

AGREEMENT TO PERFORM NON-PROFESSIONAL SERVICES

This agreement for the provision of vehicle maintenance and repair services (“Agreement”) is made and entered in this 5th day of February, 2013 (“Effective Date”), by and between the City of Redlands, a municipal corporation (“City”) and Johnson Machinery Co. (“Contractor”). City and Contractor are sometimes individually referred to herein as a “Party” and, together, as “Parties.” In consideration of the mutual promises contained herein, City and Contractor agree as follows:

ARTICLE 1 – ENGAGEMENT OF CONTRACTOR

- 1.1 City hereby engages Contractor to provide heavy off-road vehicle maintenance and repair services for City (the “Services”).
- 1.2 The Services shall be performed by Contractor in a professional manner, and Contractor 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 contractors in the industry providing like and similar types of Services.

ARTICLE 2 – SERVICES OF CONTRACTOR

- 2.1 The Services that Contractor shall perform are more particularly described in Exhibit “A,” entitled “Scope of Services,” which is attached hereto and incorporated herein by reference.
- 2.2 Contractor shall comply with applicable federal, state and local laws and regulations in the performance of this agreement including, but not limited to any applicable state prevailing wage laws.

ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Contractor public information in its possession that may assist Contractor in performing the Services.
- 3.2 City designates Fred Cardenas, City’s Quality of Life Director, 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 – PERFORMANCE OF SERVICES

- 4.1 Contractor shall perform and complete the Services in a prompt and diligent manner as reasonably requested from time to time by City. The Services shall commence within ten (10) days of the Effective Date of this Agreement.

- 4.2 During the term of this Agreement, City may request that Contractor perform Extra Services. As used herein, “Extra Services” means any work that is determined necessary by City for the proper completion of the Services, but which the Parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Provided the Extra Services do not exceed twenty percent (20%) of the compensation to be paid by City to Contractor for the Services, such Extra Services may be agreed to by official in accordance with Chapter 2.16 of the Redlands Municipal Code. Contractor shall not perform, nor be compensated for, Extra Services without such written authorization from City.
- 4.3 The term of the Agreement shall be for a period of one (1) year from the Effective Date of this Agreement (the “Initial Term”). The City shall have the option to extend the Initial Term of this Agreement by two (2) one-year additional terms (an “Extended Term”), on the same terms and conditions, by providing written notice to Contractor at least thirty (30) days prior to the expiration of the Initial Term or any Extended Term.

ARTICLE 5 – PAYMENTS TO CONTRACTOR

- 5.1 The total compensation for Consultant’s performance of the Services shall not exceed the amount of Ninety Thousand Dollars (\$90,000) for parts and supplies and One Hundred Ten Thousand Dollars (\$110,000) for labor, for a total of Two Hundred Thousand Dollars (\$200,000). City shall pay Consultant on a time and materials basis up to the not to exceed amount based upon the unit prices and hourly rates shown in Exhibit “B.” Payments to Contractor will be adjusted annually, if the Initial Term of this Agreement is extended, up to an amount equivalent to any increase in the Consumer Price Index from the previous year to the then-current year. The Consumer Price Index to be used for such annual adjustments is the CPI-U (Consumer Price Index for All Urban Consumers) Los Angeles-Riverside-Orange County.
- 5.2 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. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant’s invoice.
- 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
 Fred Cardenas, Director
 Quality of Life Department
 City of Redlands
 35 Cajon Street, Suite 222
 P.O. Box 3005 (mailing)
 Redlands, CA 92373

Consultant
 Travis Rowberry, Product Support Manager
 Johnson Machinery Co.
 800 E. La Cadena Dr.
 P.O. Box 351 (mailing)
 Riverside, CA 92502

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 Contractor for the duration of its performance of the Services. Contractor shall not perform any Services unless and until the required insurance listed below is obtained by Contractor. Contractor 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 Contractor 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 as described in Exhibit "C," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference.
- 6.3 Contractor 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 Contractor 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 Contractor owned vehicles used in connection with Contractor'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.
- 6.5 Contractor 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 Contractor, its officers, employees and agents in performing the Services.

ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Contractor 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 Contractor's Services. Contractor 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 Contractor agrees it is not a designated employee within the meaning of the Political Reform Act because Contractor:

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 Contractor must disclose its financial interests, Contractor 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 Contractor 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 Documents, records, drawings, designs, cost estimates, electronic data files, databases and any other documents developed by Contractor 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 Contractor 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 Contractor or Contractor's employees, except as herein set forth. Contractor shall supply necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Contractor are for its account only, and in no event shall Contractor 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. Contractor shall have no authority, express by City for the account of, or on behalf of City. Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Contractor 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 ten (10) days prior written notice to Contractor (delivered by certified mail, return receipt requested) of City's intent to terminate. If this Agreement is terminated by City, an adjustment to Contractor's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Contractor at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Contractor. Upon receipt of a termination notice, Contractor shall immediately discontinue its provision of the Services. Contractor shall be compensated on a pro-rata basis for Services completed up to the date of termination.
- 8.6 Contractor 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 Contractor pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Contractor.
- 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 Contractor.
- 8.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

CITY OF REDLANDS

JOHNSON MACHINERY CO.

By: _____
Tina T. Kundig
Finance Director

By: _____
Travis Rowberry
Project Support Manager

Attest:

Sam Irwin, City Clerk

EXHIBIT "A"
Scope of Services

- Perform routine repair services that include, but are not limited to, work on brakes, suspension, heat/air conditioning systems, electrical systems, minor engine repair, and other repairs normal and customary for routine repair of a commercial heavy duty off-road fleet.
- Turnaround time of two (2) business days for PM services plus routine repair services done as a result of the PM.
- The technician must include observations and explanations for any further needed repairs.
- Original Equipment Manufacturer (OEM) parts must be used.
- Work collaboratively with staff to meet the following key components of the vehicle maintenance program:
 - Comprehensive, preventive maintenance schedule
 - Full utilization of standard warranty coverage
 - Customer service responsiveness to maximize cost efficiencies, minimize unscheduled repairs and downtime
- A Preventive Maintenance Service checklist shall be completed by the technician and attached to the invoice submitted to the City for every vehicle serviced.

**P M SERVICE - OFF-ROAD HEAVY EQUIPMENT (CATERPILLAR)
INSPECTION CHECK LIST**

Vehicle# _____ Date _____ Division _____ Mileage _____ Hours _____

Every 250 Service Hours or Monthly

- Axle universal joint (rear)
- Cooling system coolant additive (DEAC)
- Differential oil level (front)
- Differential oil level (rear)
- Engine oil and filter
- Extendable stick
- Final drive oil level (front)
- Final drive oil level (rear)
- Kingpin bearings (rear)
- Sideshift stabilizer wear pads
- V-belts

Every 500 service hours or 3 months for machines used in severe applications

- Differential oil (rear)

Every 1000 service hours or 6 months

- Differential oil (front)
- Differential oil (rear)
- Engine valve lash
- Final drive oil (front)
- Final drive oil (rear)
- Rollover protective structure (ROPS)

- Transmission magnetic screen
- Transmission oil
- Wheel bearings (front)

Every 2000 service hours or 1 year

- Engine valve lash
- Hydraulic system oil

Every 3000 service hours or 2 years

- Cooling system coolant (DEAC)
- Cooling system coolant extender
- Cooling system water temperature regulator

Every 6000 service hours or 4 years

- Cooling system coolant (ELC)

EXHIBIT 'B'

**PREVENTATIVE MAINTENANCE AND REPAIRS (PM)
Johnson Machinery, Riverside, CA**

Description: Off Road Heavy Equipment

Labor

Standard Labor Rate \$ 115.00 /per hour

Preventative Maintenance Services

P.M. Labor Rate \$115.00 /per hour

Johnson Machinery's Material/Parts Cost Plus is: 0 %

| QTY | Description | Make | OEM # | Unit Price | Total |
|------------------------|--------------------|------|----------|------------|-------------------|
| 1 | Sprocket | CAT | 314-5462 | 119.44 | 119.44 |
| 1 | Step | CAT | 3887049 | | 459.81 |
| 1 | Cap Track idler | CAT | 131-1647 | | 76.68 |
| 1 | Idler & bearing AS | CAT | 192-0223 | | 843.79 |
| 1 | Hose assembly | CAT | 226-3496 | | 27.51 |
| 1 | Cutting edge | CAT | 4T-7109 | | 86.37 |
| 1 | Blower assembly | CAT | 275-6706 | | 385.12 |
| 1 | Seat assembly | CAT | 200-3174 | | 1955.32 |
| 1 | U-belt set | CAT | 251-7493 | | 110.91 |
| B8:Grand Total: | | | | | \$ 4064.95 |

EXHIBIT “C”

**WORKERS’ COMPENSATION INSURANCE CERTIFICATION TO PERFORM
VEHICLE MAINTENANCE AND REPAIR SERVICES**

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 in one or more insurer 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.

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 of this Agreement. (Labor Code §1861).

Johnson Machinery Co.

By: _____
Travis Rowberry
Product Support Manager

_____ Date