

AGREEMENT TO FURNISH PROFESSIONAL SERVICES
RELATING TO PREPARATION OF A PRE-DISASTER
MITIGATION PROGRAM GRANT APPLICATION

This agreement to perform professional services relating to the preparation of a Pre-Disaster Mitigation Program grant application ("Agreement") is made and entered into this 16 day of ~~June~~, *Sept.* 2009 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and TKE Engineering, Inc. ("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 prepare a 2010 Pre-Disaster Mitigation (PDM) Program grant application, as administered by the California Emergency Management Agency, for City's Downtown Storm Drain Improvement 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 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 which Consultant shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," 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, the Americans with Disabilities Act and the Fair Employment and Housing Act.

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 will make reasonable provision for Consultant to enter upon City-owned property to perform the Services.

- 3.3 City designates Rosemary Hoerning, or her authorized designee, 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 - PERIOD OF SERVICE

- 4.1 Consultant shall perform the Services in a prompt and diligent manner, and shall complete the services by December 31, 2009.

ARTICLE 5 - PAYMENT AND NOTICE

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of Ten Thousand Dollars (\$10,000). City shall pay Consultant on a time and materials basis up to the not to exceed amount based upon the hourly rates shown in Exhibit "B," entitled Rate Schedule.
- 5.2 Payments by City to Consultant shall be made within thirty (30) days after receipt and approval by City of Consultant's invoice, by check payable to Consultant. Invoices shall be sent on a monthly basis.
- 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:

Rosemary Hoerning, MUED Director
City of Redlands
PO Box 3005
Redlands, CA 92373

Consultant:

Michael P. Thornton, P.E., P.L.S., M.S.
President
TKE Engineering, Inc.
2305 Chicago Avenue
Riverside, CA 92507

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 are to be given by giving notice pursuant to this section.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

- 6.1 Insurance Generally. All 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 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 the Services. All insurance policies shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City.

- 6.2 **Workers' Compensation Insurance.** Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of this Agreement in an amount which meets the statutory requirement with an insurance carrier acceptable to City. The insurance policy shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to City.
- 6.3 **Hold Harmless and Indemnification.** Consultant shall indemnify, hold harmless and defend City and its elected officials, and employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any act, omission or failure to act by Consultant, its officers, employees and agents in performing the Services.
- 6.4 **Assignment.** Consultant is expressly prohibited from assigning any of the Services without the express written consent of City. In the event of mutual agreement between Parties to assign a portion of the Services, Consultant shall add the assignee as an additional insured and provide City with the insurance endorsements prior to the performance of any services by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided in this Agreement.
- 6.5 **Comprehensive General Liability Insurance.** Consultant shall secure and maintain in force throughout the duration of the 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. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. Certificates of insurance and endorsements shall be delivered to City prior to commencement of the Services.
- 6.6 **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 claim made. Certificate of liability insurance and endorsement shall be delivered to City prior to commencement of the Services.
- 6.7 **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 on the project, hired and non-owned vehicles, and employee

non-ownership vehicles. The insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. Such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City. City shall be named as an additional insured and a certificate of liability insurance and endorsement shall be delivered to City prior to commencement of the Services.

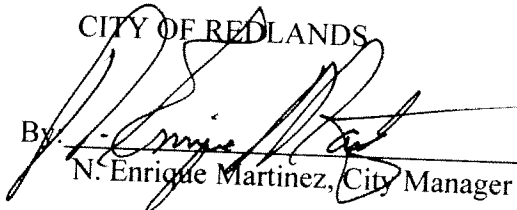
ARTICLE 7 - GENERAL CONSIDERATIONS

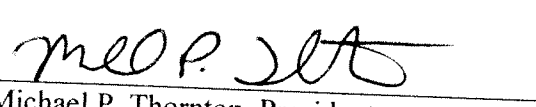
- 7.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.
- 7.2 Consultant shall not assign any of the Services to be performed under 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 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 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 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 the Services. 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 the Services by City.
- 7.6 This Agreement may be terminated by City, in its sole discretion and without cause, by providing five (5) business 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 immediately discontinue all services affected, 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 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.

- 7.9 Consultant shall maintain books and accounts of all payroll costs and expenses related to the 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 verbal agreements relating to such matters are superseded by this Agreement. Any amendment to this Agreement shall be in writing, approved by 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 City and Consultant have signed in confirmation of this Agreement.

CITY OF REDLANDS
By: 
N. Enrique Martinez, City Manager

TKE ENGINEERING, INC.
By: 
Michael P. Thornton, President

Attest:


City Clerk