

AGREEMENT TO PERFORM GASB 45 ACTUARIAL VALUATION SERVICES

This agreement for actuarial consulting services ("Agreement") is made and entered in this 25th day of June, 2013 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and Actuarial and Financial Consulting ("Consultant"). City and Consultant are sometimes individually referred to herein as a "Party" and, together, as the "Parties." In consideration of the mutual promises contained herein, City and Consultant agree as follows:

ARTICLE 1 – ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant to perform an actuarial review of the City of Redlands' post-employment benefits package, providing an estimate of the outstanding and future liabilities associated with providing its post-employment benefit package, in accordance with GASB 45 for the City's Fiscal Year 2012-2013 Comprehensive Annual Financial Report (the "Services").
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional consultants in the industry providing like and similar types of Services.

ARTICLE 2 – SERVICES OF CONSULTANT

- 2.1 The Services that Consultant shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by reference.
- 2.2 Consultant shall comply with applicable federal, state and local laws and regulations in the performance of the Services.

ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 3.2 City designates Tina T. Kundig, Finance Director, as City's representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to performance of the Services.

ARTICLE 4 – PERFORMANCE OF SERVICES

- 4.1 Consultant shall perform and complete the Services in a prompt and diligent manner.

- 4.2 If Consultant's Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with City Council adopted policy for the same. It shall be the obligation of Consultant to obtain a copy of such policy from City Staff.

ARTICLE 5 – PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall be paid on an all-inclusive not to exceed amount of fourteen thousand nine hundred dollars (\$14,900), with any mutually agreed upon additional work beyond the scope of services provided herein, based upon the fee proposal and hourly rate shown in Exhibit "B," entitled "Fee/Cost Proposal," attached hereto and incorporated herein by this reference. Notwithstanding the foregoing, the total amount of compensation that may be paid to Consultant for both the Services and any additional work beyond the scope of services shall not exceed thirty thousand dollars (\$30,000).
- 5.2 Consultant shall submit monthly invoices to City describing the Services performed during the preceding month. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed, and the number of hours spent and by whom. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice, provided the Services reflected in the invoice were performed to the reasonable satisfaction of City in accordance with the terms of this Agreement.
- 5.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City
Tina T. Kundig
Finance Director
City of Redlands
35 Cajon Street, Suite 15A
Redlands, CA 92373

Consultant
Marvin J. Paull
Principal
Actuarial & Financial Consulting Services
23905 Clinton Keith Road, #114 - 241
Wildomar, CA 92595

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to whom notices and payments are to be given by giving notice pursuant to this section.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 Insurance required by this Agreement shall be maintained by Consultant for the duration of its performance of the Services. Consultant shall not perform any Services unless and until the required insurance listed below is obtained by Consultant. Consultant shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. Insurance policies shall include a provision

prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.

- 6.2 Consultant shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made.
- 6.3 Consultant shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit bodily injury liability and property damage liability. This coverage shall include all Consultant owned vehicles used in connection with Consultant's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City.
- 6.4 Consultant shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, to the extent arising from injury or death to persons or damage to property occasioned by any negligent act or omission by, or the willful conduct of, Consultant, and its officers, employees and agents in performing the Services. Consultant is not responsible for the accuracy or omission of any census data or the accuracy of the benefit plans' descriptions provided by the City.

ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Consultant covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Consultant's Services. Consultant further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 7.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:
- A. Does not make or participate in:
- (i) the making or any City governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;
 - (ii) the issuance, denial, suspension or revocation of City permits, licenses, applications, certifications, approvals, orders or similar authorization or entitlements;
 - (iii) authoring City to enter into, modify or renew a contract;
 - (iv) granting City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
 - (v) granting City approval to a plan, design, report, study or similar item;

- (vi) adopting, or granting City approval of policies, standards or guidelines for City or for any subdivision thereof.

B. Does not serve in a staff capacity with City and in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of interest Code under Government Code section 87302.

7.3 In the event City officially determines that Consultant must disclose its financial interests, Consultant shall complete and file a Fair Political Practices Commission Form 700, State of Economic Interests with the City Clerks' office pursuant to the written instructions provided by the City Clerk.

ARTICLE 8 – GENERAL CONSIDERATIONS

- 8.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 8.2 Consultant shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms, and conditions of this Agreement.
- 8.3 All documents, records, electronic data files, databases, and other documents developed by Consultant in connection with its performance of the Services, and any copyright interest in such documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.
- 8.4 Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor of its agents shall have control over the conduct of Consultant or Consultant's employees, except as herein set forth. Consultant shall supply all necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Consultant are for its account only, and in no event shall Consultant or personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City. Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind City to any obligation.
- 8.5 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City; provided, however this Agreement may be terminated by City, in its sole discretion, by providing thirty

(30) days prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate. If this Agreement is terminated by City, an adjustment to

Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant. Upon receipt of a termination notice, Consultant shall immediately discontinue its provision of the Services and, within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of project related data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services. Consultant shall be compensated on a pro-rata basis for Services completed up to the date of termination.

8.6 Consultant shall maintain books, ledgers, invoices, accounts and other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Consultant.

8.7 This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, an amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.

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

8.9 If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate the remaining sentences, clauses, paragraphs or sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.

8.10 In connection with this Agreement, Consultant may have access to or be exposed to information of City that is not generally known to the public, such as information pertaining to software, data, reporting, pricing, and trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, should to be treated as confidential (collectively, "Confidential Information").

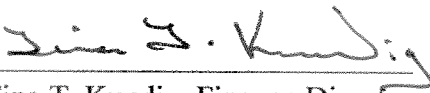
Confidential Information may not be shared with third parties unless such disclosure is to

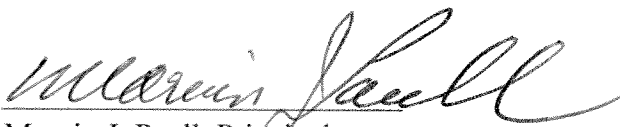
Consultant's personnel, including employees, affiliates, agents, and subcontractors, on a "need-to-know" basis in connection with this Agreement, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein. Consultant agrees to take the necessary precautions to maintain the confidentiality of City's Confidential Information by using at least the same degree of care as such Party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that Consultant can show through written records (1) was known by it before its receipt from City; (2) is or becomes public knowledge through no fault of Consultant; or (3) is rightfully received by Consultant from a third party without a duty of confidentiality. If Consultant is required by a court or government agency to disclose Confidential Information, Consultant shall, subject to any specific lawful restrictions, provide advance notice to City before making such a disclosure. The obligations with respect to Confidential Information shall survive any termination of the Agreement and continue for five (5) years from the date of disclosure. All Confidential Information relating to City's technological and telecommunications systems that is provided by City to Consultant, or which Consultant obtains as a result of the performance of its Services, shall be held strictly confidential by Consultant and shall not be used for any purpose other than for Consultant's performance of the Services under this Agreement. Consultant hereby acknowledges and agrees that any disclosure or improper use by Consultant of Confidential Information could cause City substantial damages, and also irreparable injury for which there is not an adequate remedy at law. Therefore, in the event of any such action, City shall be entitled in addition to all other remedies which it may have hereunder or at law or in equity, to a temporary and/or permanent injunction with a decree for specific performance of the terms hereof without being required to furnish a bond or other security. Jurisdiction in any action for injunctive relief shall be a court of competent subject matter jurisdiction in California, with venue in San Bernardino, California.

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

CITY OF REDLANDS

ACTUARIAL & FINANCIAL CONSULTING

By: 
Tina T. Kundig, Finance Director

By: 
Marvin J. Paull, Principal

ATTEST:



Sam Irwin, City Clerk

Exhibit “A”

Scope of services:

GASB 45 APPROACH & METHODOLOGY

1. Review the plan benefits and the census data for any missing or inappropriate information. Discuss with the City any data issues that need clarification or correction and alternative plan designs.
2. Discuss and agree upon the actuarial assumptions to be applied in the valuation. Assumptions include salary increases (if costs are expressed as a percent of payroll), interest discount, mortality, turnover, retirement ages, etc. Calculations will be performed using a single basis of assumptions and one Actuarial Cost Method.
3. Perform the actuarial valuation to determine the liabilities, Normal Cost, Annual Required Contributions (ARC), actuarial value of plan assets, present value of projected benefits and reconciliation of Net OPEB Obligation during the year. The annual benefit cost can be determined either as a level dollar amount and or as a level percentage of payroll. Results for actives and retirees will be shown separately for Police, Fire and Miscellaneous employees.
4. Summarize results in a report including the actuarial basis, funding method, assumptions, data used, a one page description of the plan, the ARC, recommendations for managing the liability, an executive summary and required supplemental information if needed. Results will be certified and compliant with generally accepted actuarial principles.
5. Perform requested additional calculations or analysis to reflect benefit plan and or assumption alternatives if pre-approved by the City. Additional services may include plan redesign, policy development, funding alternatives, projections, trust options, etc.
6. Presentation of findings and calculations to the City HR or Finance Department and if requested at a City Council Meeting.

A-1
Exhibit “B”

FEE/COST PROPOSAL

SERVICE DESCRIPTION	FEE
<u>Scope of Services</u> Analysis/Valuation Reports and Final Presentations	\$14,900
<u>Additional Services</u> Hourly Rate(s)	\$285 per hour

**The proposed annual total cost is all-inclusive, including travel expenses, and other costs (direct and indirect) necessary to complete the work specified. Any additional work, as requested by the City, shall be billed at the proposed hourly rate(s).*