

AGREEMENT TO FURNISH ENGINEERING CONSULTING SERVICES FOR THE
REPAIR OF PARKING STRUCTURE CONCRETE COLUMNS IN THE CITY OF
REDLANDS, CIVIC CENTER PRE-DISASTER MITIGATION GRANT PROJECT

This Agreement is made and entered into this 18th day of January, 2005 by and between the City of Redlands, a municipal corporation (hereinafter "City") and Johnson and Nielsen Associates, hereinafter ("Consultant").

In consideration of the mutual promises, covenants and conditions hereinafter set forth, City and Consultant agree as follows:

ARTICLE 1 - ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant and Consultant hereby accepts the engagement to perform engineering consulting services for the repair of parking structure concrete columns in the City of Redlands, Civic Center Pre-Disaster Mitigation Grant Project (the "Services").
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and professional expertise necessary to provide 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 specific Services which Consultant shall perform are more particularly described in Exhibit "A" entitled "Scope of Services" and Exhibit "A-1" entitled "Repair of Parking Structure Concrete Columns Damaged by the Landers-Big Bear Earthquake June 28, 1991," which is attached hereto and incorporated herein by this reference.
- 2.2 Consultant shall comply with all applicable Federal, State and local laws and regulations in the performance of this Agreement, including but not limited to all applicable Labor Code and prevailing wage laws commencing at California Labor Code section 1770 et. seq. and non-discrimination laws including the Americans with Disabilities Act and the Fair Employment and Housing Act.
- 2.3 Consultant further understands that if it violates the provisions of the California Labor Code relating to prevailing wage, that City may enforce the California Labor Code by notice of the withholding of contract payments to Consultant or its subcontractors pursuant to Labor Code sections 1726, 1727 and 1771.6.
- 2.4 Consultant agrees that if it executes an agreement with a subcontractor to perform any Services that Subcontractor shall comply with California Labor Code sections 1775 and 1777.7 by providing the subcontractor with copies of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code. Consultant acknowledges that the statutory provisions for penalties for failure to comply with state wage and hour laws and to pay prevailing wages may be enforced by City pursuant to Labor Code sections 1775 and 1813.

ARTICLE 3 - RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that is pertinent to the performance of Services.
- 3.2 City will make provisions for Consultant to enter upon City-owned property as required by Consultant to perform Services.
- 3.3 City designates Marjie Pettus to act as its representative with respect to Services performed under this Agreement.

ARTICLE 4 - PERIOD OF SERVICE

- 4.1 Consultant shall perform Services in a prompt and diligent manner and in accordance with the schedule set forth in Attachment "B," entitled "Project Schedule."

ARTICLE 5 - PAYMENTS TO THE CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of \$5,000.00. City shall pay Consultant on a time and materials basis up to such amount, in accordance with Exhibit "C" entitled "Service Fee," and based upon the hourly rates shown in Exhibit "D," entitled "Rate Schedule."
- 5.2 Consultant shall bill City within ten days following the close of each month by submitting an invoice indicating the portion of the Services performed, who performed Services, indirect costs, and the detailed cost of all Services including backup documentation. Payments by City to Consultant shall be made within 30 days after receipt and approval of Consultant's invoice, by warrant payable to Consultant.
- 5.3 All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail shall be addressed as follows:

City
Marjie Pettus
Administrative Services Director
City of Redlands
Administrative Services Department
PO Box 3005
Redlands, CA 92373

Consultant
Lonnie P. Mount
Johnson & Nielsen Associates, Inc.
657 North Main Street, Suite 4-B
Riverside, CA 92501

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 Consultant's Insurance to be Primary

All insurance required by this Agreement shall be maintained by Consultant for the duration of this Agreement and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City. Consultant shall not perform any Services pursuant to this Agreement unless and until all 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 Services. All insurance policies shall include a provision prohibiting cancellation of the policy except upon thirty (30) days prior written notice to City.

6.2 Workers' Compensation and Employer's Liability

- A. Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of this Agreement in amounts which meet statutory requirements with an insurance carrier acceptable to City.
- B. Consultant expressly waives all rights to subrogation against City, its elected officials, employees and volunteers for losses arising from work performed by Consultant for City by expressly waiving Consultant's immunity for injuries to Consultant's employees and agrees that the obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by or on behalf of any employee of Consultant. This waiver is mutually negotiated by the parties. This waiver shall not apply to any damage resulting from the negligence of City, its agents and employees. To the extent any of the damages referenced herein were caused by or resulted from the concurrent negligence of City, its agents or employees, the obligations provided herein to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of Consultant, its officers, agents and employees.

6.3 Comprehensive General Liability Insurance. Consultant shall secure and maintain in force throughout the duration of this Agreement comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. Consultant shall obtain an endorsement that City shall be named as an additional insured.

6.4 Professional Liability Insurance. Consultant shall secure and maintain professional liability insurance throughout the duration of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate.

6.5 Business Auto Liability Insurance. Consultant shall have business auto liability coverage, with minimum limits of one million dollars (\$1,000,000) per occurrence, combined single

limit for bodily injury liability and property damage liability. This coverage shall include all Consultant-owned vehicles used in connection with the Services, hired and non-owned vehicles, and employee non-ownership vehicles. Consultant shall obtain an endorsement that City shall be named as an additional insured.

- 6.6 Assignment and Insurance Requirements. Consultant is expressly prohibited from subletting or assigning any Services covered by this Agreement without the express prior written consent of City. In the event of mutual agreement between parties to sublet a portion of the Services, Consultant shall add the subcontractor as an additional insured and provide City with the insurance endorsements prior to any Services being performed by the subcontractor. Assignment does not include printing or other customary reimbursable expenses that may be provided in this Agreement.
- 6.7 Hold Harmless and Indemnification. Consultant shall defend, indemnify and hold harmless City, its elected officials, officers, employees and agents, from and against any and all actions, claims, demands, lawsuits, losses and liability for damages to persons or property, including costs and attorney fees, that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of or in connection with Consultant's negligent and/or intentionally wrongful acts or omissions under this Agreement; but excluding such actions, claims, demands, lawsuits and liability for damages to persons or property arising from the negligence or intentionally wrongful acts of City, its officials, employees or agents.

ARTICLE 7 - GENERAL CONSIDERATIONS

- 7.1 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.
- 7.2 Consultant's key person to perform the Services is Lonnie P. Mount. Consultant agrees that this person shall be made available and assigned to perform Services and that he shall not be replaced without concurrence from City.
- 7.3 All documents, records, drawings, designs, cost estimates, electronic data files, databases, and other documents developed by Consultant pursuant to this Agreement and any copyright interest in said above described documents, shall become the property of City and shall be delivered to City upon completion of Services, or upon the request of City. Any reuse of such documents and any use of incomplete documents will be at City's sole risk.


- 7.4 Consultant is for all purposes an independent contractor. Consultant shall supply all tools and instrumentalities required to perform Services described in this Agreement. All personnel employed by Consultant are for its account only, and in no event shall Consultant or any 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.
- 7.5 Unless earlier terminated, as provided for below, this Agreement shall terminate upon completion and acceptance of Services by City.
- 7.6 This Agreement may be terminated by City, without cause, by providing five (5) days prior written notice to Consultant (delivered by certified mail, return receipt requested) of intent to terminate.
- 7.7 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.
- 7.8 Upon receipt of a termination notice, Consultant shall (1) immediately discontinue all services affected, and (2) within five (5) days of the date of said termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of any data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing Services required by this Agreement. Consultant shall be compensated on a pro-rata basis for work completed up until notice of termination.
- 7.9 Consultant shall maintain books and accounts of all payroll costs and expenses related to Services. Such books shall be available at all reasonable times for examination by City at the office of Consultant.
- 7.10 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 oral agreements relating to such matters are superseded by this Agreement. Any amendment to this Agreement shall be in writing, approved by City Council of City and signed by City and Consultant.
- 7.11 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

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


City of Redlands

(Consultant)

By:


SUSAN PEPLER
Mayor

By:


Lonnie P. Mount

Attest:

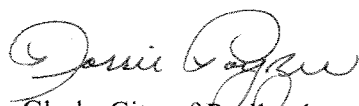

City Clerk, City of Redlands

EXHIBIT "A"

SCOPE OF WORK

A. General Conditions

The Consultant provided the City of Redlands with a document entitled, "Repair of Parking Structure Concrete Columns Damaged by the Landers-Big Bear Earthquake June 28, 1992," dated July 1, 1998. Consultant shall provide an updated engineering and design analysis of the findings and recommendations contained in the original report, using the 2000 Uniform Building Code (UBC), Structural Investigation and Calculations, including concepts, schematics and design alternatives, including required general details, cost estimates and construction schedules for the proposed project. The City does not require an updated proposal for geotechnical engineering at this time.

It will be up to Consultant to determine what additional tasks may be necessary to deliver the project and include them in their proposal.

EXHIBIT "B"

PROJECT SCHEDULE

- A. Consultant will deliver the product to the City of Redlands on or before January 31, 2005. All submittals shall include an electronic copy of all documents in a format acceptable to the City (AutoCad, Excel, MS Word, Word Perfect, etc.)

EXHIBIT "C"

SERVICE FEE

Fee for services on this project will be as follows: Time and Material not to exceed \$5,000.00.

EXHIBIT "D"
RATE SCHEDULE

**SCHEDULE OF CHARGES FOR
STRUCTURAL ENGINEERING SERVICES**

The fee for our services will be based on the charges listed below. All fee quotations are applicable for a period of ninety days from the date of the proposal to which the schedule is attached:

PERSONNEL

Professional

Structural Designer II	\$80.00/Hour
Engineer/Structural Designer I	\$130.00/Hour
Project Engineer	\$130.00/Hour
Principal	\$130.00/Hour
Expert Witness\Testimony	\$150.00/Hour

Sub-professional

Clerical	\$50.00/Hour
Structural Draftsperson	\$70.00/Hour
Senior Draftsperson	\$80.00/Hour

These rates apply to regular time and travel time in the United States. A maximum travel time of eight hours will be charged in any day. Overtime, if required in the interest of the project, will be charged at the above rates for professional personnel and at 1.25 times the above rates for sub-professional personnel. Overtime will apply to time in excess of eight hours per day and all time on Saturdays, Sundays, and holidays.

REIMBURSABLE ITEMS

Outside services performed by others and direct expenses incurred on the client's behalf are charged at 1.15 times our cost. Such items include, but are not limited to outside consultants, specification writers, cost estimators, non-reusable equipment, blueprinting, long distance communications, subsistence, lodging, air and ground transportation charges, auto rental and freight.

INSURANCE

Johnson & Nielsen Associates maintains General Liability Insurance for bodily injury and property damage with an aggregate limit of \$500,000 per occurrence and will furnish certificates of such insurance upon request. In the event the client desires additional coverage, we will, upon the client's written request, obtain additional insurance (if possible) at the client's expense.

Note: This fee schedule is subject to adjustment semi-annually.

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JN

JOHNSON & NIELSEN ASSOCIATES CONSULTING STRUCTURAL ENGINEERS