

## AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of temporary labor services (“Agreement”) is made and entered in this September 16, 2014 (“Effective Date”), by and between the City of Redlands, a municipal corporation (“City”) and Labor Ready Southwest, Inc. (“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 temporary staffing services for all City Departments. (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 Initial term of this Agreement shall commence on the Effective Date of this Agreement and shall terminate on June 30, 2016. City shall have the right to extend the Initial Term of this Agreement for an additional one (1) year term (“Renewal Term”) on the same terms and conditions of this Agreement by providing not less than thirty (30) days written notice to Consultant prior to the expiration of the Initial Term. The Initial Term and the Renewal Term are collectively referred to herein as the “Term.”

### 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 the Human Resources/Risk Management Director, 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 “A,” 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 shall not exceed the amount of One Hundred Thousand Dollar (\$100,000) per fiscal year. The City shall negotiate each temporary employee’s hourly rate on a case by case basis with Consultant, and in addition to such hourly rate, pay the Consultant the percentage “mark up” as shown in Exhibit “A”.
- 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, the number of hours spent and by whom, and a description of reimbursable expenses related to the project. 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  
Amy Martin, Director  
Human Resources Department  
City of Redlands  
35 Cajon Street, Suite 10  
PO. Box 3005 (mailing)  
Redlands, CA 92373

Consultant  
Kenn Kaplan  
Labor Ready Southwest, Inc.  
18 W. Colton Ave.  
Redlands, CA 92374

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 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 "B," 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 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.
- 6.5 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 is not a designated employee within the meaning of the Political Reform Act because Consultant:

A. Does not make a governmental decision whether to:

- (i) approve a rate, rule or regulation, or adopt or enforce a City law;
- (ii) issue, deny, suspend or revoke any City permit, license, application, certification, approval, order or similar authorization or entitlement;
- (iii) authorize the City to enter into, modify or renew a contract;
- (iv) grant 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) grant City approval to a plan, design, report, study or similar item;
- (vi) adopt or grant 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 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 (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 project related 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

Labor Ready Southwest, Inc.

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

By: \_\_\_\_\_  
Kenn Kaplan, Training Branch  
Manager

Attest:

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

**EXHIBIT “A”**

**Name of primary contact person who will be assigned to handle the City’s requests.**

Kenn Kaplan – Training Branch Manager

909-307-3779

Kkaplan@laborready.com

**Response time in filling the City’s requests:**

1-10 employees                      1 hour

10-20 employees      3 hours

20+ employees                      Dependent upon actual volume, 3 hours – 24 hours

**Hours of operation -**

Mon-Thurs: 5:30am-6:00pm

Friday: 5:30am-6:00pm

Saturday & Sunday: On- Call

Labor Ready is available 24/7 to respond to emergencies that may arise or to support last minute staffing needs. Labor Ready operates a dedicated message center that is available 24/7 to relay messages to our branch staff. In addition you will have access to branch manager and the district manager's cell phone for emergency response.

Category 2

Light Industrial (Maintenance Worker)

Heavy Industrial (Solid Waste Collector, Solid Waste Truck Drivers, Backhoe Operators)

Pay rate is \$9.00 per hour Bill rate \$14.69

**Minimum hours to be paid for less than eight (8) hours worked.**

Labor Ready has a minimum of four hours per worker per shift.

**Any fees involved in hiring a temporary employee assigned to the City.**

Labor Ready firmly believes in doing everything in its power to help our workers grow both personally and professionally and we do not stand in the way of their success. If one of our workers is fortunate enough to be offered a full-time position, we do not charge any fees to our workers or our customers for hiring them on.

**Background check services and pricing, if any. Indicate whether or not background checks are verified against a local, state, or national database.**

Labor Ready has partnered with a nationwide vendor offering National Criminal File Search and Social Security Verification with results made available in less than 24 hours. On average, results are received within less than 1 hour of submittal. There is no additional cost for this service.

**Drug screen services and pricing, if any.**

Labor Ready has the capability to perform 5 panel "in house" drug testing with urinalysis kits. The process and results are immediate. There is no additional charge for this service.

**Description of application screening, testing and selection procedures. Specify the computer software programs used for testing candidates.**

Labor Ready utilizes a nine page application that asks the prospective employee to list all of their personal contact data as well as past work experience. Past work experience will be entered into our operating system for ease of locating the perfect candidate. The employment application includes the I-9 page, which is required to verify that all employees are able to legally work in the United States.

Labor Ready utilizes the services of Merchant's Integrity, Inc, the innovative leader in electronic pre-employment screening to effectively reduce employment risk. The 73-question survey assesses behavior, not personality, and screens for violence, drug use, theft, lying and entitlement mentality. When workers fill out an application a safety test must be taken and safety films also are shown daily in all of our branches.



## EXHIBIT "B"

### 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.

Labor Ready

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Kenn Kaplan