requested by City (the “Services”). The Services include, but are not limited to, discussions and negotiations with property owners and retailers, project feasibility analysis, the performance of due diligence and economic analysis, market analysis, proforma analysis, public/private transaction negotiations and structuring, fiscal impact studies, identification of possible financing and funding sources for projects, and other tasks as requested by City.
- 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 Consultant shall comply with all applicable Federal, State and local laws and regulations in the performance of its obligations under this Agreement including, but not limited to, the Americans with Disabilities Act and the Fair Employment and Housing Act.

ARTICLE 2 - RESPONSIBILITIES OF CITY

- 2.1 City shall make available to Consultant public information in its possession that may assist Consultant in performing the Services. City shall also provide reasonable access to City facilities, as required by Consultant to perform its Services.

ARTICLE 3 - PAYMENT AND NOTICE

- 3.1 The total compensation for Consultant’s performance of the Services shall not exceed the amount of Twenty Thousand Dollars (\$20,000). Consultant shall be paid on a time and materials basis in accordance with the rate schedule attached hereto as Exhibit “A.”
- 3.2 Consultant shall submit monthly invoices to City describing the work performed during the preceding month. 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.

- 3.3 All notices shall be given in writing by personal delivery or by mail. Notices, sent by mail should be addressed as follows:

City: N. Enrique Martinez
City Manager
City of Redlands
P.O. Box 3005
Redlands, CA 92373

Consultant: Larry Kosmont
Kosmont & Associates, Inc.
dba Kosmont Companies
865 South Figueroa Street
35th Floor
Los Angeles, CA 90017

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.

ARTICLE 4 - INSURANCE AND INDEMNIFICATION

- 4.1 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 City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services.
- 4.2 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.
- 4.3 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. 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.
- 4.4 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.

- 4.5 Consultant shall secure and maintain 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 throughout the term of this Agreement. 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. Such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City. City shall be named as an additional insured.
- 4.6 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 Consultant's and its officers', employees' and agents' sole negligent acts or sole negligent omissions in performing the Services.

ARTICLE 5- CONFLICTS OF INTEREST

- 5.1 Consultant covenants and represents that it does not have any investment or interest in any real property within the City of Redlands 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.
- 5.2 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 authorizations or entitlements;
 - (iii) authorizing 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.

5.3 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 Form 700 with the City of Redlands' City Clerk's office pursuant to the written instructions provided by the City Clerk.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.1 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 use of in-house counsel by a Party

6.2 Consultant shall not assign any of the Services to be performed under this Agreement, except with the prior written approval of City and in strict compliance with the terms, provisions and conditions of this Agreement.

6.3 All documents, records, drawings, designs, cost estimates, electronic data files, databases, and other documents developed by Consultant pursuant to this Agreement, 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 will be at City's sole risk.

6.4 Consultant is for all purposes an independent contractor. 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.

6.5 This Agreement may be terminated by either Party, in its sole discretion and without cause, by providing ten (10) business days' prior written notice to the other Party (delivered by certified mail, return receipt requested) of intent to terminate.

6.6 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.

6.7 Upon receipt of a termination notice, Consultant shall immediately discontinue all services affected, and within five (5) business 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, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services required by this Agreement. Consultant shall be compensated on a pro-rata basis for work completed up until notice of termination.

- 6.8 This Agreement 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.
- 6.9 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 6.10 This Agreement may be executed in one or more counterparts, each of which constitutes an original, and all of which together constitute one and the same instrument. The signature of any person on a telecopy of this Agreement, or any notice, action or consent taken pursuant to this Agreement shall have the same full force and effect as such person's original signature.

IN WITNESS WHEREOF, duly authorized representatives of the City and Consultant have signed in confirmation of this Agreement.

THE CITY OF REDLANDS:

KOSMONT & ASSOCIATES, INC.
dba KOSMONT COMPANIES

By: _____
Pete Aguilar, Mayor

By: _____
Larry Kosmont, President & CEO

Attest:

Sam Irwin, City Clerk