

AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of services associated with Analysis of Pavement Rehabilitation Costs attributable to City Vehicles ("Agreement") is made and entered into on this 3rd day of May, 2012 ("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 provide an engineering analysis of pavement rehabilitation costs attributable to City Vehicles for City's Municipal Utilities and Engineering Department (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 this Agreement including, but not limited to State prevailing wage laws.

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 Donald P. Young, P.E., Engineering Manager, 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. Contact Phone Number shall be 909-798-5875 (x6).

ARTICLE 4 – PERFORMANCE OF SERVICES

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

is attached hereto and incorporated herein by reference. The Services shall commence within ten (10) days of the Effective Date of this Agreement.

- 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 not exceed the amount of Five Thousand Dollars (\$5,000.00). City shall pay Consultant on a time and materials basis up to the not to exceed amount, in accordance with Exhibit "C" entitled "Project Costs," and based upon the hourly rates shown in Exhibit "D," entitled "Rate Schedule." Both Exhibits "C" and "D" are attached hereto and incorporated herein by this reference.
- 5.1 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, the number of hours spent and by whom, and a description of reimbursable expenses related to the project. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 5.2 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City

Fred Mousavipour, Director
Municipal Utilities and Engineering Dept.
City of Redlands
35 Cajon Street, Suite 15A
P.O. Box 3005 (mailing)
Redlands, CA 92373

Consultant

Michael Thornton
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 and payments are to be given by giving notice pursuant to this section 5.3.

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 Workers' Compensation and Employer's Liability insurance throughout the duration of its performance of the Services in accordance with the laws of the State of California, with an insurance carrier acceptable to City.
- 6.3 Consultant shall secure and maintain 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 such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 6.4 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.
- 6.5 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.
- 6.6 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, arising from injury or death to persons or damage to property occasioned by and negligent act, omission or failure to act by Consultant, its officers, employees and agents in performing the Services.

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 Project related documents, records, drawings, designs, cost estimates, electronic data files, databases and any 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

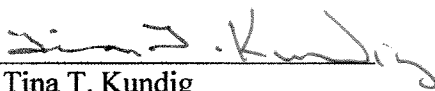
have control over the conduct of Consultant or Consultant's employees, except as herein set forth. Consultant shall supply necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Consultant are for its account only, and in no event shall Consultant or personnel 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 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.

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

CITY OF REDLANDS

By: 
Tina T. Kundig
Finance Director/City Treasurer

By:  5/3/12
Michael Thornton, PE
President

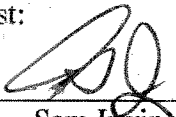
Attest: 
Sam Irwin, City Clerk

EXHIBIT A – Scope of Services

Analysis of Pavement Rehabilitation Costs attributable to City Vehicles.

This analysis will include up to two meetings with staff and presentation of a report to the City Council.

EXHIBIT B – Project Schedule

Analysis shall be complete by May 7, 2012

Presentation at City Council will be at a date to be determined.

EXHIBIT C – Cost (see attached)

EXHIBIT D – Hourly Rates (see attached)

Exhibit C

From: Terry Renner [mailto:trenner@tkeengineering.com]
Sent: Thursday, May 03, 2012 5:13 PM
To: Young, Don
Subject: Pavement Analysis

Don,

TKE will provide the initial pavement analysis report for refuse vehicles on three road types defining deterioration costs per unit length, attend two meeting with City Staff and prepare and present the findings to City Council for a not to exceed budget of \$5,000. If requested, TKE will expand the report findings to various types of heavy vehicles on each street classification within the City standards for a not to exceed additional cost of \$15,000. If you have any questions please let me know.

Thanks,

Terry Renner, P.E.
Vice President
TKE Engineering, Inc.
Ph. (951) 680-0440
Fax (951) 680-0490

TKE ENGINEERING, INC. RATE SCHEDULE 2011-2012

	HOURLY RATE
Project Manager/Construction Manager/Licensed Surveyor.....	\$130.00
Senior Engineer/Project Engineer (PE)/Senior Plan Checker.....	\$110.00
Associate Engineer.....	\$100.00
Assistant Engineer/Plan Checker.....	\$ 90.00
AutoCAD Technician.....	\$ 90.00
Engineering Technician.....	\$ 50.00
Clerical.....	\$ 55.00
Forensic Engineering.....	\$150.00
Expert Witness Testimony.....	\$250.00

SURVEYING SERVICES

2-Man Survey Crew (Standard Wage).....	\$190.00
2-Man Survey Crew (Prevailing Wage).....	\$210.00

CONSTRUCTION SERVICES

Construction Inspector (Standard Wage).....	\$ 85.00
Construction Inspector (Prevailing Wage).....	\$ 95.00
Car/Truck for Construction Services Personnel.....	\$ 60.00/Day

REIMBURSABLE COSTS

In-house Reproduction.....	Cost
Printing and Materials.....	Cost + 10%
Express Mail/Courier/Next Day Service.....	Cost + 10%
Special Subconsultant Services.....	Cost + 10%