

AGREEMENT TO FURNISH CONSULTING SERVICES FOR ASBESTOS CONTAINING MATERIALS AND LEAD BASED PAINT TESTING AND REPORT PREPARATION ON THE CHURCH STREET BUILDING DEMOLITION PROJECT

This Agreement is made and entered into this 21st day of December 2004, by and between the City of Redlands, a municipal corporation (hereinafter "City") and Protocol Consulting and Management (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 asbestos containing building materials (ACBM's) and lead based paints (LBP's) testing and report preparation services which is more particularly described in Article 2 attached hereto and incorporated herein by this reference (the "Services") for the Church Street Building Demolition project (the "Project").
- 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 specific Services which Consultant shall perform are more particularly described as, but not limited to, conducting pre-demolition inspection of one story commercial building (approx. 2,000 sq.ft.) With attached residence and two building 3-unit apartment complex (2-story apartment and garage & 1-story duplex) for asbestos containing building materials (ACBM's) and lead based paints (LBP's) as follows:
 - Conduct visual inspection of structures for friable and non-friable suspected ACBM's that could be damaged or present a hazard during demolition activities.
 - Conduct visual inspection of structures painted interior surfaces that could be damaged during demolition activities.
 - Perform screening of painted surface with XRF analyzer for presence of LBP's.
 - Sample collection of suspected asbestos containing materials identified in the scope of the inspection. Some materials may be identified as asbestos-containing based on experience of the inspector without analysis.
 - Sample analysis by NVLAP participating laboratory using polarized-light microscopy (PLM).
 - Provide report giving any identified ACBM's type, condition, approximate location and quantity, along with the sample results. Report will also identify LBP's location, condition, and level of lead content.
- 2.2 Site location and addresses are as follows:
 - Commercial structure with attached residence is located on the northwest corner of Church Street and State Street with a street address of 725 E. State Street.

- 3-unit apartment complex is located on the southwest corner of Church Street and State Street with street addresses of 19, 21, and 23 N. Church Street.
- 2.3 Consultant shall comply with all applicable Federal, State and local rules, laws and regulations in the performance of this Agreement including but not limited to all applicable Labor Code and prevailing wage laws.

ARTICLE 3 - RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant, information in its possession pertinent to the performance of Consultant's Services.
- 3.2 City will provide access to and make provisions for Consultant to enter upon City-owned property as required by Consultant to perform the Services. The proposed price is based upon access to all areas of the structures on the mutually agreed upon site visit. If return visits are necessary to complete the survey due to lack of access by the City, there will be an additional charge as described in Article 5.
- 3.3 City designates Alan Griffiths, Senior Civil Engineer, to act as its representative with respect to the Services to be performed under this Agreement.

ARTICLE 4 - PERIOD OF SERVICE

- 4.1 Consultant shall perform the Services in a prompt and diligent manner and complete all work before January 25, 2005.

ARTICLE 5 - PAYMENTS TO THE CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed \$2,210.00 unless authorized by the City, in accordance with the schedule as follows:
 - \$250.00 each for additional site visits as described in Article 3.2.
 - \$1,250.00 for site visits, asbestos inspection, lead paint inspection, and inspection reports.
 - \$16.00 each for bulk sample analysis of asbestos (PLM). Estimated 20 to 60 samples.The not to exceed amount of \$2,210.00 shown above includes the \$1,250.00 amount plus \$16.00 each for 60 samples.
- 5.2 Consultant shall bill City upon release of results by submitting an invoice indicating the portion of the Services performed, who performed the 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 contractual 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: Alan K. Griffiths
City of Redlands
Public Works Department
P.O. Box 3005
Redlands CA 92373

Consultant: Ned M. Reber
Protocol Consulting and Management
6570 Montecarlo Place
Alta Loma CA 91701

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 paragraph.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

6.1 Consultant's Insurance to be Primary

All insurance required by this Agreement is to be maintained by Consultant for the duration of this Project and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by the 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 work. 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 officers, 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 subsection shall not apply to any damage resulting from the sole 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 1 million (\$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 on the project, 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 of the services covered by this Agreement without the express written consent of City. In the event of mutual agreement between parties to sublet a portion of the Services, the Consultant will add the subcontractor as an additional insured and provide City with the insurance endorsements prior to any work 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 sole negligence or intentionally wrongful acts of City, its officers, employees or agents.

ARTICLE 7 - GENERAL CONSIDERATIONS

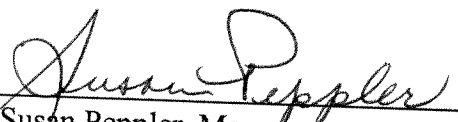
- 7.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees.
- 7.2 Consultant shall not assign any of the Services required by this Agreement, except with the prior written approval of City and in strict compliance with the terms, provisions and conditions of this Agreement.
- 7.3 Consultant's key personnel for the project is: Ned Reber
Consultant agrees that these key people will be made available and assigned to Project, and that they shall not be replaced without concurrence from City.
- 7.4 All documents, records, drawings, designs, cost estimates, electronic data files, databases, aerial photographs and negatives, specifications 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 the 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.
- 7.5 Consultant is for all purposes an independent contractor. Consultant shall supply all tools and instrumentalities required to perform the consulting services 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.

- 7.6 Unless earlier terminated, as provided for below, this Agreement shall terminate upon completion and acceptance by City of the Services.
- 7.7 This Agreement may be terminated by City, without cause, by providing five (5) days prior written notice to the Consultant (delivered by certified mail, return receipt requested) of intent to terminate.
- 7.8 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.
- 7.9 Upon receipt of a termination notice, Consultant shall (1) promptly discontinue all services affected and (2) 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 the Services required by this Agreement. Consultant shall be compensated on a pro-rata basis for work completed up until notice of termination.
- 7.10 Consultant shall maintain books and accounts of all Project related payroll costs and all expenses. Such books shall be available at all reasonable times for examination by City at the office of Consultant.
- 7.11 This Agreement, including the attachments incorporated herein by reference, represents the entire agreement and understanding between the parties as to the matters contained herein, and any prior negotiations, proposals or oral agreements are superseded by this Agreement. Any amendment to this Agreement shall be in writing, approved by the City Council of City and signed by City and Consultant.
- 7.12 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.

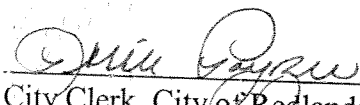
City of Redlands

By: 
Susan Peppler, Mayor

Protocol Consulting and Management

By: 
Ned M. Reber, Owner

Attest:


City Clerk, City of Redlands