

RESOLUTION NO. 2011-63

A RESOLUTION OF THE COUNCIL OF THE
CITY OF ROHNERT PARK
AUTHORIZING AND APPROVING MASTER
PROFESSIONAL ENGINEER AGREEMENT FOR
MUNICIPAL ENGINEERING SERVICES
WITH WHITLOCK & WEINBERGER, INC. (W-Trans)

WHEREAS, the City desires general municipal engineering services, general city planning services, development review services, design services and construction management services related to capital projects and studies; and

WHEREAS, Whitlock & Weinberger, Inc., (W-Trans) is qualified to provide such services.

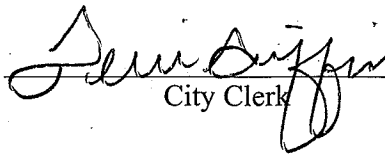
NOW, THEREFORE, be it resolved by the City Council of the City of Rohnert Park that it does hereby authorize and approve an agreement by and between Whitlock & Weinberger, Inc. (W-Trans), a California Corporation, and the City of Rohnert Park, a municipal corporation, for general municipal engineering services, general city planning services, development review services, design services and construction management services related to capital projects and studies.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute this agreement in substantially similar form to the agreement, attached hereto and incorporated in as Exhibit A, for and on behalf of the City of Rohnert Park, subject to the approval of the City Attorney.

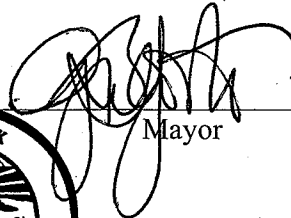
DULY AND REGULARLY ADOPTED this 26th day of July, 2011.

CITY OF ROHNERT PARK

ATTEST:


City Clerk




Mayor

| | | | | |
|---------------------|----------------------|-----------------------|----------------------|----------------------|
| AHANOTU: <u>AYE</u> | CALLINAN: <u>AYE</u> | MACKENZIE: <u>AYE</u> | STAFFORD: <u>AYE</u> | BELFORTE: <u>AYE</u> |
| AYES: (5) | NOES: (0) | ABSENT: (0) | ABSTAIN: (0) | |

City of Rohnert Park
130 Avram Ave.
Rohnert Park, CA 94928

**MASTER AGREEMENT WITH WHITLOCK & WEINBERGER TRANSPORTATION,
INC., FOR PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is entered into as of the _____ day of _____, 2011, by and between the CITY OF ROHNERT PARK ("City"), a California municipal corporation, and WHITLOCK & WEINBERGER TRANSPORTATION, INC., ("Design Professional"), a California corporation.

Recitals

WHEREAS, City desires to obtain design professional services on an as-needed basis;

WHEREAS, Design Professional hereby represents to City that Design Professional is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Design Professional pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, IN CONSIDERATION OF THEIR MUTUAL COVENANTS, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as City may determine from time to time, Design Professional shall perform the services set out in the "Scope of Services" ("Services") attached hereto as Exhibit A. Additional work for specific projects may be authorized by separate "Task Order" in accordance with the terms of this Agreement. Design Professional's place of work is at 490 Mendocino Avenue, Suite 201, Santa Rosa, CA 95401.

2. Time of Performance. The term of this Agreement shall be from the date of its execution until December 31, 2015, unless earlier terminated in accordance with Section 18, and may be extended for successive one-year term(s) upon mutual, written approval by the City Manager and/or his/her designee and Design Professional.

A. Work authorized by a separate Task Order as contemplated by this Agreement shall be subject to the Schedule of Performance set forth in the Task Order.

B. The services of Design Professional are to commence upon receipt of a written notice to proceed from City, but in no event prior to receiving a fully executed Agreement/Task Order from City and obtaining and delivering the required insurance coverage,

and satisfactory evidence thereof, to City. Any changes to the dates in this Section or in the Task Order must be approved in writing by City.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Design Professional, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit B. Under no circumstances shall the total amount City pays Design Professional for the Services exceed Forty Thousand Dollars (\$40,000); provided, however, that work authorized by a separate Task Order as contemplated by this Agreement shall be subject to the compensation set forth in the individual Task Order and may exceed \$40,000. The total amount authorized for the Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to City at the time of payment.

B. Timing of Payment.

- (1) Design Professional shall submit itemized monthly invoices for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by City.
- (2) Payments due and payable to Design Professional for current services must be within the current budget and within an available, unexhausted and unencumbered appropriation of the City. In the event the City has not appropriated sufficient funds for payment of Design Professional services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year; payment for additional work is conditional upon future City appropriation.

C. Changes in Compensation. Design Professional will not undertake any work that will incur costs in excess of the amount set forth in Section 3(A) without prior written amendment to this Agreement.

D. Standard of Quality. City relies upon the professional ability of Design Professional as a material inducement to entering into this Agreement. All work performed by Design Professional under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Design Professional's field of expertise.

E. Taxes. Design Professional shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Design Professional.

F. No Overtime or Premium Pay. Design Professional shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty

(40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends, unless specifically required by the applicable task order and authorized by City in writing. Design Professional shall not receive a premium or enhanced pay for work performed on a recognized holiday. Design Professional shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

4. Amendment to Task Order and/or Scope of Services. City shall have the right to amend the Task Order and/or Scope of Services within the Agreement by written notification to the Design Professional. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Failure of the Design Professional to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

5. Duties of City. City shall provide all information requested by Design Professional that is reasonably necessary to performing the Scope of Work. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement.

6. Ownership of Documents.

A. The plans, specifications, estimates, programs, reports, models, and other material prepared by or on behalf of Design Professional under this Agreement including all drafts and working documents, and including electronic and paper forms (collectively the "Documents"), shall be and remain the property of City, whether the Services are completed or not. Design Professional shall deliver all Documents to City upon (1) the completion of the Services, (2) the date of termination of this Agreement for any reason, (3) request by City in writing, or (4) payment of all monies due to Design Professional.

B. The Documents may be used by City and its officers, elected officials, employees, agents, and volunteers, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable without further employment of or payment of any compensation to Design Professional. If City desires to modify Documents before using them, City shall obtain written consent from Design Professional for any such modification, and such consent shall not unreasonably be withheld. If City modifies Documents without obtaining written consent from Design Professional, Design Professional shall not be liable to City for any damages resulting from use of such modified Documents, provided that the Design Professional was not a proximate cause of such damages.

C. Design Professional retains the copyright in and to the intellectual property depicted in the Documents subject to Design Professional's limitations and City's rights and licenses set forth in this Agreement. City's ownership interest in the Documents includes the following single, exclusive license from Design Professional: Design Professional, for itself, its employees, heirs, successors and assigns, hereby grants (and if any subsequent grant is necessary, agrees to grant) to City an irrevocable, perpetual, royalty-free, fully paid, sole and

exclusive license and right to use and exercise any and all of the copyrights or other intellectual property rights that Design Professional may author or create, alone or jointly with others, in or with respect to the Documents, including without limitation all analysis, reports, designs and graphic representations. City's license shall include the right to sublicense, shall be for all purposes with respect to each right of copyright, and shall be without restriction.

D. Design Professional shall include language that is consistent with this Section 6 in all subcontracts and agreements that Design Professional negotiates with respect to the Services.

E. All reports, information, data, and exhibits prepared or assembled by Design Professional in connection with the performance of its Services pursuant to this Agreement are confidential until released by City to the public, and the Design Professional shall not make any of these documents or information available to any individual or organization not employed by the Design Professional or City without the written consent of City before any such release. This provision shall not apply to information that (1) is already in the public domain, (2) was previously known by Design Professional, (3) Design Professional is required to provide by law, or (4) reasonably required by Design Professional to conduct its defense in a legal or similar proceeding, so long as Design Professional notifies City in writing before use of such information.

7. Employment of Other Design Professionals, Specialists or Experts.

A. Design Professional will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of City. Any consultants, specialists or experts approved by City are listed in Exhibit D.

B. Design Professional represents that it has, or will secure at its own expense, all personnel required in performing the Services. All of the Services required hereunder will be performed by the Design Professional or under Design Professional's supervision, and all personnel engaged in the work shall be qualified to perform such services.

C. Design Professional shall make every reasonable effort to maintain stability and continuity of Design Professional's key personnel assigned to perform the Services. Key personnel for this contract are listed in Exhibit D.

D. Design Professional shall provide City with a minimum twenty (20) days prior written notice of any changes in Design Professional's Key Personnel, provided that Design Professional receives such notice, and shall not replace any Key Personnel with anyone to whom City has a reasonable objection.

E. Design Professional will not utilize subconsultants other than those listed in Exhibit D without advance written notice to City. Design Professional will not utilize a subconsultant to whom City has a reasonable objection. Subconsultants providing professional services will provide professional liability insurance as required in Exhibit C unless City waives this requirement, in writing.

8. Conflict of Interest.

A. Design Professional understands that its professional responsibility is solely to City. Design Professional warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Design Professional shall not knowingly, and shall take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If Design Professional discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Design Professional shall promptly disclose the relationship to City and take such action as City may direct to remedy the conflict.

B. Design Professional (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Design Professional's Services hereunder. Design Professional 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.

C. Design Professional is not a designated employee within the meaning of the Political Reform Act because Design Professional:

(1) Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of City or of any City official other than normal contract monitoring; and

(2) Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a)(2)).

9. Interest of Members and Employees of City. No member of City and no other officer, elected official, employee, agent or volunteer of City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects its personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

10. Liability of Members and Employees of City. No member of City and no other officer, elected official, employee, agent or volunteer of City shall be personally liable to Design Professional or otherwise in the event of any default or breach of City, or for any amount which may become due to Design Professional or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

11. Indemnity.

A. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Design Professional shall defend (with legal

counsel reasonably acceptable to City), indemnify, and hold harmless City and its officers, elected officials, employees, agents, and volunteers (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Design Professional or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, reasonable court costs and reasonable attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such negligence, recklessness, or willful misconduct includes without limitation the failure of Design Professional to disclose information known by Design Professional to be material to performing the Services. Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of such Indemnitee. Notwithstanding any provision of this Agreement to the contrary, the extent of Design Professional's obligation to defend, indemnify, and hold harmless shall be governed by the provisions of California Civil Code Section 2782.8.

B. Neither termination of this Agreement nor completion of the Services shall release Design Professional from its obligations under this Section 11, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

C. Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement. If Design Professional fails to obtain such indemnity obligations from others as required, Design Professional shall be fully responsible for all obligations under this Section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Design Professional and shall survive the termination of this Agreement or this section.

D. Design Professional's compliance with the insurance requirements does not relieve Design Professional from the obligations described in this Section 11, which shall apply whether or not such insurance policies are applicable to a claim or damages.

12. Independent Contractor. It is understood that Design Professional, in the performance of the work and services agreed to be performed by Design Professional, shall act as and be an independent contractor as defined in Labor Code 3353 and not an agent or employee of City; and as an independent contractor, Design Professional shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Design Professional hereby expressly waives any claim it may have to any such rights. Design Professional, its officers, employees and agents shall not have any power to bind or commit City to any decision.

13. Compliance with Laws.

A. General. Design Professional shall (and shall cause its agents and subcontractors), at its sole cost and expense, comply with all applicable federal, state and local laws, codes, ordinances and regulations now in force or which may hereafter be in force during the term of this Agreement. Any corrections to Design Professional's reports or other Documents (as defined in Section 6) that become necessary as a result of Design Professional's failure to comply with these requirements shall be made at the Design Professional's expense.

B. Updates. Should Design Professional become aware that the requirements referenced in subparagraph A above change after the date of a report or other Document is prepared, Design Professional shall be responsible for notifying City of such change in requirements. Design Professional will bring the Documents into conformance with the newly issued requirements at the written direction of City. Design Professional's costs for providing services pursuant to this paragraph shall be submitted to City as Additional Services.

C. Licenses and Permits. Design Professional represents that it has the skills, expertise, licenses and permits necessary to perform the Services. Design Professional shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which Design Professional is engaged. All products of whatsoever nature which Design Professional delivers to City pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Design Professional's profession. Permits and/or licenses shall be obtained and maintained by Design Professional without additional compensation throughout the term of this Agreement. Except as otherwise allowed by City in its sole discretion, Design Professional and all subconsultants shall have acquired, at their expense, a business license from City in accordance with Chapter 5.04 of the Rohnert Park Municipal Code, prior to City's issuance of an authorization to proceed with the Services. Such license(s) must be kept valid throughout the term of this Agreement.

D. Documents Stamped. Design Professional shall have documents created as part of the Services to be performed under this Agreement stamped by registered professionals for the disciplines covered by Design Professional's Documents as required by Section 6735 of the Business and Professions Code or any other applicable law or regulation. Design Professional shall not be required to stamp any documents not prepared under its direct supervision. The City will not be charged an additional fee to have such documents stamped. .

E. Workers' Compensation. Design Professional certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Design Professional certifies that it will comply with such provisions before commencing performance of this Agreement.

F. Prevailing Wage. Design Professional and Design Professional's sub-consultants, shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at City Clerk's office. This provision to comply with prevailing wage laws takes precedence over the provisions of paragraph 3.F.

G. Injury and Illness Prevention Program. Design Professional certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

H. City Not Responsible. City is not responsible or liable for Design Professional's failure to comply with any and all of the requirements set forth in this Agreement.

14. Nonexclusive Agreement. Design Professional understands that this is not an exclusive Agreement and that City shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Design Professional as City desires.

15. Confidential Information. All data, documents, discussions or other information developed or received by or for Design Professional in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, as required by law, or as otherwise allowed by this Agreement.

16. Insurance. Design Professional shall provide insurance in accordance with the requirements of Exhibit C.

17. Assignment Prohibited. Design Professional shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of City and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

18. Termination.

A. If Design Professional at any time refuses or neglects to prosecute its Services in a timely fashion or in accordance with the schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its Services, or otherwise fails to perform fully any and all of the agreements herein contained, Design Professional shall be in default.

B. If Design Professional fails to cure the default within seven (7) days after written notice thereof, City may, at its sole option, take possession of any Documents or other materials (in paper and electronic form) prepared or used by Design Professional and (1) complete any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Design Professional under this Agreement; and/or (2) terminate Design Professional's right to proceed with this Agreement.

C. In the event City elects to terminate, City shall have the right to immediate possession of all Documents and work in progress prepared by Design Professional, whether located at Design Professional's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In

case of such default termination, Design Professional shall not be entitled to receive any further payment under this Agreement until the Services are completely finished.

D. In addition to the foregoing right to terminate for default, City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Design Professional ("Termination for Convenience"). In the event of a Termination for Convenience, Design Professional shall be entitled to payment in an amount that shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by City, plus (2) reimbursable expenses actually incurred by Design Professional, as approved by City. The amount of any payment made to Design Professional prior to the date of termination of this Agreement shall be deducted from the amounts described in (1) and (2) above. Design Professional shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of such termination and payment. In addition, City's right to withhold funds under Section 18.C. shall be applicable in the event of a termination for convenience.

E. If this Agreement is terminated by City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a Termination for Convenience under this Section 18 and Design Professional shall be entitled to receive only the amounts payable under Section 18.D.

19. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as he/she deems necessary due to unfavorable conditions or to the failure on the part of the Design Professional to perform any provision of this Agreement. Design Professional will be paid for satisfactory Services performed through the date of temporary suspension. In the event that Design Professional's Services hereunder are delayed for a period in excess of six (6) months due to causes beyond Design Professional's reasonable control, Design Professional's compensation shall be subject to renegotiation.

20. Entire Agreement and Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between City and Design Professional and supersedes any previous agreements, whether verbal or written, concerning the same subject matter. This Agreement may only be amended or extended from time to time by written agreement of the parties hereto.

21. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

22. Litigation Support. Design Professional agrees to testify at City's request if litigation is brought against City in connection with Design Professional's Services. Unless the action is brought by Design Professional or is based upon Design Professional's negligence, City will compensate Design Professional for the preparation and the testimony at Design Professional's standard hourly rates, if requested by City and not part of the litigation brought by City against Design Professional.

D. City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in the City Manager's office. Access to such records and documents shall be granted to any party authorized by Design Professional, Design Professional's representatives, or Design Professional's successor-in-interest.

E. Pursuant to California Government Code Section 10527, the parties to this Agreement shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

27. Equal Employment Opportunity. Design Professional is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Design Professional will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Design Professional will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design Professional further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

28. Unauthorized Aliens. Design Professional hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Design Professional so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Design Professional hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

29. Section Headings. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

30. City Not Obligated to Third Parties. City shall not be obligated or liable for payment hereunder to any party other than the Design Professional.

31. Remedies Not Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

32. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

33. No Waiver Of Default. No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

34. Successors And Assigns. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

35. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Services
- B. Exhibit B: Compensation – Rates and Schedules
- C. Exhibit C: Insurance Requirements
- D. Exhibit D: Key Personnel and Other Consultants, Specialists or Experts Employed by Design Professional

36. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

37. News Releases/Interviews. All Design Professional and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by City.

38. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Sonoma, California.

39. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Design Professional hereby warrants that it shall

not have breached the terms or conditions of any other contract or agreement to which Design Professional is obligated, which breach would have a material effect hereon.

IN WITNESS WHEREOF, City and Design Professional have executed this Agreement as of the date first above written.

CITY OF ROHNERT PARK

By: _____
Gabriel A. Gonzalez, City Manager

Date:
Per Resolution No. 2011-____ adopted by the Rohnert
Park City Council at its meeting of July 26, 2011.

DESIGN PROFESSIONAL

By: _____
Title: _____

Date: _____
DESIGN PROFESSIONAL

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
Title: _____
Date: _____

ATTEST:

By: _____
City Clerk

EXHIBIT A

Scope of Services

As specifically authorized by separate Task Order, Design Professional may perform the following services:

W-Trans may be asked to perform the following services on an as-needed basis:

1. Neighborhood Traffic Control/Neighborhood Traffic Studies – As issues relative to neighborhood traffic arise, assistance with the appropriate analysis and reporting will be provided.
2. Collision Records and Analysis – W-Trans could review collision records and monitor locations that have had high collision experience on an as-needed basis, including field reviews and recommendations for potential measures to address safety concerns.
3. Traffic Counts – W-Trans crews would be available to perform machine and turning movement counts as needed for analyses. The cost for this type of work is highly dependent upon the number of locations and would normally be part of some other type of analysis such as speed surveys, neighborhood issues, etc.
4. Traffic Control Device Inventories – We could assist in the development and data collection of traffic control devices such as stop signs, speed limit, and other regulatory and warning signs.
5. Traffic Control Device Warrants – Warrants will be prepared relative to the need for new or changed right-of-way controls as requested.
6. Preparation of Striping and Signing Plans – Plans and associated specifications and cost estimates will be prepared for minor signing and striping changes.
7. Pedestrian Safety/School Area Safety – As the need arises, Safe Route to School plans or other pedestrian safety issues would be evaluated.
8. Traffic Control Plan Review – Traffic control plans submitted by contractors could be reviewed to ensure compliance with Town standards.
9. Grants and Funding Opportunity Applications – W-Trans will assist City staff in preparing competitive applications for transportation grants and other funding opportunities.

A total budget of \$40,000 is requested to continue providing staff services on an as-needed basis. Billings will be provided on a monthly basis, and will include line items for the various tasks worked on.

EXHIBIT B
Compensation
Rates and Schedules

Exhibit B – Rates and Schedules



Whidlock & Weinberger
Transportation, Inc.

490 Mendocino Avenue
Suite 201
Santa Rosa, CA 95401

voice 707.542.9500
fax 707.542.9590
web www.w-trans.com

Reduced Fee Schedule

2011 Staff Billing Rates

| Position | Billing Rate (per hour) |
|---------------------------------|------------------------------------|
| Principal | \$155-\$198 |
| Senior Associate | \$144-\$153 |
| Associate | \$126-\$144 |
| Senior Engineer/Planner | \$117-\$126 |
| Transportation Engineer/Planner | \$85.50-\$117 |
| Assistant Engineer/Planner | \$76.50-\$85.50 |
| Technician/Administrative | \$63.00-\$76.50 |
| Intern | \$27-\$45 |
| Field Technician | \$13.50-\$36 |

2011 Expense Charges

| Item | Charge |
|-----------------------|---------------|
| Mileage | \$0.55/mile |
| Services and Expenses | 10% surcharge |

These rates are valid for work initiated prior to December 31, 2011. Work initiated after January 1, 2012, and any subsequent year may be billed at the revised rates established for that year.

EXHIBIT C

Insurance Requirements to Agreement For Design Professional Services Re: MASTER AGREEMENT WITH WHITLOCK & WEINBERGER

Design Professional shall, at all times it is performing services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. Design Professional will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Design Professional agrees to amend, supplement or endorse the existing coverage to do so. Design Professional acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Design Professional in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

1. Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 00 01 or an approved equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review, but in no event shall be less than \$2,000,000 (Two Million Dollars) each occurrence;
2. Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or an approved equivalent. Limits are subject to review, but in no event shall be less than \$2,000,000 (Two Million Dollars) each occurrence. If Design Professional or its employees will use personal autos in any way in connection with performance of the Services, Design Professional shall provide evidence of personal auto liability coverage for each such person.
3. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers liability insurance, with minimum limits of \$1,000,000 (One Million Dollars) per occurrence.
4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Design Professional, subconsultants or others involved in performance of the Services. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000 (Two Million Dollars) per occurrence.

5. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Design Professional and "Covered Professional Services" as designated in the policy must include the type of work performed under this Agreement. The policy limit shall be no less than \$1,000,000 (One Million Dollars) per claim and in the aggregate.

6. Insurance procured pursuant to these requirements shall be written by insurers that are authorized to transact the relevant type of insurance business in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

7. General conditions pertaining to provision of insurance coverage by Design Professional. Design Professional and City agree to the following with respect to insurance provided by Design Professional:

A. Design Professional agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officers, elected officials, employees, agents, and volunteers, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or an equivalent. Design Professional also agrees to require all contractors, and subcontractors to do likewise.

B. No liability insurance coverage provided to comply with this Agreement, except the Business Auto Coverage policy, shall prohibit Design Professional, or Design Professional's employees, or agents, from waiving the right of subrogation prior to a loss. Design Professional agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

C. All insurance coverage and limits provided by Design Professional and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to City or its operations limits the application of such insurance coverage.

D. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

E. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

F. All coverage types and limits required are subject to approval, modification and additional requirements by City, as the need arises, and City shall be responsible for the cost of any additional insurance required. Design Professional shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

G. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured

endorsement to Design Professional's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City may terminate this agreement in accordance with Section 18 of the Agreement.

H. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Design Professional agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

I. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Design Professional or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to City.

J. Design Professional agrees to ensure that subconsultants, and any other party involved with the Services who is brought onto or involved in the Services by Design Professional, provide the same minimum insurance coverage required of Design Professional; provided, however that only subconsultants performing professional services will be required to provide professional liability insurance. Design Professional agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Design Professional agrees that upon request, all agreements with subcontractors and others engaged in the Services will be submitted to City for review.

K. Design Professional agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, architect, consultant or other entity or person in any way involved in the performance of work on the Services contemplated by this agreement to self-insure its obligations to City. If Design Professional's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to City. At that time City shall review options with the Design Professional, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

L. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Design Professional ninety (90) days advance written notice of such change. If such change results in additional cost to the Design Professional, and City requires Design Professional to obtain the additional coverage, City will pay Design Professional the additional cost of the insurance.

M. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

N. Design Professional acknowledges and agrees that any actual or alleged failure on the part of City to inform Design Professional of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

O. Design Professional will endeavor to renew the required coverages for a minimum of three years following completion of the Services or termination of this agreement and, if Design Professional is unable to do so, Design Professional will notify City at least thirty days prior to the cancellation or expiration of the policy or policies.

P. Design Professional shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Design Professional's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

Q. The provisions of any workers' compensation or similar act will not limit the obligations of Design Professional under this agreement. Design Professional expressly agrees that any statutory immunity defenses under such laws do not apply with respect to City, its officers, elected officials, employees, agents, and volunteers.

R. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

S. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

T. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

U. Design Professional agrees to be responsible for ensuring that no contract entered into by Design Professional in connection with the Services authorizes, or purports to authorize, any third party to charge City an amount in excess of the fee set forth in the agreement on account of insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

V. Design Professional agrees to provide immediate notice to City of any claim or loss against Design Professional arising out of the work performed under this

agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

EXHIBIT D

Key Personnel and Other Consultants, Specialists or Experts Employed by Design Professional

Dalene J. Whitlock

Steve Weinberger

Mark Spencer

Allan Tilton

Don Costa

Mary Jo Yung

Zack Matley

Josh Abrams

Tony Henderson

Vanessa Aguayo

Chris Helmer

Debbie Mizell

Corinne Rasmussen

Ward Cargay

Angela McCoy