

C 3606

CONSULTING SERVICES AGREEMENT

THIS CONSULTING SERVICES AGREEMENT (this "**Agreement**") is entered into by and between the City of Union City, a municipal corporation (the "**City**") and Badawi & Associates ("**Consultant**") effective as of June 12, 2012 (the "**Effective Date**"). City and Consultant are collectively referred to herein as the "**Parties**."

1. **SERVICES; TERM.** Consultant shall provide to City the services described in Exhibit A attached hereto and incorporated herein (the "**Scope of Work**"). The term of this Agreement (the "**Term**") shall begin on the Effective Date and shall end upon completion of the audit for the fiscal year ended June 30, 2013 (the "**Expiration Date**"). Consultant shall complete the Scope of Work prior to the Expiration Date.

2. **COMPENSATION.** For services performed pursuant to this Agreement, City shall pay Consultant an aggregate sum not to exceed Sixty-eight thousand three hundred Dollars (\$68,300) (the "**Contract Sum**") payable (if applicable) at the fees shown in Exhibit A for the audit of fiscal year ending June 30, 2012 and seventy-thousand three hundred forty-nine Dollars (\$70,349) for the audit of the fiscal year ending June 30, 2013

3. **INVOICES; PAYMENT.** Consultant shall submit invoices to City not more often than once per month. Invoices shall be signed by Consultant, and shall include all of the following information: (i) the beginning and ending dates of the billing period; (ii) a description of the work performed during the billing period, (iii) the total amount payable, (iv) the remaining balance of the Contract Sum, and (v) copies of invoices and evidence of payment for Reimbursable Expenses. City shall pay Consultant within 30 days of City's receipt of invoices that comply with the requirements set forth in this Section 3 for services satisfactorily performed and for authorized Reimbursable Expenses incurred.

4. **INSURANCE.** At Consultant's sole expense without reimbursement, Consultant shall obtain and maintain throughout the term of this Agreement, all insurance specified in this Section 4. Prior to commencing work under this Agreement, Consultant shall provide evidence satisfactory to City that all insurance required by this Agreement is in full force and effect in the form required hereby, and upon City's request, Consultant shall furnish City with complete copies of all insurance policies required by this Agreement, including complete copies of all endorsements attached to such policies.

4.1 **Workers' Compensation.** Consultant shall obtain and maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for all persons employed directly or indirectly by Consultant. In the alternative, Consultant may rely on a self-insurance program, but only if the program of self-insurance complies fully with the provisions of the California Labor Code.

4.2 **Commercial General and Automobile Liability Insurance.** Consultant shall obtain and maintain commercial general and automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, each written on an occurrence basis (not a claims made basis) for risks associated with the work contemplated by this Agreement, and including, without

limitation, coverage for Claims (defined in Section 5 below) arising from bodily injury, including death resulting therefrom, and damage to property. Commercial general liability insurance shall provide coverage for liability arising out of work or operations performed by or on behalf of the Consultant. Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition). Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto) and shall provide coverage for owned and non-owned automobiles. The automobile and commercial general liability policies shall each name the City, and the Community Redevelopment Agency of the City of Union City, a public agency ("**Agency**"), and their respective officers, officials, employees, agents, contractors and volunteers (all of the foregoing, collectively, the "**Indemnitees**") as additional insureds.

4.3 Carrier Requirements; Primary Coverage; Waiver of Subrogation; Notice of Cancellation, Non-renewal or Modification. All insurance required by this Agreement shall be placed with insurers admitted in California and with an A.M. Best's rating of no less than A:VII. Coverage provided by Consultants (and subcontractors if applicable) shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Agency or City or any Indemnatee, and the policies shall so provide. Any insurance or self-insurance maintained by the Agency, the City or any Indemnatee shall be excess of the Consultant's insurance and shall not contribute with it. Each insurance policy shall contain a waiver of subrogation for the benefit of the City and Agency. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled or substantially modified except after 30 days' prior written notice has been provided to the City.

5. INDEMNITY. Consultant shall, to the fullest extent allowed by law, defend (with counsel acceptable to City), indemnify, and hold the Indemnitees (defined in Section 4.2), harmless from and against any and all losses, liabilities, claims, suits, actions, judgments, costs, expenses (including without limitation attorneys' fees), damages, and causes of action (all of the foregoing, collectively "**Claims**") directly or indirectly, in whole or in part, arising out of or in connection with the performance of the Scope of Work or the failure of Consultant or its employees, subcontractors, or agents to comply with the terms of this Agreement, including without limitation, Claims relating to bodily injury, loss of life, and/or property damage. Such obligation to defend, hold harmless and indemnify the Indemnitees shall not apply to the extent that a Claim is caused by the sole negligence, gross negligence, or willful misconduct of one or more Indemnitees. Consultant's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not, and shall not, waive any rights against Consultant which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Consultant's deposit with City of any of the insurance policies described in this Agreement.

6. INDEPENDENT CONTRACTOR; CONSULTANT NOT AN AGENT. Consultant acknowledges and agrees that neither Consultant nor any of its employees, agents, or subcontractors providing services under this Agreement shall be considered employees of City or Agency or shall qualify for or become entitled to any compensation, benefit, or any incident of employment by City or Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS). Without limiting the generality of the foregoing, Consultant acknowledges and agrees that Consultant is solely responsible for the payment of all applicable employee compensation and benefits and all applicable local, state and

federal business and payroll taxes for all persons providing services to City pursuant to this Agreement. Except as City may expressly specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity as an agent or to bind City to any obligation.

7. RECORDS AND MATERIALS.

7.1 Materials Created by Consultant; Use of Recycled Products. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, and any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement shall be the property of the City, and Consultant agrees to deliver all such materials and documents to the City upon termination of the Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties. Consultant shall prepare and submit all reports, written studies and other printed materials to be provided to City pursuant to this Agreement on recycled paper to the extent it is available at equal or less cost than virgin paper. This Section 7.1 shall survive the expiration or earlier termination of this Agreement.

7.2 Books and Records. Consultant shall maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years (or for any longer period required by law) from the date of City's final payment to Consultant. City shall have the right to inspect, audit, and/or copy such documents at any time during regular business hours upon request. In addition, pursuant to California Government Code Section 8546.7, if the Contract Sum exceeds \$10,000, this Agreement shall be subject to examination and audit by the State and/or the City for a period of three (3) years after final payment hereunder. This Section 7.2 shall survive the expiration or earlier termination of this Agreement.

8. TERMINATION; DEFAULT AND REMEDIES.

8.1 Termination Without Cause. City may cancel this Agreement at any time and without cause upon written notice to Consultant. In the event of termination, Consultant shall be entitled to compensation for services satisfactorily rendered to the effective date of termination. City may condition such payment upon Consultant's delivery of all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Default and Remedies. If Consultant materially breaches any of the terms of this Agreement, City may exercise any of the following remedies, each of which shall be cumulative and not exclusive:

- (i) Immediately terminate the Agreement;
- (ii) Retain any work product prepared by Consultant pursuant to this Agreement;
- (iii) Pursue any other remedy available under law or in equity.

9. MISCELLANEOUS PROVISIONS.

9.1 Compliance with Applicable Laws. Consultant shall comply with all federal, state and local laws, rules and regulations applicable to the performance of the Scope of Work, including without limitation, all applicable copyright, patent and trademark laws, all applicable requirements imposed by funding sources, and all applicable conflict of interest provisions of Government Code Section 1090.

9.2 Licenses and Permits; City Business License. Consultant represents, warrants and covenants that Consultant and all of Consultant's employees, agents, and subcontractors (if any) performing work under this Agreement have, and shall maintain throughout the term of this Agreement, at Consultant's or their sole cost and expense, all licenses, permits, and qualifications legally required to practice their respective professions. Consultant and all subcontractors shall obtain and maintain throughout the term of this Agreement valid City of Union City Business Licenses.

9.3 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement.

9.4 Amendments; No Waiver. This Agreement may be amended or modified only by a written instrument executed by all Parties. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that provision or of any other provision of this Agreement.

9.5 Assignment and Subcontracting. This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of City's Contract Administrator. Without the prior written approval of City's Contract Administrator, Consultant shall not assign or subcontract any portion of the Scope of Work, other than to subcontractors (if any) specified in Exhibit A.

9.6 Attorneys' Fees. In any action to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled.

9.7 Governing Law; Venue. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard exclusively in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

9.8 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

9.9 Successors and Assigns; No Third Party Beneficiaries. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties, subject to the restrictions on assignment set forth in Section 9.5. This Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

9.10 Contract Administration; Notices. This Agreement shall be administered by _____ ("**Contract Administrator**"). All correspondence shall be directed to or through the Contract Administrator or his or her designee. Any notice to be delivered to the Parties shall be sent by first-class mail, to the Parties at the addresses set forth in this Section or to such substitute address as a Party may designate by written notice to the other party:

Consultant:

Ahmed Badawi, CPA
Badawi & Associates
Certified Public Accountants
180 Grand Avenue, Suite 955
Oakland, CA 94612_____

City:

City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
Attention: Richard Digre_____

9.11 Entire Agreement; Headings and Interpretation. This Agreement, including Exhibit A attached hereto and incorporated herein is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written negotiations, representations, or agreements with respect thereto. The section headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof. This Agreement is the result of negotiation between the Parties, and shall be construed as to its fair meaning and not for or against any Party based upon any attribution of such Party as the sole source of the language in question.

9.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, The Parties have executed this Agreement as of the date first written above.

CITY OF UNION CITY

By: [Signature]
[NAME, TITLE]
Attest: [Signature]

City Clerk

Approved as to Form:

City Attorney

CONSULTANT

By: [Signature]
[NAME, TITLE]
President
Bddawi & Associates

City Short-Form Consulting Services Agreement
Form 10/26/09
1312509-1

Exhibit A

SCOPE OF WORK

(Attach description of Scope of Work and authorized subcontractors (if any). See Section 1.)

Exhibit B

COMPENSATION

(Attach hourly rate schedule or state "Not Applicable." See Section 2.)

Not Applicable

Exhibit C

REIMBURSABLE EXPENSES

(Attach description and amount of any Reimbursable Expenses or state "NONE." See Section 2.)

Not Applicable