



STAFF REPORT

DATE: SEPTEMBER 6, 2011
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROD FOSTER, CITY MANAGER
PREPARED BY: ARTHUR MORGAN, REDEVELOPMENT MANAGER
SUBJECT: APPROVE PROFESSIONAL SERVICES AGREEMENT WITH URBAN FUTURES, INC.

RECOMMENDED ACTION

Approve and authorize the City Manager to execute a Professional Services Agreement with Urban Futures, Inc. to continue work on the amendment/merger of the City's Redevelopment Plans effective June 28, 2011.

GOAL STATEMENT

The proposed action will support the City's goal to foster economic development, create jobs and eliminate blight in the City.

BACKGROUND

ORIGINAL AGREEMENT WITH THE REDEVELOPMENT AGENCY

On May 10, 2010, the Redevelopment Agency entered into a Professional Services Agreement with UFI to prepare an amendment(s) to the City's Redevelopment Plans for several purposes, including, but not limited to: merging the City's existing redevelopment project areas, including new territory within the merged redevelopment project area, reinstating limited eminent domain authority, and increase certain Plan(s) fiscal limits. As the process was moving forward, in July 2011, the State signed into legislation AB X1 26 and AB X1 27, which caused redevelopment agencies to not be able to take certain actions on contracts, projects, etc.

In August 2011, the California Supreme Court ordered a Stay relative to specific portions of AB X1 26 and 27 pending the final decision by the Supreme Court regarding the Petition filed by the California Redevelopment Association and the League of California Cities regarding the constitutionality of AB X1 26 and 27.

POTENTIAL CONFLICTS – RULE OF NECESSITY PROCESS

When the Agency took its action on May 10, 2010, it used the “rule of necessity” which allows officials to participate in decisions where it is not possible to constitute a quorum out of officials who do not have potential conflicts of interest and there is no alternative means of reaching a decision. Based upon the known economic interests at the time, City staff identified five (5) Council Members who appeared to have disqualifying potential conflicts of interests in any decisions concerning the potential amendment/merger, simply due to ownership or other interests in real property or businesses. Those Council Members were Chastain, Bennett, DeLaRosa, Oliva and Yzaguirre.

A random means of selecting the minimum number of Council Members needed to participate in the decision (four) was used, and Council Members DeLaRosa and Oliva were allowed to participate along with Council Member Toro and Perez.

Once selected, an official typically participates for the duration of the proceedings in all related matters, until his or her participation is no longer legally required, or the need for invoking the exception no longer exists. In this case, two of the “conflicted” Council Members (Chastain and DeLaRosa) are no longer on the City Council, and they have been replaced by Mayor Zamora and Council Member Gonzales, neither of which appears to have a potential conflict of interest.

Thus, since there are now four (4) Council Members (Zamora, Gonzales, Toro and Perez) without apparent conflicts of interest, only those four (4) will participate on this matter. Council Members Bennett, Oliva and Yzaguirre will be recused from participating.

ISSUES/ANALYSIS

The Agency has been identifying actions that it can and cannot conduct under the Stay Order, effective as of June 28, 2011 when AB X1 26 and 27 were adopted. The Agency has consulted with its legal counsel regarding certain existing Professional Services Agreements (PSA), including its May 10, 2010 PSA with UFI to conduct the plan amendment/merger. The Agency is not authorized under the current law to continue with this PSA.

However, the City wishes to continue as much work as legally possible on the plan amendment/merger, since it is ultimately the City – and not the Agency – that adopts a plan amendment or merger. The City would like to be prepared should the Supreme Court rule in favor of redevelopment agencies and allow the amendment/merger to be considered.

To continue moving the plan amendment/merger process forward, staff recommends that the City enter into a PSA with UFI in the amount of \$311,046.71 to conduct those services the City is allowed to perform, retroactive to June 28, 2011 when AB X1 26 and 27 were adopted. This amount comprises the remaining balance of \$272,046.71 of the original PSA, plus \$39,200 for necessary changes which have been or may be authorized in the scope of work. These changes include survey area boundaries, new legal descriptions, and amended data to support blight as the result of Council direction in December 2010.

FISCAL IMPACTS

The PSA between the City and UFI will be in the amount of \$311,046.71. This action will allow work to continue on this project while waiting for final resolution of the recent Supreme Court Stay. If RDA's are ultimately allowed to continue operations in the future, staff anticipates the balance of the above City contract will be transferred to the RDA and any monies expended by the City on this project will be fully reimbursed by the RDA. If, however, RDA's are not permitted to continue operations, any monies expended by the City will not be reimbursed and the balance of the City PSA will be cancelled.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

1. City Professional Services Agreement with UFI for the City's Redevelopment Planning Services

**CITY OF COLTON
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this 6th day of September, 2011 by and between the City of Colton, a municipal organization organized under the laws of the State of California with its principal place of business at 650 North La Cadena Drive, Colton, California 92324 ("City") and Urban Futures, Inc., a corporation with its principal place of business at 3111 N. Tustin, Suite 230, Orange, CA 92865-1753 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing consulting economic and redevelopment planning services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such services for the Redevelopment Plan Amendment(s) project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from June 28, 2011 to December 31, 2012, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: Marshall Linn, CEO; Michael Busch, President; Jon D. Huffman, Managing Principal; Douglas P. Anderson, Managing Principal; Paul Schowalter, Principal; Ryan Bensley, Senior Planner; Jung Seo, Senior Planner; Julie Myhra, Planner; and Steve Gonzales, Planner.

3.2.5 City's Representative. The City hereby designates Agency Executive Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Marshall Linn, CEO, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall

stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this

Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Water Quality Management and Compliance.

3.2.12.1 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Project or the Services including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.2.12.2 Liability for Non-compliance. Failure to comply with the laws, regulations and policies described in paragraph 3.2.12.1 is a violation of law that may subject Consultant or City to penalties, fines, or additional regulatory requirements. Consultant hereby agrees to indemnify, hold harmless and defend (with counsel selected by the City) City, its officers, agents and employees from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Consultant's non-compliance with the laws, regulations and policies described in paragraph 3.2.12.1, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

3.2.12.3 Training. In addition to the standard of care requirements set forth in paragraph 3.2.8, Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.2.12.1. Consultant further warrants that it, its employees and subcontractors will receive adequate

training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.2.12.1 as they may relate to the Services provided under this Agreement. Upon request, City will provide Consultant with a list of training programs that meet the requirements of this paragraph.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Three Hundred Eleven Thousand Forty-Seven Dollars (\$311,047)** without written approval of the City Council. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

Urban Futures, Inc.
3111 N. Tustin, Suite 230
Orange, CA 92865-1753
Attn: Marshall Linn, CEO

City:

City of Colton
650 North La Cadena Drive
Colton, CA 92324
Attn: Rod Foster, City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or volunteers.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and

subcontractors of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-

insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[Signatures on Next Page]

CITY OF COLTON

URBAN FUTURES, INC.

By: _____
Rod Foster
City Manager

By: _____
Marshall Linn, CEO

Attest:

Eileen C. Gomez
City Clerk

Approved as to Form:

Best Best & Krieger LLP
City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

[CONSULTANT'S PROPOSAL DATED 2-25-10 IS INCORPORATED HEREIN BY REFERENCE AND INCLUDES THE FOLLOWING: (1) PAGES 1-10; (2) END NOTES I-II; AND (3) ATTACHMENT TABS 1-7]

If there are any conflicts in interpretation or enforcement between this Agreement (including exhibits) and the proposal incorporated herein by reference, this Agreement shall control. The following is a summary of the Services, as provided for in the 2-25-10 proposal:

- Task 1: Prepare and Monitor Project Schedule; Prepare and Transmit Data Request Letter; Review and Inventory Database; Construct Project Files and Data Systems
- Task 2: Resolve Redevelopment Survey Area Requirements
- Task 3: Prepare Property and Business Interest Exhibits to be used by Agency Legal Counsel to Determine Public Official's Potential Conflict(s) of Interest; Update as Required
- Task 4: Field Reconnaissance Preparation
- Task 5: Conduct Parcel Specific Field Reconnaissance for Blight Discovery and Urbanization Analyses in the Added Territory and Project Areas
- Task 6: Field Reconnaissance Data Base Construction; Data Entry; Coordinate with Civil Engineer Preparing Legal Description and Maps
- Task 7: Prepare Preliminary Plan for Planning Commission and Agency Consideration and Adoption; Prepare for and Attend Two Meetings
- Task 8: Formulate Taxing and Environmental Entity Transmittal Manifests; Prepare and Transmit Statement of Plan(s) Amendment Initiation (CCRL) and Notice of Preparation (CEQA) to Affected Taxing and Environmental Entities, and CCRL Section 33328.1 "schools report" (pertaining to Added Territory only) to all Affected Education Entities
- Task 9: Formalize Agency Eminent Domain Policy and Project Area Committee (PAC) Positions; Prepare for and Attend one Meeting

- Task 10: Prepare CCRL Section 33444.5 Preliminary Report Including all GIS Analyses
- Task 11: Prepare Amended Plan"; Prepare for and Attend One Meeting
- Task 12: Prepare Initial Study, Program Environmental Impact Report, and Related Transmittal Notices
- Task 13: Prepare CCRL Section 33346 Conformity Report for Planning Commission Consideration and Adoption; Prepare for and Attend One Meeting
- Task 14: Determine Base Year (and Adjusted Base Year vis-a-vis Tax Increment Increases) Assessed Valuations and Prepare Tax Increment Projections as Necessary for all Amendment Objectives
- Task 15: Initiate and Conduct Consultations with Affected Taxing Entities; Prepare for and Attend three Meetings
- Task 16: Amend Previously Adopted or Draft New Owner Participation Rules and Relocation Guidelines pertinent to the Added Territory
- Task 17: Prepare Public Hearing Notices, Statement of Acquisition, and Agency and City Council Resolutions Setting Dates for Joint Public Hearing and Authorizing Transmittal of Public Notices and Related Attachments
- Task 18: Prepare Manifest of Assesseees, Residents and Businesses for Joint Public Hearing Mailings; Coordinate Mail House Operations
- Task 19: Assemble and Transmit Required Documents to State Finance Director and HCD Not less Than 45 Days Prior to Joint Public Hearing
- Task 20: Prepare Agency Report to the Legislative Body Pursuant to CCRL Section 33352
- Task 21: Work with Agency Legal Counsel to Prepare Amendment Adopting and Downtown Projects "Decommissioning" Ordinance(s), Amendment Related Resolutions (Including Housing Benefit Pertaining to the Added Territory Only) and CEQA Findings of Fact (Including Statement of Overriding Considerations, as May be Necessary), FEIR Certification Resolutions, and Various Staff Reports Necessary to Adopt the Amendment and Decommission the Downtown Projects
- Task 22: Coordinate Assembly and Distribution of Joint Public Hearing Evidentiary Record Binders
- Task 23: Prepare For and Conduct four (4) Community Redevelopment Workshops

- Task 24: Prepare for and Attend Agency/City Council Joint Public Hearing
- Task 25: Prepare Responses to Written Objections as Necessary (time and materials [T&M])
- Task 26: Work with Agency Staff and City Clerk's Office to Prepare and Transmit Final Filings; Archive Amendment Files
- Task 27: Staff Meeting Preparation and Attendance on Dates to be Determined; Prepare for and Attend six (6) Meetings

The Services provide that Consultant will prepare for and attend nineteen (19) meetings. These will consist of the following: two (2) Planning Commission meetings (task nos. 7 and 13); four (4) public workshops (property owners/tenants/residents, task no. 23); three (3) taxing entity consultation sessions (task no. 15); four (4) Agency/City Council meetings (task nos. 7, 9, 11, and 24); and six (6) staff meetings at City Hall (task no. 27).

EXHIBIT "A"
(Continued)
Addendum to Scope of Services

[CONSULTANTS ADDENDUM PROPOSAL DATED JULY 27, 2011 IS INCORPORATED HEREIN BY REFERENCE AND INCLUDES THE FOLLOWING: (1) PAGES 1-5; AND (2) ENDNOTES 1-7 (PAGE 5); AND ATTACHMENTS A & B]

- Task 1:** Update as Necessary and regularly monitor the Previously Prepared Project Schedule; Prepare and Transmit Data Request Letter Regarding Modified Added Territory; Review and Inventory Database; Update Project Files and Data Systems
- Task 2:** Update Redevelopment Survey Area Requirements
- Task 3:** Update Previously Prepared Property and Business Interest Exhibits to be used by Agency Legal Counsel to Determine Public Official's Potential Conflict(s) of Interest
- Task 4:** Prepare for Field Reconnaissance Activities in the New Added Territory
- Task 5:** Conduct Parcel Specific Field Reconnaissance for Blight Discovery and Urbanization Analyses in the New Added Territory as Necessary and Appropriate
- Task 6:** Update Field Reconnaissance Data Base and Analyses; Illustrate findings; Coordinate with Civil Engineer to Prepare Revised Legal Description and Maps of the Modified Added Territory
- Task 7:** Update Preliminary Plan for Planning Commission and Agency Consideration and Adoption; Prepare for and Attend Two Meetings
- Task 8:** Update Previously Compiled Taxing and Environmental Entity Transmittal Manifests, as Necessary; Revise Previously Prepared Statement of Plan(s) Amendment Initiation (CCRL) and Notice of Preparation (CEQA) and Transmit to Affected Taxing and Environmental Entities; Revise CCRL Section 33328.1 "schools report" (pertaining to the Added Territory only) and Retransmit to all Affected Education Entities
- Task 9:** Formalize Agency Eminent Domain Policy and Project Area Committee (PAC) Positions for the modified Added Territory and Existing Project Areas; Prepare for and Attend One Meeting (Same Agency Meeting for Task 7)
- Task 10:** Revise Portions of Partially Completed CCRL Section 33344.5 Preliminary Report, Including Related GIS Analyses to Reflect Modified Added Territory
- Task 11:** Revise Previously Prepared Initial Study to Reflect Modified Added Territory
- Task 12:** Prepare for and Attend One County Board of Supervisors Public Hearing on the Amendment; Prepare Adopting Ordinance; Coordinate with County Staff, as Necessary

EXHIBIT "B"
SCHEDULE OF SERVICES

Consultant shall complete the Services within about fifteen months (15) months, but in any event will complete all Services so that the adopting ordinance(s) will be effective on/or before August 20, 2012; this would allow the Agency to capture the 2011-12 base year for tax increment collection purposes for any added territory.

Consultant will not be responsible for delays in the adoption process which may be caused by circumstances not under its control, including postponed starting date, local political matters, state and local budget issues, the Supreme Court ruling over the constitutionality of AB X1 26 and AB X1 27, etc.

EXHIBIT "C"
COMPENSATION

The Parties understand, acknowledge and agree that Alfred Gobar Associates ("AGA") is an authorized subconsultant to Consultant, as provided for in Section 3.6.1 of the Agreement. The City shall have no contractual relationship with AGA, and Consultant shall be responsible for AGA's contractual obligations, including ensuring that their subcontract contains a provision making them subject to all provisions stipulated in this Agreement at no additional cost to the City over the not-to-exceed fee for the Services.

SERVICE FEES

Services, including those provided by an authorized subconsultant such as AGA, shall be provided for a not-to-exceed fee amount of Three Hundred Eleven Thousand and Forty-Seven dollars (\$311,047). The term "fixed-fee" used in the proposal incorporated by reference into Exhibit "A" is understood, acknowledged and agreed to be a not-to exceed cap on the total compensation and not a guaranteed fixed-fee payment.

Consultant's hourly rates area as follows, and shall not be increased without an approved amendment t this Agreement:

UFI

Managing Principal	\$225.00 per hour
Principal	175.00 per hour
Senior Planner	105.00 per hour
Planner	95.00 per hour
Assistant Planner	55.00 per hour
Word Processing	45.00 per hour

AGA

Principals	\$148.00 per hour
Senior Research Associate	88.00 per hour
Field Staff	60.00 per hour
Administrative Staff	60.00 per hour

REIMBURSABLE EXPENSES

With respect to authorized reimbursements, notwithstanding what is stated in the proposal incorporated by reference in Exhibit "A" attached hereto, Consultant will not charge a fee on top of any authorized expenses or billings, including but not limited to the ten percent (10%) handling and administrative fee noted in the Professional Services Fee and Related Costs section (pages 8-9).

Authorized reimbursements may include the following: Document printing/transmittal costs; State Board Equalization (SBE) filing and mapping fees; Joint public hearing mailings (including postage, printing, handling, and informational brochure) and other mailing costs; CEQA filing fees; County 33328 report and education entities report preparation costs; GIS data purchase from County or other sources (if required); Mail house services; and Metes and boundary legal descriptions and Map (SBE)