

AGREEMENT FOR BRINE POND CAP REPAIR AND RESURFACE

This agreement to repair and resurface the wastewater treatment plant brine pond cap (“Agreement”) is made and entered into this 29th day of September, 2014 (“Effective Date”), by and between the City of Redlands, a municipal corporation (“City”), and KAD Paving Company (“Contractor”). City and Contractor are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

In consideration of the mutual promises contained herein, City and Contractor agree as follows:

ARTICLE 1 - ENGAGEMENT OF CONTRACTOR

- 1.1 City hereby retains Contractor to repair and resurface the asphalt cap of the brine pond at the City’s wastewater treatment plant (the “Services”) located on 1950 Nevada Street in the City of Redlands.
- 1.2 Contractor and its subcontractors shall possess all appropriate State contractors’ licenses required for the performance of the Services, and shall not be debarred pursuant to Labor Code sections 1777.1 and 1777.7.

ARTICLE 2 - RESPONSIBILITIES OF CONTRACTOR

- 2.1 The specific Services which Contractor shall perform are more particularly described in Exhibit “A,” which is attached hereto and incorporated herein by this reference.
- 2.2 Contractor shall comply with all applicable federal, state and local laws and regulations in the performance of the Services including, but not limited, to all applicable Labor Code and prevailing wage laws and non-discrimination laws, and the Americans with Disabilities Act. Pursuant to Labor Code section 1773.2, copies of the prevailing rates of per diem wages as determined by the Director of the California Department of Industrial Relations for each craft, classification or type of worker needed to perform the Services are on file at City’s Municipal Utilities and Engineering Department, located at the Civic Center, 35 Cajon Street, Suite 15A (Mailing: P.O. Box 3005), Redlands, California 92373.
- 2.3 Contractor acknowledges that if it violates the Labor Code provisions relating to prevailing wages that City may enforce such provisions by withholding payments to Contractor or its subcontractors pursuant to Labor Code section 1771.6.
- 2.4 If Contractor executes an agreement with a subcontractor to perform any portion of the Services, Contractor shall comply with Labor Code sections 1775 and 1777.7, and shall provide the subcontractor with copies of the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815. Contractor acknowledges that the statutory provisions establishing 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.
- 2.5 Contractor and its subcontractors shall comply with the provisions of Labor Code section 1776

regarding payroll records maintenance, certifications, retention and inspection.

- 2.6 Contractor acknowledges that eight (8) hours constitutes a legal day's work pursuant to Labor Code section 1810.
- 2.7 Contractor shall comply with the provisions of Labor Code section 1777.5 as to apprenticeships, and Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815.
- 2.8 Contractor shall guarantee the Services against defective materials or workmanship for a period of (1) year from the date of City's issuance of a Notice of Completion for the Services, except where longer warranty periods are specifically provided by manufacturer of equipment installed in connection with the provision of the Services. During the (1) one year warranty period, should Contractor fail to remedy defective material and/or workmanship, or to make replacements within five (5) days after written notice by City, it is agreed that City may make such repairs and replacement and the actual cost of the required labor and materials shall be chargeable to and payable by Contractor or his surety.

All work which has been rejected by City, shall be remedied, or removed and replaced by the Contractor at its own expense. Any defective material or workmanship which may be discovered before final acceptance of the Services or within (1) one year from the completion date specified in the Notice of Completion, shall be corrected immediately by Contractor at its own expense notwithstanding that such defects may have been overlooked in previous inspections and estimates. Failure to inspect work at any stage shall not relieve the Contractor from any obligation to perform sound and reliable work as herein described. It is Contractor's responsibility to deliver at the time of final acceptance a completed project that complies in all details with this Agreement.

City will endeavor to locate any errors or defective materials or workmanship and call them to the attention of Contractor prior to subsequent work being performed. However, City is under no obligation to do so and shall not be held liable because errors or defective material or workmanship by Contractor are not discovered prior to subsequent work.

Nothing in this section shall be construed to limit the rights of City to immediately correct conditions which may be unsafe or which may pose a public health nuisance. Should said conditions later be found to be caused by defective material and/or workmanship, Contractor and its surety shall reimburse City for costs reasonably incurred while attending the situation.

ARTICLE 3 - PERIOD OF SERVICE

- 3.1 Contractor shall commence the Services upon City's delivery to Contractor of a written "Notice to Proceed."
- 3.2 Consultant shall perform and complete the Services in a prompt and diligent manner.

ARTICLE 4 - PAYMENT AND NOTICE

- 4.1 City shall pay Contractor the sum of Forty Thousand Five Hundred and Ninety Dollars (\$40,590)

as complete compensation for the Services.

- 4.2 Payments by City to Contractor shall be made within thirty (30) days after City's receipt and approval of Contractor's invoice, by warrant payable to Contractor.
- 4.3 Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the day of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a party may provide notice of in accordance with this section:

City:

Chris Diggs
Municipal Utilities and Engineering Department
City of Redlands
P.O. Box 3005
Redlands, CA 92373

Contractor:

Donald J. Wheeler Jr.
KAD Paving Company
32147 Dunlap Blvd Ste K
Yucaipa, CA 92399

When so addressed, such notices shall be deemed given upon deposit in the United States mail; in all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. 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 4.3.

ARTICLE 5 - INSURANCE AND INDEMNIFICATION

- 5.1 All insurance required by this Agreement shall be maintained by Contractor throughout Contractor's performance of the Services, and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City.
- 5.2 Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that Contractor is self-insured or exempt from the workers' compensation laws of the State of California. Contractor shall provide City with Exhibit "B," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to occupancy of the Premises.
- 5.3 Contractor shall secure and maintain in force throughout its performance of the Services comprehensive general liability insurance, with carriers acceptable to City, with 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. 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. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Services.

- 5.4 Contractor shall secure and maintain in force throughout its performance of the Services business automobile 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 Contractor owned vehicles used for the Services, hired and non-owned vehicles, and employee non-ownership vehicles. 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. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Services.
- 5.5 Contractor shall indemnify, hold harmless and defend City and its elected officials, employees and agents from and against any and all claims, losses and liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent or intentionally wrongful act or omission of Contractor, and its officers, employees and agents, in performing the Services.
- 5.6 Contractor is expressly prohibited from assigning any of the work associated with the Services without the prior written consent of City. In the event of agreement by the Parties to assign a portion of the Services, Contractor shall add the assignee as an additional insured to its insurance policies and provide City with the insurance endorsements prior to any work being performed by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in this Agreement.
- 5.7 Contractor shall execute and deliver to City a Payment Bond as required by Civil Code section 5990, in a form as set forth in Exhibit "C," which is attached hereto and incorporated herein by reference.

ARTICLE 6 - GENERAL CONSIDERATIONS

- 6.1 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 recover its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 6.2 All documents, records, drawings, electronic data files and data base, photographic prints and negatives, designs and specifications, cost estimates, and other documents developed by Contractor for the Services shall become the property of City and shall be delivered to City upon completion of the Services.
- 6.3 Contractor is, for all purposes under this Agreement, an independent contractor with respect to the performance of the Services and not an employee of City. All personnel employed by Contractor to perform the Services are for its account only, and in no event shall Contractor 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. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties.

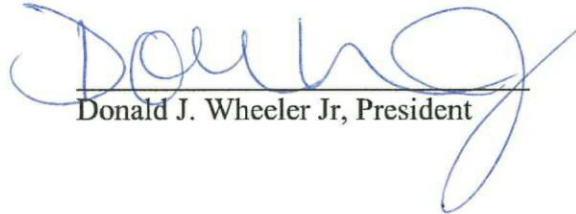
- 6.4 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Project by City.
- 6.5 City may terminate this Agreement for any reason, at any time at its sole discretion, upon five (5) calendar days prior written notice to Contractor.
- 6.6 Upon receipt of a termination notice, Contractor shall (1) promptly discontinue all work associated with the Services and (2) deliver or otherwise make available to City, copies of any data, design calculations, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing the Services. Contractor shall be compensated on a pro-rata basis for any work completed up until notice of termination.
- 6.7 This Agreement, including the exhibits incorporated by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein and any prior negotiations, proposals and agreements relating to the subject matter hereof are superseded by this Agreement. Any amendment to this Agreement shall be in writing and approved by City and Contractor.
- 6.8 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 Parties have signed in confirmation of this Agreement.

CITY OF REDLANDS

By 
N. Enrique Martinez, City Manager

KAD PAVING COMPANY


Donald J. Wheeler Jr, President

ATTEST


Sam Irwin, City Clerk



EXHIBIT "A"
Scope of Services

Item No.	Estimate Quantity	Item Description
1.	3,000 Sq. Ft.	Saw cut and remove asphalt pavement and replace with conventional asphalt pavement, maximum 2.5' thick.
2.	6,000 L.F.	Crack Fill with Hot Rubberized Crack Sealant.
3.	52,000 Sq. Ft.	Slurry seal, Type 2,

EXHIBIT "C"

WORKERS' COMPENSATION INSURANCE CERTIFICATION

Every employer, except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

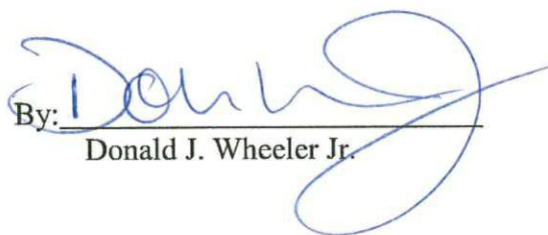
CHECK ONE

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work and activities required or permitted under this Agreement. (Labor Code §1861).

_____ I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

KAD Paving Company

By: 
Donald J. Wheeler Jr.

Date: 9-25-14

EXHIBIT "C"

LABOR AND MATERIAL PAYMENT BOND

Whereas, the City of Redlands, State of California, and K A D PAVING COMPANY DBA K A D ENGINEERING (hereinafter designated as "Principal") have entered into an agreement (the "Agreement") whereby Principal agrees to install and complete certain designated public improvements (the "Work"), which said agreement, dated September 29, 2014, and identified as **Brine Pond Cap Repair and Resurface Project** is hereby referred to and made a part hereof; and

Whereas, under the terms of said Agreement, Principal is required before commencing upon the performance of the Work, to file a good and sufficient payment bond with the City of Redlands to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

Now, therefore, said Principal and the undersigned as corporate surety, are held firmly bound unto the City of Redlands and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the aforesaid Agreement and referred to in the aforesaid Code of Civil Procedure in the sum of Forty Thousand Five Hundred and Ninety Dollars (\$40,590) for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City of Redlands in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In witness whereof, this instrument has been duly executed by the Principal and surety above named, on NOVEMBER 7, 2014.

(SEAL)
K A D PAVING COMPANY DBA K A D ENGINEERING
[Signature]
(Contractor)
(Signature)

(SEAL)
U.S. SPECIALTY INSURANCE COMPANY
YUNG T. MULLICK, (Surety) ATTORNEY-IN-FACT
BY: [Signature]
(Signature)

Address: 625 THE CITY DRIVE SOUTH, STE. 130
ORANGE, CA 92868
Telephone (714) 740-7000



(Seal and Notarial Acknowledgment of Surety)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of ORANGE

On NOVEMBER 7, 2014 before me, JENNIFER C. ANAYA, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared YUNG T. MULLICK
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

POWER OF ATTORNEY

AMERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

James W. Moilanen, Yung T. Mullick or Jennifer C. Anaya of Mission Viejo, California

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed** *****Fifteen Million***** Dollars (\$**15,000,000.00**).

This Power of Attorney shall expire without further action on December 08, 2016. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 10th day of December, 2012.

AMERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

Corporate Seals




Daniel P. Aguilar, Vice President

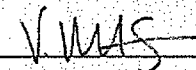
State of California

County of Los Angeles SS:

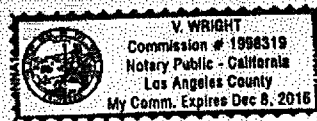
On 10th day of December, 2012, before me, Vanessa Wright, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature



(Seal)



I, Jeannie Lee, Assistant Secretary of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

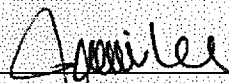
In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 7th day of November, 2014

Corporate Seals

Bond No. 1001000156

Agency No. 7715




Jeannie Lee, Assistant Secretary