

CONSULTANT AGREEMENT
(Goldfarb & Lipman LLP)

THIS CONSULTANT AGREEMENT (the "Agreement") is made and entered into on _____ 2011 (the "Effective Date"), by THE CITY OF PITTSBURG, a municipal corporation, PITTSBURG ARTS AND COMMUNITY FOUNDATION, a nonprofit, 501(c)(3) corporation (hereinafter collectively referred to as "City") and GOLDFARB & LIPMAN LLP, a California limited liability partnership, hereinafter referred to as "Consultant".

RECITALS

- A. WHEREAS, the City has the need for professional legal services; and
- B. WHEREAS, the Consultant is willing and qualified to provide such legal services.

NOW, THEREFORE, the City and Consultant, for the considerations hereinafter named, agree as follows:

ARTICLE 1
SCOPE OF WORK

1.1 Scope of Work.

Subject to the terms and conditions pursuant hereto, the scope of work to be performed by the Consultant shall be in accordance with the Consultant's Scope of Work, attached as Exhibit A and incorporated herein by this reference (the "Scope of Work"). As part of the Consultant's Scope of Work, the Consultant shall identify all subcontractors performing work, if any, and shall provide an explanation to the City as to the scope of work and costs of such work to be performed by the subcontractor. The Consultant shall not be compensated for any additional services rendered in connection with its performance of this Agreement or listed in Exhibit A unless, such additional services are authorized in advance and in writing by the City Manager. The Consultant shall be compensated for any such additional services in amounts and in the manner agreed to in writing by the City Manager and such additional services shall be identified and incorporated into this Agreement.

1.2 Change in Scope of Services.

The Consultant shall perform no work for the City beyond the scope of services described in the Scope of Work without the City Manager's prior written consent. Should either the City or the Consultant determine that services beyond the services described in the Scope of Work are required, the Consultant shall provide the City with an amendment to the Scope of Work for the services to be performed. The amendment shall describe the modifications to the services, deliverables, and costs set forth in Exhibit A.

1.3 Delays.

If the work provided for under this Agreement is delayed due to factors or conditions beyond the control of the Consultant and through no fault or negligence on its part as determined solely by the City Manager, the Consultant may request, in writing, an extension of time, an adjustment in compensation, or both. The request must be accompanied by substantiating data reasonably acceptable to the City Manager. If, in the sole opinion of the City Manager or his or her authorized representative, a delay is justified, the Consultant may be granted an extension of time, an adjustment in compensation, or both. The City Manager's decision regarding any adjustment to time or compensation is final.

1.4 Inspection and Final Acceptance.

The City may inspect and accept or reject any of the Consultant's work under this Agreement, either during performance or when completed. If, during performance of the work as defined herein, the City determines that the Consultant's work is unsatisfactory, the City shall inform the Consultant in writing as to the deficiencies. The Consultant shall have ten (10) days from the date of the City's delivery of such notice (or the Consultant's refusal of delivery, if applicable) to cure such deficiencies. Failure to cure such deficiencies within the ten (10) day period shall be a breach of this Agreement. The City Manager at his or her sole discretion may extend the time frame to cure deficiencies only by written authorization.

Upon completion of performance of work as defined herein, the City may reject work within sixty (60) days following the City's receipt of such work by giving written notice to the Consultant, otherwise such work shall be deemed accepted. Acceptance of any of the Consultant's work by the City shall not constitute a waiver of any provision of this Agreement, including but not limited to the insurance and indemnity provisions herein.

ARTICLE 2 PROGRESS OF WORK

2.1 Beginning of Work.

The Consultant shall commence the work pursuant to the Scope of Work attached as Exhibit A hereto upon the Effective Date and shall diligently prosecute all work to completion. The Consultant shall commence and complete work at direction of the City. The term of this Agreement shall commence as of the Effective Date and shall terminate on the third (3rd) anniversary of the Effective Date; provided, however the City City Manager has 2 two-year options to extend the term of this Agreement following the expiration of the initial term.

2.2 Temporary Suspension of Work.

Should the City suspend work pursuant hereto through no fault of the Consultant, and then resume work, the Consultant shall have the right to renegotiate fees, but only if the period of suspension exceeds one hundred and twenty (120) calendar days.

2.3 Termination.

The City reserves the right to terminate this Agreement at any time prior to completion of any of the services upon sixty (60) days written notice to the Consultant of such termination. If the Consultant fails to perform any material obligation and/or is in default under the terms of this Agreement, then, in addition to any other remedies, the City may terminate this Agreement immediately upon written notice.

If the City fails to approve either an amendment to the Scope of Work as described in Section 1.2 or a reasonable increase in total compensation requested by Consultant pursuant to Section 4.1, then either party may terminate this Agreement immediately upon written notice. If any payment is not made by the City to the Consultant when due in accordance with this Agreement, the Consultant may, thirty (30) days after delivery of written notice of nonpayment to City, terminate this Agreement immediately upon written notice.

In the event of termination, the Consultant shall invoice the City for the services completed prior to the date of termination subject to the limitations of Section 4.1 of this Agreement. Further, all property belonging exclusively to the City which is in the Consultant's possession (including, but not limited to all work performed by the Consultant prior to the termination, and all materials referenced in Section 3.9) shall, within five (5) days after the effective date of termination, be returned to the City by the Consultant.

ARTICLE 3 CONTROL OF THE WORK

3.1 Authority of the City.

The City shall vest authority in the City Manager of the City to decide all questions which may arise as to the quality or acceptability of the Consultant's work and as to the manner of performance and rate of progress of all services provided by the Consultant.

3.2 Assignment.

Performance of the services as defined herein shall not be assigned except upon the prior written consent of the City Manager. Consent to subcontract, assign, or otherwise dispose of any portion of this Agreement will not be construed to relieve the

Consultant of any responsibility for the fulfillment of this Agreement.

3.3 Consultant Not an Agent.

Except as the City may specify in writing, Consultant shall have no authority, expressed or implied, to act on behalf of the City in any capacity whatsoever as an agent.

3.4 Subcontracts.

The Consultant shall give its complete attention to the fulfillment of this Agreement and shall keep the work to be performed under this Agreement under its control. The Consultant shall be fully responsible to the City for the acts and omissions of its employees and subcontractors and of persons either directly or indirectly employed by them.

Any contract entered into between the Consultant and a subcontractor for work related to this Agreement shall incorporate the applicable provisions of this Agreement. The City shall reserve its right to approve all subcontractors, either as part of Consultant's proposal as provided under Section 1.1 or anytime during the performance of work as defined herein, prior to the Consultant entering into any agreement with a subcontractor for work to be performed pursuant to this Agreement.

3.5 Standard of Performance.

The Consultant shall perform the services set forth in the Scope of Work to the reasonable satisfaction of the City Manager in accordance with generally accepted standards for residential development. While the Consultant shall perform its services in reasonable accordance with professional standards in effect at the time the Consultant's services are performed, the Consultant and the City agree and acknowledge that such standards may subsequently change due to improvements in the state of practice and the Consultant shall thereafter perform to such standard. All work performed by the Consultant shall be subject to review and approval of the City Manager or his or her authorized representative at all times. The Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, timely, and professional manner.

3.6 Independent Contractor.

The Consultant is an independent contractor and not an officer, employee or agent of the City, and is solely responsible for its acts or omissions. Neither the Consultant, nor any of the Consultant's officers, employees, subcontractors, sub-consultants, or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to the City's employees. The Consultant expressly waives any claim it may have to any such rights. The Consultant shall have

no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or authorized written amendments to this Agreement.

The personnel performing the services under this Agreement on behalf of the Consultant shall at all times be under the Consultant's exclusive direction and control. The Consultant shall not at any time or in any manner represent that the Consultant or any of the Consultant's officers, employees, subcontractors, sub-consultants, or agents are in any manner officials, officers, employees or agents of the City.

3.7 Conflict of Interest.

The Consultant understands that its professional responsibility under the terms of this Agreement is solely to the City. Except as previously disclosed in writing to the City, the Consultant warrants that it presently has no interest and will not acquire any direct or indirect interest that would conflict with its performance of this Agreement. During the time the Consultant provides services to the City, the Consultant shall not participate in any activity, employment, or contractual relationship that would constitute a conflict of interest with its duties to the City or to employ any such person having such an interest, unless agreed to in writing by the City. The Consultant and its agents or employees working under this Agreement shall submit statements of economic interest under applicable law if requested to do so by the City.

3.8 Covenant against Contingent Fees.

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement.

For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or, at its sole discretion, deduct from the Consultant's compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

3.9 Ownership of Documents.

All documents including but not limited to original models, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed, or discovered by the Consultant in the course of providing any services pursuant to this Agreement (collectively the "Project Documents") shall become the sole property of the City. However, such Project Documents are not intended nor represented to be suitable for reuse by the City for purposes other than as related to the

Scope of Work as defined herein. Any reuse for specific purposes intended will be at the user's sole risk. The City hereby grants a license to the Consultant to use or reuse the Project Documents, provided such use or reuse is not adverse to the interests of the City.

Following the completion of the services under this Agreement and final payment to the Consultant, the Project Documents shall become the exclusive property of the City and, at the request of the City Manager, the Consultant shall promptly deliver to the City all such original models, photographs, studies, surveys, reports, data, notes, computer files, files and other documents produced in connection with the performance of services as defined herein.

The City shall comply with all public records requests pursuant to applicable law. The City shall not be liable for release of information disclosed.

3.10 Replacement and Reimbursement.

Where applicable to the services performed under this Agreement, in the event that any such services furnished by the Consultant are reasonably rejected or found to be unacceptable by the City, the Consultant shall at its sole expense remove or replace all rejected services or project deliverables. Should the Consultant fail, neglect or refuse to remove and replace rejected services or project deliverables, the City may substitute services in the open market and deduct the cost of such substitute services from any money due the Consultant. This section does not in anyway limit the City's rights and remedies for Consultant's breach of this Agreement.

3.11 Testimony.

The Consultant agrees to testify at the City's request if litigation is brought against the City in connection with the Consultant's services. Unless the action is brought by the Consultant or is based upon the Consultant's wrongdoing, the City shall compensate the Consultant for the testimony at the Consultant's standard hourly rates as set forth in the Scope of Work.

3.12 Compliance with Applicable Laws.

The Consultant shall carry out the work defined under this Agreement in conformity with all applicable laws, including without limitation applicable provisions of the City of Pittsburgh Municipal Code; all applicable disabled and handicapped access requirements, including with limitation the Americans with Disabilities Act, 42 U.S.C. section 12101, et seq., Government Code section 4450, et seq., Government Code section 11135 et seq., and the Unruh Civil Rights Act, California Civil Code section 51 et seq.

The Consultant shall at all times observe and comply with all federal, state, and local

laws, regulations, ordinances, orders, and decrees applicable to the Scope of Work. The Consultant shall indemnify, defend, and hold harmless the City and its Indemnitees as defined herein against any claims of liability arising from acts or omissions of its agents, sub-consultants, subcontractors, employees based on the violation of any such law, regulation, ordinance, order, and decree.

ARTICLE 4 COMPENSATION AND METHOD OF PAYMENT

4.1 Method of Measurement.

Compensation for services performed pursuant hereto shall be on a time, materials, and/or performance basis depending upon the scope of services performed. The Consultant's current hourly rate is attached hereto as Exhibit A. The Consultant's hourly rate may be increased on an annual basis by the Consultant providing the City an updated fee schedule, which shall thereafter be incorporated into Exhibit A.

All invoices shall identify the scope of services performed and shall detail charges including, where appropriate, labor (by sub-category), travel, materials, equipment, supplies, subcontractor charges, and miscellaneous expenses. The City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid within thirty (30) days following receipt. In the event any charges or expenses are disputed by the City, the original invoice shall be returned by the City to Consultant for correction and resubmission. Payment to the Consultant for work performed pursuant to this Agreement and in particular, as set forth in Exhibit A, shall not be deemed to waive any defects, errors, or omissions in work performed by the Consultant.

4.2 Invoices.

The Consultant shall provide the City with invoices for all services provided. Invoices shall identify the service performed in accordance with the scope of services outlined in the Scope of Work (and as approved in writing by the City in accordance with Section 2.1), the period of time during which the work was performed, the position(s) of the employee(s) performing the work and the number of hours worked by each position.

Invoices shall be addressed to:

Redevelopment City of the
City of Pittsburgh
65 Civic Avenue
Pittsburg, CA 94565
Attn: Redevelopment Manager

ARTICLE 5 INSURANCE REQUIREMENTS; INDEMNITY

5.1 General Insurance Requirements.

The Consultant shall not begin work under this Agreement until it obtains insurance required under this Article and shall maintain in full force and effect the required insurance during the term of this Agreement. All insurance policies shall be subject to approval by the City as to form and content. The Consultant may, in writing, notify the City of explanation as to why any specific insurance requirements should be waived. The City Manager in conjunction with the Redevelopment City Director may determine to waive certain requirements. Such determination is final. Any amendment or waiver to the insurance requirements as defined herein shall be in writing and incorporated into this Agreement. All insurance shall cover the Consultant and its principals and employees and also cover their liability arising out of operations of the Consultant's agents, representatives, and subcontractors in connection with its operations under this Agreement. All insurance requirements shall appear either in the body of the insurance policies or as endorsements. The insurance required under this Article shall specifically name the City, its officers, officials, agents, employees and volunteers ("the City and its employees") as an additional insured.

A copy of all policies or evidence thereof shall be furnished to the City at least ten (10) days prior to the Consultant's commencement of services under this Agreement. All policies shall provide for at least thirty (30) calendar days prior notice to the City before coverage is canceled; the Consultant shall notify the City at least thirty (30) calendar days prior to any suspension, voiding, or reduction of coverage or of limits. The Consultant's insurance is to be placed with insurance companies with A.M. Best Co.'s rating of no less than A-VII. Any deductibles or self-insured retention exceeding \$35,000 shall be declared to the City and the City shall determine whether to approve such deductible or self-insurance retention, or to require the Consultant to provide additional coverage. The Consultant's insurance shall be primary with respect to the City and its employees. Any failure by the City and its employees to comply with the reporting provisions of the policy shall not affect coverage provided to the City and its employees.

5.2 Automobile Insurance.

The Consultant shall maintain minimum automobile coverage of (a) One Hundred Thousand Dollars (\$100,000) for property damage, Five Hundred Thousand Dollars (\$500,000) for injury to one person/any one occurrence and One Million Dollars (\$1,000,000) for injury to more than one person/any one occurrence or (b) combined single limit of One Million Dollars (\$1,000,000) per occurrence.

5.3 Workers' Compensation Insurance.

The Consultant shall maintain workers' compensation insurance as required by the State Labor Code and Employer's Liability Insurance with limits in the amount of One Million Dollars (\$1,000,000) per accident. The insurer shall agree to waive all rights of subrogation against the City and its employees for losses arising from work performed by Consultant for the City.

5.4 Public Liability and Property Damage Insurance.

The Consultant shall take out and maintain comprehensive general liability and property damage insurance and shall insure the City and its employees from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from the Consultant's negligent operations under this Agreement, whether or not done by the Consultant or by anyone directly or indirectly employed by the Consultant. Such insurance shall have a combined limit of not less than One Million Dollars (\$1,000,000).

5.5 Errors and Omissions Insurance.

The Consultant shall cause to be taken out and kept in full force and effect during the term of this Agreement a policy in form and content satisfactory to the City that shall indemnify the Consultant against errors and omissions or malpractice by the Consultant. Said policy or policies shall provide liability coverage in the amount of Five Hundred Thousand Dollars (\$500,000) per claim, and a deductible provision of not more than Fifty Thousand Dollars (\$50,000), and Two Million Dollars (\$2,000,000) aggregate.

5.6 Indemnity.

The Consultant shall indemnify and hold harmless the City, its elected and appointed boards, its officials, officers, agents, employees, and volunteers (individually and collectively referred to as "Indemnitees") from and against any and all demands, claims, causes of action, liability, loss, costs of whatever nature, proceedings including but not limited to administrative proceedings, suits, damages, judgments, liens, levies, and reasonable expenses (including without limitation costs and fees of litigation and attorneys fees) arising from or in any way connected with the Consultant's performance hereunder, to the extent that the above are caused by any negligence, errors, acts, omissions, or misrepresentations by the Consultant, its employees, agents, sub-consultants, subcontractors, either as a sole or contributory cause, sustained by any person or entity. The foregoing shall not apply to claims or causes of action caused by the sole negligence of the Indemnitees.

If any action or proceeding is brought against the Indemnitees in connection with the Consultant's services under this Agreement, the Consultant shall indemnify same as provided above, and shall defend same at the Consultant's expense and upon written notice from the City, by counsel acceptable to the City, such acceptance not to be

unreasonably withheld.

This section shall survive termination of this Agreement.

ARTICLE 6 MISCELLANEOUS

6.1 Notices.

Any notice given under this Agreement shall be in writing and deemed given when personally delivered, delivered by reputable overnight delivery service, or deposited in the mail (certified or registered) addressed to the parties as follows:

The City: City of Pittsburgh
 65 Civic Avenue
 Pittsburg, CA 94565
 Attn: City Manager

The Consultant: Goldfarb & Lipman LLP
 1300 Clay Street, Ninth Floor
 Oakland, CA 94612
 Attn: Lynn Hutchins

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery, or refusal of delivery (if applicable).

6.2 Resolution of Disputes; Litigation.

Prior to either party commencing litigation, the parties shall meet in good faith to select a mediator, reasonably acceptable to each party, to mediate and resolve the dispute. The parties shall equally divide the cost of mediation. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE or its successor in interest ("JAMS") and JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation. If either party brings an action to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees and costs.

6.3 Waivers.

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision under this Agreement.

6.4 Modification.

No waiver or modification of this Agreement is valid unless made in writing and signed by both parties.

6.5 Severability.

If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.

6.6 Entire Agreement.

This Agreement and its exhibits set forth the entire understanding between the parties.

6.7 Choice of Law.

This Agreement is governed by and to be construed in accordance with the laws of the State of California.

6.8 Headings.

Paragraph headings are used for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

6.9 Consultant Representation and Warranty Regarding Execution.

This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered by Consultant, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Consultant, and all actions required under Consultant's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement, or to be executed and delivered, pursuant to this Agreement, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

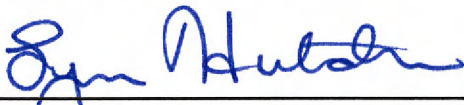
6.10 Counterparts; Multiple Originals.

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date written above.

CONSULTANT:

GOLDFARB & LIPMAN LLP, a California limited liability partnership

By: 
Lynn Hutchins

CITY:

CITY OF PITTSBURG, a municipal corporation

By: _____
Joe Sbranti
City Manager

Exhibit A

Scope of Work/Consultant Fee Schedule

Scope of Work

Legal services as requested by the City.

Consultant Fee Schedule

Partners	\$250-260
Associates	\$165-245
Senior Law Clerks	\$140
Law Clerks	\$125
Project Coordinators	\$125