

**SUBMITTAL TO THE BOARD OF DIRECTORS OF THE
REDEVELOPMENT AGENCY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



537

FROM: Redevelopment Agency

SUBMITTAL DATE:
January 11, 2012

SUBJECT: Mead Valley Community Center – Consulting Services Agreement for Construction Management Services with TKE Engineering & Planning

RECOMMENDED MOTION: That the Board of Directors:

1. Approve and authorize the Chairman of the Board to execute the attached consulting services agreement between TKE Engineering & Planning and the Redevelopment Agency for the County of Riverside in the amount of \$350,000;
2. Authorize the Executive Director to administer the agreement in accordance with applicable Board policies; and
3. Make findings that the proposed agreement between the Agency and TKE Engineering & Planning with regard to the Mead Valley Community Center Construction is an enforceable obligation of the Agency.

Robert Field
Robert Field
Executive Director

REVIEWED BY CIP
Christopher Hans
Christopher Hans

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 350,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

COMPANION ITEM ON BOARD OF SUPERVISORS AGENDA: No

SOURCE OF FUNDS: I-215 Corridor Redevelopment Project Area Capital Improvement Funds – Mead Valley Sub-Area (previously approved budget)	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: *Jennifer L. Sargent*
County Executive Office Signature Jennifer L. Sargent

MINUTES OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY

On motion of Supervisor Tavaglione, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: January 24, 2012
xc: RDA, Auditor, CIP

Kecia Harper-Ihem
Clerk of the Board
By: *Jennifer Sargent*
Deputy

Prev. Agn. Ref.: 4.1 of 11/22/11; 4.17 of 6/28/11 District: 1 Agenda Number **4.4**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY: *Samuel Wong*
 SAMUEL WONG
 COUNTY APPROVED COUNTY COUNSEL
 BY: *Marshall Victor*
 MARSHALL VICTOR
 DATE: 1/11/12

Policy Policy
 Consent Consent
 Dep't Recomm.: Per Exec. Ofc.:

BACKGROUND:

On June 28, 2011, the Board awarded construction of the Mead Valley Community Center project to AWI Builders. Due to the complexity of the project, the Agency determined a construction management firm would be essential to assist the Agency. On October 11 and October 18, 2011, the Agency advertised a Request for Qualifications in the Press Enterprise seeking qualified construction management firms for the Mead Valley Community Center project.

On October 20, 2011, fourteen Statement of Qualifications were submitted to the Agency. The Agency reviewed fourteen submissions. TKE Engineering & Planning was determined by the Agency to be the most qualified candidate for the Mead Valley Community Center project.

This consulting services agreement is considered an enforceable obligation and may be executed because the original construction contract for the project that it supports was executed on June 28, 2011 and construction management services are necessary and essential in order to construct this facility. Cost for construction management services was a line item in the project budget approved by the Board on June 28, 2011. The cost for this proposal came in under the proposed line item amount and therefore, will not be an additional cost to the project. Staff recommends approval of the consulting services agreement between TKE Engineering and Planning and the Redevelopment Agency for the County of Riverside.

Attached:

- Consulting Services Agreement with TKE Engineering & Planning
- Exhibit A
- Proof of Publication

1 **CONSULTING SERVICES AGREEMENT FOR**
2 **CONSTRUCTION MANAGEMENT SERVICES**
3 **FOR THE MEAD VALLEY COMMUNITY CENTER PROJECT**
4 **BY AND BETWEEN THE**
5 **REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE**
6 **AND TKE ENGINEERING & PLANNING**

7 **THIS AGREEMENT**, is made and entered into this 20th day of January, 2012,
8 by and between the REDEVELOPMENT AGENCY FOR THE COUNTY OF
9 RIVERSIDE, a public body corporate politic in the State of California (hereinafter
10 "AGENCY"), and TKE ENGINEERING & PLANNING (hereinafter "CONSULTANT").

11 **WITNESSETH:**

12 **WHEREAS**, AGENCY is a redevelopment AGENCY duly created, established
13 and authorized to transact business and exercise its powers, all under and pursuant to
14 the provisions of the Community Redevelopment Law ("CRL"), which is Part 1 of
15 Division 24 of the California Health and Safety Code (commencing with Section 33000
16 et seq.);

17 **WHEREAS**, Section 33445 of the California Health and Safety Code provides
18 that a redevelopment agency may pay all or part of the cost of the construction of any
19 building, facility, structure or other improvement, which is to be publicly owned and is
20 located within or outside of a redevelopment project area upon making certain findings;

21 **WHEREAS**, the Riverside County Board of Supervisors adopted, by Ordinance
22 No. 821, on July 16, 2001, a redevelopment plan for an area within the County known
23 as the I-215 Corridor Redevelopment Project Area (hereinafter referred to as "Project
24 Area"),

25 **WHEREAS**, the Project Area was adopted in order to eliminate blight and
26 revitalize the substandard physical and economic conditions that exist within the
27 Project Area;

28 **WHEREAS**, Section 33220 of the Community Redevelopment Law permits
AGENCY and COUNTY to cooperate and assist each other in certain redevelopment
activities that are the subject of this Agreement;

JAN 24 2012 44

1 **WHEREAS**, AGENCY staff issued a Request for Qualifications (RFQ) for
2 construction management services and received fourteen (14) responses from
3 construction management firms;

4 **WHEREAS**, AGENCY staff have reviewed all proposals submitted and have
5 chosen TKE ENGINEERING & PLANNING to provide construction management
6 services based on their established qualifications and knowledge of the project; and

7 **WHEREAS**, the proposed services provided in this Agreement include
8 construction management services, attendance in meetings, development of materials
9 to assist the AGENCY with budget and schedule preparation, and to facilitate the
10 construction of the Mead Valley Community Center Project (hereinafter referred to as
11 "PROJECT").

12 **NOW THEREFORE**, in consideration of the mutual covenants contained herein,
13 the parties hereto agree as follows:

14 **1. DESCRIPTION OF SERVICES**: CONSULTANT has completely and carefully
15 reviewed the PROJECT site, the Request for Qualifications, plans, specifications,
16 provided by AGENCY, and site prior to submitting their proposal for services as verified
17 in Exhibit A, attached hereto and incorporated herein, and herein agrees to provide
18 construction management services that includes, but is not limited to, the following:
19 review and respond to RFI's, review construction claims, record keeping, document
20 review, material submittal review, and budget and scheduling review, and construction
21 administration.

22 **1.1** Construction activities include, but are not limited to the following: demolition
23 of the existing facilities and construction of a 38,958 square foot community center
24 including childcare classrooms, community room, senior center, medical/dental clinic,
25 kitchen, multi-purpose recreational field, basketball court, community garden, tot-lot,
26 parking lot, landscaping, and off-site street and sewer infrastructure improvements.
27 Street improvements will include hardscape and softscape landscaping fronting the
28 Project.

1 1.2 CONSULTANT represents and maintains that it is skilled in the
2 professional calling necessary to perform all services, duties and obligations required
3 by this Agreement to fully and adequately complete the project. CONSULTANT shall
4 perform the services and duties in conformance to and consistent with the standards
5 generally recognized as being employed by professionals in the same discipline in the
6 State of California. CONSULTANT further represents and warrants to the AGENCY
7 that it has all licenses, permits, qualifications and approvals of whatever nature are
8 legally required to practice its profession. CONSULTANT further represents that it shall
9 keep all such licenses and approvals in effect during the term of this Agreement.

10 2. PERIOD OF PERFORMANCE: CONSULTANT shall commence
11 performance upon issuance of a Notice to Proceed Letter from Agency, and complete
12 performance throughout the established construction schedule of Four Hundred and
13 Eighty Seven Days (487 days). Additional days of service are to be used only as
14 approved by the AGENCY'S Project Manager. CONSULTANT will diligently and
15 responsibly pursue the performance of the services required of it by this Agreement
16 through project completion (construction activities and construction schedule) unless
17 the work is altered by written amendment(s) pursuant to Section 14, or terminated as
18 specified in Section 9. All applicable indemnification provisions in this Agreement shall
19 remain in effect following the termination of this Agreement.

20 3. COMPENSATION: The AGENCY shall pay the CONSULTANT an
21 amount, not-to-exceed Three Hundred Fifty Thousand Dollars (\$350,000) for the
22 services set forth herein. CONSULTANT shall submit invoices to the AGENCY for
23 progress payments based on work completed to date. If the CONSULTANT completes
24 the work ahead of schedule and under budget, the AGENCY will retain any unused
25 monies. However, if the CONSULTANT exceeds the schedule and not-to-exceed
26 budget, no additional monies shall be paid or due CONSULTANT beyond the
27 abovementioned amount. The PROJECT is a public works project and therefore
28 subject to full prevailing wage provision requirements. CONSULTANT hereby agrees to

1 pay for all travel and daily trip charges; AGENCY will not compensate CONSULTANT
2 for minimum daily show-up charges.

3 **3.1** Certain Classifications of Labor under this contract may be subject to
4 prevailing wage requirements. It is anticipated that the performance tests will or may
5 be performed which classifications are subject to payment of prevailing wage when
6 performed as pre-construction, construction activities or post-construction services on a
7 public works project.

8 a. Reference is made to Chapter 1, Part 7, Division 2 of the California
9 Labor Code (commencing with Section 1720). By this reference said Chapter 1 is in-
10 corporated herein with like effect as if it were here set forth in full. The parties recog-
11 nize that said Chapter 1 deals, among other things with discrimination, penalties and
12 forfeitures, their disposition and enforcement, wages, working hours, and securing
13 worker's compensation insurance and directly affect the method of prosecution of the
14 work by Consultant and subject it under certain conditions to penalties and forfeitures.
15 Execution of the Agreement by the parties constitutes their agreement to abide by said
16 Chapter 1, their stipulation as to all matters which they are required to stipulate as to by
17 the provisions of said Chapter 1, constitutes Consultant's certification that he is aware
18 of the provisions of said Chapter 1 and will comply with them and further constitutes
19 Consultant's certification as follows: "I am aware of the provisions of Section 3700 of
20 the California Labor Code which require every employer to be insured against liability
21 for worker's compensation or to undertake self-insurance in accordance with the provi-
22 sions of that Code, and I will comply with such provisions before commencing the per-
23 formance of the work of this contract."

24 b. Pursuant to Section 1773 of the Labor Code, the general prevailing
25 wage rates, including the per diem wages applicable to the work, and for holiday and
26 overtime work, including employer payments for health and welfare, pension, vacation,
27 and similar purposes, in the county in which the work is to be done have been deter-
28 mined by the Director of the California Department of Industrial Relations. These wag-

1 es are available from the California Department of Industrial Relations' Internet website
2 at <http://www.dir.ca.gov>, and are available at the main office of Agency.

3 **3.2** Said compensation shall be paid in accordance with an invoice showing
4 percentage of work complete, submitted to AGENCY by CONSULTANT within fifteen
5 (15) days from the last day of each calendar month, and AGENCY shall pay the invoice
6 within thirty (30) working days from the date of receipt of the invoice.

7 **4. INDEPENDENT CONSULTANT:** AGENCY retains CONSULTANT on an
8 independent contractor basis. CONSULTANT is not, and shall not be considered to be
9 in any manner, an employee or agent of the AGENCY. Personnel performing the
10 Services under this Agreement on behalf of CONSULTANT shall at all times be under
11 CONSULTANT'S exclusive direction and control. CONSULTANT shall pay all wages,
12 salaries and other amounts due such personnel in connection with their performance of
13 service and as required by law. CONSULTANT shall be responsible for all personnel
14 reports and obligations, including but not limited to, social security taxes, income tax
15 withholdings, unemployment insurance, minimum daily show-up charges incurred,
16 travel, and workers' compensation insurance. CONSULTANT and its employees and
17 agents shall maintain professional licenses required by the laws of the State of
18 California at all times while performing services.

19 **5. INDEMNITY AND HOLD HARMLESS:** The CONSULTANT agrees to
20 and shall indemnify and hold harmless the County of Riverside, its Agencies, Districts,
21 Departments and Special Districts, their respective directors, officers, Board of
22 Supervisors, elected and appointed officials, employees, agents and representatives
23 (hereinafter individually and collectively referred to as "Indemnitees") from all liability,
24 including, but not limited to loss, suits, claims, demands, actions, or proceedings to the
25 extent caused by any alleged or actual negligence, recklessness, willful misconduct,
26 error or omission of CONSULTANT, its directors, officers, partners, employees, agents
27 or representatives or any person or organization for whom CONSULTANT is
28 responsible, arising out of or from the performance of services under this Agreement.

1 **5.1** As respects each and every indemnification herein CONSULTANT shall
2 defend and pay, at its sole expense, all costs and fees including but not limited to
3 attorney fees, cost of investigation, and defense and settlements or awards against the
4 Indemnitees.

5 **5.2** With respect to any action or claim subject to indemnification herein by
6 CONSULTANT, CONSULTANT shall, at their sole cost, have the right to use counsel
7 of their own choice and shall have the right to adjust, settle, or compromise any such
8 action or claim without the prior consent of AGENCY; provided, however, that any such
9 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
10 CONSULTANT'S indemnification to Indemnitees as set forth herein.

11 **5.3** CONSULTANT'S obligation hereunder shall be satisfied when
12 CONSULTANT has provided to Indemnitees the appropriate form of dismissal relieving
13 Indemnitees from any liability for the action or claim involved.

14 **5.4** The specified insurance limits required in this Agreement shall in no way
15 limit or circumscribe CONSULTANT'S obligations to indemnify and hold harmless
16 Indemnitees from third party claims.

17 **5.5** In the event there is conflict between this clause and California Civil Code
18 Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such
19 interpretation shall not relieve the CONSULTANT from indemnifying the AGENCY to
20 the fullest extent allowed by law.

21 **6. INSURANCE:** Without limiting CONSULTANT'S indemnification,
22 CONSULTANT shall maintain in force at all times during the performance of this
23 Agreement, insurance policies evidencing coverage during the entire term of the
24 Agreement as follows:

25 **6.1 Workers' Compensation:** If CONSULTANT has employees as defined
26 by the State of California, CONSULTANT shall maintain Workers' Compensation
27 Insurance (Coverage A) as prescribed by the laws of the State of California. Policy
28 shall include Employers' Liability (Coverage B) including Occupational Disease with

1 limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to
2 waive subrogation in favor of the AGENCY and County of Riverside; and, if applicable,
3 to provide a Borrowed Servant/Alternate Employer Endorsement.

4 **6.2 Commercial General Liability:** Commercial General Liability insurance
5 coverage, including but not limited to, premises liability, contractual liability, completed
6 operations, personal and advertising injury covering claims which may arise from or out
7 of CONSULTANT'S performance of its obligations hereunder. Policy shall name the
8 AGENCY, County of Riverside, special districts, their respective directors, officers,
9 Board of Supervisors, elected officials, employees, agents or representatives as an
10 Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per
11 occurrence combined single limit. If such insurance contains a general aggregate limit,
12 it shall apply separately to this agreement or be no less than two (2) times the
13 occurrence limit.

14 **6.3 Vehicle Liability:** If CONSULTANT'S vehicles or mobile equipment are
15 used in the performance of the obligations under this Agreement, CONSULTANT shall
16 maintain liability insurance for all owned, non-owned or hired vehicles in an amount not
17 less than \$1,000,000 per occurrence combined single limit. If such insurance contains
18 a general aggregate limit, it shall apply separately to this agreement or be no less than
19 two (2) times the occurrence limit. Policy shall name the AGENCY, County of
20 Riverside, special districts, their respective directors, officers, Board of Supervisors,
21 elected officials, employees, agents, or representatives as an Additional Insured.

22 **6.4 Professional Liability:** CONSULTANT shall maintain Professional
23 Liability Insurance providing coverage for performance of work included within this
24 Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and
25 \$2,000,000 annual aggregate. If CONSULTANT'S Professional Liability Insurance is
26 written on a claims made basis rather than an occurrence basis, such insurance shall
27 continue through the term of this Agreement. Upon termination of this Agreement or
28 the expiration or cancellation of the claims made insurance policy CONSULTANT shall

1 purchase at his sole expense either 1) an Extended Reporting Endorsement (also
2 known as Tail Coverage); or, 2) Prior Dates Coverage from a new insurer with a
3 retroactive date back to the date of, or prior to, the inception of this Agreement; or, 3)
4 demonstrate through Certificates of Insurance that CONSULTANT has maintained
5 continuous coverage with the same or original insurer. Coverage provided under
6 items; 1), 2) or 3) will continue for a period of five (5) years beyond the termination of
7 this Agreement.

8 **6.5 General Insurance Provisions - All lines:**

9 a. Any insurance carrier providing insurance coverage hereunder shall be
10 admitted to the State of California and have an A.M. BEST rating of not less than an A:
11 VIII (A: 8) unless such requirements are waived, in writing, by the AGENCY Risk
12 Manager. If the AGENCY'S Risk Manager waives a requirement for a particular insurer
13 such waiver is only valid for that specific insurer and only for one policy term.

14 b. The CONSULTANT'S insurance carrier(s) must declare its insurance
15 deductibles or self-insured retentions. If such deductibles or self-insured retentions
16 exceed \$500,000 per occurrence such deductibles and/or retentions shall have the
17 prior written consent of the AGENCY Risk Manager before the commencement of
18 operations under this Agreement. Upon notification of deductibles or self insured
19 retentions which are deemed unacceptable to the AGENCY, at the election of the
20 AGENCY'S Risk Manager, CONSULTANT'S carriers shall either; 1) reduce or
21 eliminate such deductibles or self-insured retentions as respects this Agreement with
22 the AGENCY, or 2) procure a bond which guarantees payment of losses and related
23 investigations, claims administration, defense costs and expenses.

24 c. The CONSULTANT shall cause their insurance carrier(s) to furnish the
25 AGENCY with 1) a properly executed original Certificate(s) of Insurance and certified
26 original copies of Endorsements effecting coverage as required herein; or, 2) if
27 requested to do so orally or in writing by the AGENCY Risk Manager, provide original
28 Certified copies of policies including all Endorsements and all attachments thereto,

1 showing such insurance is in full force and effect. Further, said Certificate(s) and
2 policies of insurance shall contain the covenant of the insurance carrier(s) shall provide
3 no less than thirty (30) days written notice be given to the AGENCY prior to any
4 material modification or cancellation of such insurance. In the event of a material
5 modification or cancellation of coverage, this Agreement shall terminate forthwith,
6 unless the AGENCY receives, prior to such effective date, another properly executed
7 original Certificate of Insurance and original copies of endorsements or certified original
8 policies, including all endorsements and attachments thereto evidencing coverages
9 and the insurance required herein is in full force and effect. Individual(s) authorized by
10 the insurance carrier to do so on its behalf shall sign the original endorsements for
11 each policy and the Certificate of Insurance. **CONSULTANT shall not commence**
12 **operations until the AGENCY has been furnished original Certificate(s) of**
13 **Insurance and certified original copies of endorsements or policies of insurance**
14 **including all endorsements and any and all other attachments as required in this**
15 **Section.**

16 d. It is understood and agreed by the parties hereto and the
17 CONSULTANT'S insurance company(s), that the Certificate(s) of Insurance and
18 policies shall so covenant and shall be construed as primary insurance, and the
19 AGENCY'S insurance and/or deductibles and/or self-insured retentions or self-insured
20 programs shall not be construed as contributory.

21 e. If, during the term of this Agreement or any extension thereof, there is a
22 material change in the scope of services or performance of work the Risk Manager
23 reserves the right to adjust the types of insurance required under this Agreement and
24 the monetary limits of liability for the insurance coverage required herein, if; in the
25 AGENCY Risk Manager's reasonable judgment, the amount or type of insurance
26 carried by the CONSULTANT has become inadequate. CONSULTANT may terminate
27 this Agreement if it deems that any increase in the amount of insurance required herein
28 is unreasonable.

1 f. CONSULTANT shall pass down the insurance obligations contained
2 herein to all tiers of sub-consultants working under this Agreement

3 7. **COOPERATION BY AGENCY:** All information, data, reports, records,
4 and maps as are existing, available to the AGENCY and necessary for carrying out the
5 work described shall be furnished to CONSULTANT without charge by the AGENCY.
6 The AGENCY shall cooperate with CONSULTANT as appropriate to facilitate, without
7 undue delay, the work to be performed under this Agreement.

8 8. **AUTHORITY OF CONSULTANT:** CONSULTANT and its agents,
9 servants, employees and subcontractors shall act at all times in an independent
10 capacity during the term of this agreement, and shall not act as, and shall not be, nor
11 shall they in any manner be construed to be, agents, officers or employees of
12 AGENCY, and further, CONSULTANT, its agents, servants, employees and
13 subcontractors, shall not in any manner incur or have the power to incur any debt,
14 obligation, or liability against the AGENCY.

15 9. **TERMINATION:** AGENCY may, by written notice to CONSULTANT,
16 terminate this Agreement in whole or in part at any time, with or without cause. Such
17 termination may be for AGENCY'S convenience or because of CONSULTANT'S failure
18 to perform its duties and obligations under this Agreement including, but not limited to,
19 the failure of CONSULTANT to timely perform Services.

20 9.1 **Discontinuance of Services:** Upon receipt of written Notice of
21 Termination, CONSULTANT shall discontinue all affected Services within seven (7)
22 days of receipt of the Notice, unless otherwise directed by the Notice, and deliver to the
23 AGENCY all data, estimates, graphs, summaries, reports, and other related materials
24 as may have been prepared or accumulated by CONSULTANT in performance of
25 Services, whether completed or in progress.

26 9.2 **Effect of Termination For Convenience:** If the termination is to be for
27 the convenience of the AGENCY, the AGENCY shall compensate CONSULTANT for
28 services satisfactorily provided through the date of termination. Such payment shall

1 include a pro-rated amount of profit, if applicable, but no amount shall be paid for
2 anticipated profit on unperformed services. CONSULTANT shall provide
3 documentation deemed adequate by AGENCY'S Representative to show the Services
4 actually completed by CONSULTANT prior to the date of termination. This Agreement
5 shall terminate thirty (30) days following receipt by the CONSULTANT of the written
6 Notice of Termination.

7 **9.3 Effect of Termination For Cause:** If the termination is due to the failure
8 of CONSULTANT to fulfill its obligations under this Agreement, CONSULTANT shall be
9 compensated for those Services which have been completed and accepted by the
10 AGENCY. In such case, the AGENCY may take over the work and prosecute the
11 same to completion by contract or otherwise. Further, CONSULTANT shall be liable to
12 the AGENCY for any reasonable additional costs incurred by the AGENCY to revise
13 work for which the AGENCY has compensated CONSULTANT under this Agreement,
14 but which the AGENCY has determined in its sole discretion needs to be revised in part
15 or whole to complete the Project. Following discontinuance of Services, the AGENCY
16 may arrange for a meeting with CONSULTANT to determine what steps, if any,
17 CONSULTANT can take to adequately fulfill its requirements under this Agreement. In
18 its sole discretion, AGENCY'S Representative may propose an adjustment to the terms
19 and conditions of the Agreement, including the contract price. Such contract
20 adjustments, if accepted in writing by the Parties, shall become binding on
21 CONSULTANT and shall be performed as part of this Agreement. In the event of
22 termination for cause, unless otherwise agreed to in writing by the parties, this
23 Agreement shall terminate seven (7) days following the date the Notice of Termination
24 was mailed to the CONSULTANT. Termination of this Agreement for cause may be
25 considered by the AGENCY in determining whether to enter into future agreements
26 with CONSULTANT.

27 **9.4 Cumulative Remedies:** The rights and remedies of the parties provided
28 in this Section are in addition to any other rights and remedies provided by law or under

1 this Agreement.

2 **10. CONFLICT OF INTEREST:** CONSULTANT shall have no interest, and
3 shall not acquire any interest, direct or indirect, which will conflict in any manner or
4 degree with the performance of services required under this Agreement.

5 **11. DESIGNATED REPRESENTATIVES:** The following individuals are
6 designated as representatives of the AGENCY and CONSULTANT respectively to act
7 as liaison between the parties:

8 **AGENCY:**

9 Tony Resendez
10 Project Manager
11 Redevelopment Agency
12 for the County of Riverside
13 3403 10th Street, Suite 400
14 Riverside, CA 92507
15 Phone: (951) 955-5781
16 Fax: (951) 955-4890

CONSULTANT:

Jeffrey F. Scott
Vice President
TKE Engineering & Planning
2305 Chicago Avenue
Riverside, CA 92507
Phone: (951) 680-0440
Fax: (951) 680-0490

17 Any change in designated representatives shall be promptly reported to the
18 other party in order to ensure proper coordination of the PROJECT.

19 **12. ASSIGNMENT:** This Agreement shall not be assigned by
20 CONSULTANT, either in whole or in part, without prior written consent of AGENCY.
21 Any assignment or purported assignment of this Agreement by CONSULTANT without
22 the prior written consent of AGENCY will be deemed void and of no force or effect.

23 **13. NONDISCRIMINATION:** CONSULTANT shall ensure that there shall
24 be no discrimination against or segregation of any person, or group of persons, on
25 account of sex, marital status, race, religion, color, creed, national origin, ancestry, sex,
26 physical condition or age, in the performance of this Agreement and that
27 CONSULTANT, contractor, or any person claiming under or through the AGENCY shall
28 not establish or permit any such practice or practices of discrimination or segregation.

14. ALTERATION: No alteration or variation of the terms of this Agreement
shall be valid unless made in writing and signed by the parties hereto, and no oral
understanding or agreement not incorporated herein shall be binding on any of the
parties hereto. The Agency will not permit Amendments to the Agreement for

1 construction schedule extensions in relation to construction change orders unless the
2 AGENCY has verified that CONSULTANT has worked days in excess of the Period of
3 Performance (work hours and days) detailed in Section 2.

4 **15. LICENSE AND CERTIFICATION:** CONSULTANT verifies upon
5 execution of this Agreement, possession of a current and valid license in compliance
6 with any local, State, and Federal laws and regulations relative to the scope of services
7 to be performed within this Agreement and Exhibits, and that the service(s) will be
8 performed by properly trained and licensed staff.

9 **16. CONFIDENTIALITY:** CONSUTLANT shall observe all Federal, State and
10 AGENCY regulations concerning confidentiality of records. CONSULTANT shall refer
11 all requests for information to AGENCY.

12 **17. WORK PRODUCT:** All documents, reports, preliminary findings, or data
13 assembled or compiled by CONSULTANT under this Agreement shall become the
14 property of the AGENCY upon creation. The AGENCY reserves the right to authorize
15 others to use or reproduce such materials. Therefore, such materials shall not be
16 circulated in whole or in part, nor released to the public, without the direct authorization
17 of the AGENCY Director or an authorized designee.

18 **18. JURISDICTION, VENUE, ATTORNEY'S FEES:** This Agreement is to be
19 construed under the laws of the State of California. The parties agree to the jurisdiction
20 and venue of the appropriate courts in the County of Riverside, State of California.
21 Should action be brought to enforce or interpret the provisions of the Agreement, the
22 prevailing party shall be entitled to attorney's fees in addition to whatever other relief is
23 granted.

24 **19. WAIVER:** Any waiver by AGENCY of any breach of any one or more of
25 the terms of this Agreement shall not be construed to be a waiver of any subsequent or
26 other breach of the same or of any other term thereof. Failure on the part of the
27 AGENCY to require exact, full and complete compliance with any terms of this
28 Agreement shall not be construed as in any manner changing the terms hereof, or

1 stopping AGENCY from enforcement hereof.

2 **20. SEVERABILITY:** If any provision in this Agreement is held by a court of
3 competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will
4 nevertheless continue in full force without being impaired or invalidated in any way.

5 **21. ENTIRE AGREEMENT:** This Agreement is intended by the Parties hereto
6 as a final expression of their understanding with respect to the subject matter hereof,
7 and all prior or contemporaneous agreements of any kind or nature relating to the
8 same shall be deemed to be merged herein. Any modifications to the terms of this
9 Agreement must be in writing and signed by the parties herein.

10 **22. BINDING EFFECT:** This Agreement binds the parties and their permitted
11 successors and assigns.

12 **23. NOTICES:** All correspondence and notices required or contemplated by
13 this Agreement shall be delivered to the respective parties at the addresses set forth
14 below and are deemed submitted one (1) day after their deposit in the United States
15 Mail, postage prepaid:

16 **AGENCY:**
17 Redevelopment Agency
18 for the County of Riverside
19 3403 10th Street, Suite 400
Riverside, CA 92507
Attn: Tony Resendez

CONSULTANT:
TKE Engineering & Planning
2305 Chicago Avenue
Riverside, CA 92507
Attn: Jeffrey F. Scott

20 //
21 //
22 //

1 **IN WITNESS WHEREOF**, the CONSULTANT and the AGENCY have executed
2 this AGREEMENT as of the date first above written.

3
4 **REDEVELOPMENT AGENCY FOR**
5 **THE COUNTY OF RIVERSIDE**


TKE ENGINEERING & PLANNING

6
7 
8 John Tavaglione, Chairman
9 Board of Directors

 1/11/12
Michael Thornton,
President

10 **ATTEST:**
11 Kecia Harper-Ihem
12 Clerk of the Board

 1/11/12
Jeffrey F. Scott,
Vice President

13 
14 Karen Minton
15 Deputy

16
17
18 **APPROVED AS TO FORM:**
19 Pamela J. Walls,
20 County Counsel

21
22  1/9/12
23 Pamela J. Walls
24 Deputy

25
26 S:\RDACOM\DIS1\PROJECT AREA 1-215\MEAD VALLEY\Mead Valley Community Center Project\MV Community Center\Mead
27 Valley Community Center\3.0 Agreements & Contracts\TKE - Const Mgmt Srvs 12-7-11.doc



EXHIBIT "A"

To: Chuck Waltman
County of Riverside RDA

From: Michael P. Thornton

Date: January 5, 2012

Re: Construction Management Services

At the Agency's request, TKE has prepared a scope and fee breakdown based on the RFQ Dated October 5, 2011 for Construction Management services:

A. Coordination/Communication

In order to complete a construction project in the most cost effective manner that meets all project requirements, a team effort from the construction manager, Architect, Engineer, the RDA & County EDA Staff and the Construction contractor will be required. As such, coordination and communication with RDA & County EDA including operations staff and the construction contractor is vital to the project success. Prior to beginning the project, we will meet with RDA & County EDA staff to review project obligations and to discuss all project requirements. At the meeting, we will discuss our list of project tasks.

We are committed to frequent communications with our clients. As such, we will communicate with staff, either by telephone or by additional meetings, throughout the course of providing construction management services to keep staff apprised of project progress and to keep the engineering services proceeding efficiently. We will document (minutes) each meeting and/or telephone conference and forward copies of the documents to the Agency & County.

We are committed to frequent communications with the construction contractor as well. We will confer with the contractor daily to ensure the project is proceeding efficiently and to identify any project issues for immediate resolution. We will respond to contractor inquiries immediately upon receipt. Inquiries would include request for information (RFI), submittal review and approval, and change order request.

1. Claims

Claims for construction projects include changed condition (differing site conditions or County directed betterment) and delay claims. We attempt to minimize such claims by performing detailed contract document review and identification of potential issues prior to beginning construction. We are very familiar with the process that requires prompt notification by contractors, immediate response to merit with sections of the specifications referenced and completion date adjustments.

2. Record Keeping

Record keeping is an important aspect of construction management. Records would include logs (for material submittals, requests for information, change order requests, and responses to all requests), letters, field reports, photographs, and videos. Logs will assist us in tracking construction activities and will provide early warnings as to projects that may be falling behind schedule. We will review project logs weekly and prepare weekly summary reports to the Agency & County to notify you of potential construction problems.

We have developed an effective record keeping system that permits us to access records in short order. Many of these records are computerized to minimize the administrative burden; the eventual goal is to computerize all project records so that the box or boxes of construction contract records will soon be supplemented and even replaced with one or more CD-ROM's. At the present time, as many of the records as possible will be given to the County on CD-ROM.



B. Scope of Services

1. Document Review

TKE's Construction Manager will review the contract documents (drawings, specifications, environmental documents, and permits) for the projects in detail. We will develop a complete understanding and advise Agency & County staff of potential construction issues. Our thorough review will include a detailed field walk with the project construction inspector.

2. Material Submittal Review

We will review and approve all project submittals. We will maintain a project log for each project and it will include descriptions of submittals, date received, and date returned. Once the submittals have been reviewed and accepted, they will be signed, dated, and sent to the Agency & County staff and the contractor. Submittals will be returned within the time frame specified by the contract documents. The construction schedule will be a critical document. It will be reviewed to verify compliance with the contract documents and will be reviewed monthly to ensure construction is proceeding efficiently.

3. Construction Administration

We will prepare agendas and minutes for each meeting and will respond to questions as required. Our CM will visit the job site as directed by RDA & EDA to observe the facility implementation and follow the Construction Management Duties and Responsibilities as listed below. He will also document any observed deviations from the plans or safety plans and he will advise the construction contractor, as appropriate, for resolution of observed safety deficiencies. In addition, our CM will conduct weekly meetings with each construction contractor to ensure construction is progressing efficiently. We will prepare agendas and minutes for each, and refer to uncompleted business at each meeting. In addition, our CM will verify compliance with DBE/MBE/WBE requirements, if requested by the Agency & County.

Throughout the course of construction, our CM will respond to RFI's and RFC's (including written clarification requests and change-in-plan drawings) regarding the contract documents in order to ensure the project is being constructed in compliance with same; we will provide said responses as required to minimize delays in construction. All RFI's and RFC's will be logged, including content of inquiry and date relayed and date of response. Our contract administration activities will include progress reviews to ensure that the project is proceeding according to requirements and schedule, progress review meetings with Agency & County staff, review of contract change order requests, and payment requests and related services. Payment requests and record keeping will include all correspondence, transmittals, drawings, technical manuals, reports, etc. related to pre-construction, construction and post-construction phases of each construction contract. The documents will be kept at both our office, and the Agency/County. Our filing system will be reviewed with the Agency /County staff in order that they will be able to access documents as required.

Project progress and any changes during construction will be noted on a set of the project's contract documents maintained in our office. If a problem occurs requiring an Agency or County decision, we will consult with Agency/County staff. The CM will attempt to resolve complaints, concerns, and questions from residents and other affected agencies.

Through e-mail, telephone conferences, and regular meetings, the CM will keep the Agency/County staff informed of project progress, problems that have occurred during construction, and any changes in work. Whenever possible, we will review required changes with Agency/County staff prior to providing direction in the field.



Each month, we will review the construction payment requests submitted by the contractor for work completed and the construction schedule. We will review the work completed and payment requests (forms provided by the Agency/County) to ensure that the quantities and amounts requested reflect the actual work completed. After each request has been reviewed (and revised if necessary), we will approve it and send it to Agency/County staff for approval and payment. We will also submit a monthly status report with each payment request that will advise the Agency/County of compliance with the project schedule. If the contractor begins to fall behind the schedule, we will request corrective action.

If change conditions occur, we will negotiate with contractors to establish the impact of change conditions and we will attempt to complete negotiations prior to beginning work the Agency/County will be included in all negotiation requiring a contract amount increase. If we fail to reach an agreement and the work must continue, we will direct the contractor to complete the work. We will document the labor, materials and equipment used for the extra work for use in future negotiations.

We will review any change order request received to determine if said request is warranted. If the change order request is not warranted, we will reject it in writing; prior to sending rejection letters to the contractor, we will review it with County staff. If the change order request appears justified, we will review it with the Agency's construction inspector and compare it with field reports for confirmation of materials, equipment and/or labor involved; we will review same with County staff and receive County approval prior to preparing and processing the contract change order. Change order will be prepared on standard forms.

We will ensure that telephone numbers for normal working hours, evenings, and weekends for our staff, contractor, utilities, and emergency services are provided to all concerned parties.



C. Construction Management Duties and Responsibilities:

1. Monitor overall budget and schedule and advise County of any trends that affect the timely procedures and cost effective completion of the project.
2. Assess and evaluate disputes, taking the lead in dispute resolutions.
3. CM shall maintain thorough knowledge of the plans and specifications. Personally observe, check, and measure items placed in the construction for compliance to the contract documents, supplemental instructions from the Project Architect/Engineer, and supporting the quality assurance efforts of the Inspector(s).
4. Coordinate construction logistics between the General Contractor (GC), County and other project partners as required. Assist in resolving disputes that may arise due to interaction between the GC and County staff.
5. Establish and maintain communication protocol between County staff, trade contractors, architects, inspectors, and other related parties.
6. Review GC's Schedule of Values/Cost Breakdown and construction schedule and recommend approval/changes or disapproval.
7. Arrange and conduct a variety of meetings, as requested by County at the construction site. The CM shall chair all meetings between County and the GC. The CM shall prepare written meeting minutes for all such meetings.
8. Draft Requests for Cost Proposals, including County Cost Estimate with breakdown of labor, materials, and equipment costs. RCP's shall define work to be performed and cite relevant specification sections including appropriate sketches illustrating work to be performed.
9. Review Request for Cost Proposal responses, conduct fact finding and clarifications with the contractor and draft memo explaining cost differences between the County Estimate and the GC's proposed cost.
10. Confirm certified payrolls have been submitted for all workers and forward to County; perform labor interviews as required.
11. Perform quality surveys, review and verify the contractor's monthly progress payments and make recommendations to County.
12. Review and analyze proposed change orders and make recommendations to County. Assess and evaluate accuracy of pricing on all change order requests taking the lead in negotiating fair and equitable resolutions and managing schedule impacts.
13. Receive, log, and review submittals for completeness and accuracy. Distribute for evaluation and track submittal as required through completion of the process.
14. Accept or reject informational Submittals.
15. Assist in resolution, draft response, track, and follow up on requests for information (RFI's).
16. Maintain daily diary describing general events, noting problems, and unusual events.
17. Review Contractor Quality Control (QC) daily reports for accuracy and completeness.
18. Take appropriate photographs that document construction progress and problems, such as capturing items that will not be seen later, etc.
19. Verify GC's implementation of the SWPPP and on-going compliance.
20. Review and verify contractor's project record drawings are updated to reflect all changes and work completed before each monthly progress payment.
21. Provide monitoring inspections of the construction:
 - a. Inspect the work of the construction contractor for progress, workmanship, and conformance with the approved contract documents and applicable codes and regulations.
 - b. Meet with County, GC, and permitting agencies as required to coordinate inspection services.