

RESOLUTION NO. 2012- 57

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK APPROVING THE INTERGOVERNMENTAL SHARED SERVICES AGREEMENT FOR MATERIAL TESTING AND INSPECTION SERVICES BETWEEN THE CITY OF ROHNERT PARK AND THE COUNTY OF SONOMA AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAID AGREEMENT

WHEREAS, the City and County have determined it to be in their mutual best interests to share services when it would result in a cost savings to the City and the County; and

WHEREAS, the City and County have identified certain services that if shared will provide a cost savings to both parties, including project inspection services, laboratory and field services involving sampling and testing of construction materials for contract compliance, and miscellaneous engineering analysis related to the expertise of materials laboratory staff; and

WHEREAS, City periodically has need of the types of services performed by County's materials lab and construction inspection services and desires to be able to utilize County for these services on an as needed basis; and

WHEREAS, County is prepared to provide the services identified in this Agreement – provided that County has the capacity and sufficient manpower at the time City requests such services – upon the terms and conditions provided herein; and

WHEREAS, this Agreement does not commit County to providing any of the services identified in this Agreement to City. County may refuse to provide services requested by City pursuant to this Agreement at any time, and City may choose to utilize third parties to provide services instead of requesting services pursuant to this Agreement; and,

WHEREAS, this Agreement does not commit either the City or the County to providing any of the services identified in this Agreement to the other party. Either party may refuse to provide services requested by the other party pursuant to this Agreement at any time, and either party may choose to utilize third parties to provide services instead of requesting services pursuant to this Agreement; and

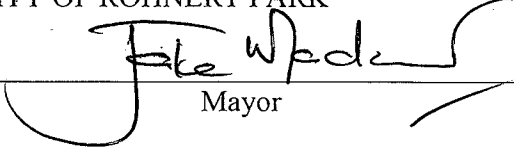
WHEREAS, City and County are prepared to provide the services identified in the attached Exhibits "A," and "B" of this Agreement on the terms and conditions provided herein;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Rohnert Park hereby approves the Intergovernmental Shared Services Agreement between the City of Rohnert Park and the County of Sonoma; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the said agreement for and on behalf of the City of Rohnert Park in substantially similar form to the attached contract: is further authorized to delegate to his designee approval authority for payments for services rendered under this agreement.

DULY AND REGULARLY ADOPTED this 12th day of June, 2012.

CITY OF ROHNERT PARK



Mayor

ATTEST:



City Clerk



AHANOTU: AYE BELFORTE: AYE CALLINAN: AYE STAFFORD: AYE MACKENZIE: AYE
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

INTERGOVERNMENTAL SERVICE AGREEMENT
BETWEEN
THE COUNTY OF SONOMA
AND
THE CITY OF ROHNERT PARK

This agreement ("Agreement"), dated as of _____ ("Effective Date") is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and the City of Rohnert Park, a municipal corporation formed under the laws of the State of California (hereinafter "City"). City and County may be individually or collectively referred to herein as a "party" or the "parties," respectively.

RECITALS

WHEREAS County operates a materials laboratory and construction inspection office that perform certain services, including project inspection services, laboratory and field services involving sampling and testing of construction materials for contract compliance, and miscellaneous engineering analysis related to the expertise of materials laboratory staff; and,

WHEREAS, City periodically has need of the types of services performed by County's materials lab and construction inspection services and desires to be able to utilize County for these services on an as needed basis, and

WHEREAS, County is prepared to provide the services identified in this Agreement – provided that County has the capacity and sufficient manpower at the time City requests such services – upon the terms and conditions provided herein.

WHEREAS, this Agreement does not commit County to providing any of the services identified in this Agreement to City. County may refuse to provide services requested by City pursuant to this Agreement at any time, and City may choose to utilize third parties to provide services instead of requesting services pursuant to this Agreement; and,

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. SCOPE OF SERVICES.

1.1 Services Offered. Subject to having sufficient capacity and available manpower to perform any requested services, County agrees, upon receipt of a written request from City as provided in Section 1.2 below, to offer to City the services described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter "Services").

1.2 Request & Provision of Services. City may request that Services be rendered pursuant to this Agreement by presenting a written request for Services to County. All requests

must be approved in writing by an authorized County representative, and County shall not be obligated to perform any Services unless and until a request has been approved and executed as provided hereinafter. The Services being requested and the time for completion of the Services (hereinafter "Scope of Services") shall be clearly identified in the written request. County may deny a Scope of Services and refuse to provide Services to City for any reason. No Services shall be provided until the Scope of Services is signed by both parties. Neither party guarantees a minimum or maximum amount of Services that it will request or provide pursuant to this Agreement.

1.3 Non-Exclusivity. This Agreement does not preclude either (i) City from hiring third parties to perform Services or using its own facilities, equipment and personnel to perform Services, or (ii) County from entering additional agreements to perform Services for third parties. City retains its discretion to decide if and when to place a request for Services with County, and nothing in this Agreement shall be construed as requiring City to request Services from County. County retains its discretion to decide if and when to accept a request for Services from City, and nothing in this Agreement shall be construed as requiring County to accept a request for Services from City.

2. CONTACT INFORMATION AND HOURS OF OPERATION.

County's Materials Lab is located at 2688 Ventura Avenue, Santa Rosa, CA 95403 and County's Construction Inspection Office is located at 2300 County Center Drive, Suite B-100, Santa Rosa, CA 95403. Contact information and hours of operation for County's Materials Lab are provided in Exhibit "A," attached hereto and incorporated herein by this reference. From time to time, this Exhibit may be updated to reflect any changes to the contact information or hours of operation stated therein.

3. CHARGES AND BILLING

3.1 Payment. All Services performed hereunder, shall be invoiced and paid on a time and material/expense basis in accordance with the rates set forth in Section 3.2 herein. County shall invoice City within thirty (30) days of the completion of the Services covered by the Scope of Services. Unless otherwise requested by City, in the event County accepts multiple Scopes of Services in a calendar month, County may elect to instead provide one invoice to City for all of the Services provided within a calendar month. City shall remit payment to County within thirty (30) days of City's receipt and approval of an invoice.

3.2 Billing and Rates. All expenses, including labor, materials, vehicle mileage, testing expendables, overhead, and third-party charges, shall be charged to City at direct cost based on County's established rates at the time such Services are performed. County's rates are established each fiscal year and are subject to change. County's current rates for the Services are set forth in Exhibit "A," attached hereto and incorporated herein by this reference. County agrees to notify City of any changes in the rates for the Services in a timely manner.

4. AGREEMENT ADMINISTRATION & DISPUTE RESOLUTION.

4.1 Authority to Act Under This Agreement. All action pursuant to this Agreement requiring approval of or agreement by "City" may be authorized by the City's Deputy City Engineer, Patrick Barnes, or a duly authorized delegate ("authorized City representative"). All action pursuant to this Agreement requiring approval of or agreement by "County" may be authorized by County's Director of Transportation and Public Works, or a duly authorized delegate, as long as such decisions or actions are within the authority delegated to the Director by the Sonoma County Board of Supervisors ("authorized County representative"). For the purposes of approving a written requests for Services pursuant to Section 1.2 above, the Director hereby delegates such authority to the individuals identified in Section II of Exhibit "A."

4.2 Problem Resolution and Dispute Process. If at any time a disagreement or problem should arise concerning the operation of this Agreement, the parties agree that the dispute will be resolved at the division manager level within County and City's respective organizations. If the appropriate City representative and the County representative are unable to resolve the problem within 30 days, the matter shall be submitted to the City Manager and the Director of Transportation and Public Works or their respective designees.

5. INDEMNIFICATION.

Each party shall indemnify, defend, protect, hold harmless, and release the other, and any and all of its officers, agents, and employees, from and against any and all claims, suits, losses, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and costs, witness costs, court costs, interest, and defense costs) where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by the indemnifying party or by any individual or entity for which the indemnifying party is legally liable, including but not limited to officers, agents, employees or sub-contractors. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts. This indemnity provision survives the Agreement. The provisions of this section do not apply to claims occurring as a result of the sole negligence of the party which would otherwise be indemnified. The provisions of this section shall not release either party from liability arising from its gross negligence or willful acts or omissions or the gross negligence or willful acts or omissions of its officials, employees and agents.

6. INSURANCE.

Each party shall be responsible for maintaining the insurance specified in attached Exhibit D either through a program of insurance or self-insurance or any combination thereof.

7. TERM OF AGREEMENT.

This Agreement shall commence on the Effective Date and shall have an initial term of three (3) years unless terminated earlier in accordance with the provisions of Section 8 below. The parties

may mutually agree in writing to extend the term of this Agreement for one (1) additional three-year term at any time prior to its expiration or termination. Any such extension shall be upon the same terms and conditions set forth herein.

8. TERMINATION.

8.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, either party shall have the right, in its sole discretion, to terminate this Agreement by giving thirty (30) days written notice to the other party.

8.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should a party fail to perform any of its material obligations hereunder or otherwise violate any of the terms of this Agreement, the other party, in addition to any other remedies, may immediately terminate this Agreement by giving the noncompliant party written notice of such termination, stating the reason for termination.

8.3 Completion of Pending Services; Payment Upon Termination. The parties agree that if either party terminates the Agreement pursuant to this Section 8, County will complete any Services for which a Scope of Services has already been signed in accordance with the terms of this Agreement and the Scope of Services, unless City agrees in writing that County is released from providing any further Services stated in the Scope of Services. Upon termination of this Agreement by either party, County shall be entitled to receive full payment for all services satisfactorily rendered and expenses incurred hereunder through and until the final date of termination. In the event City releases County from providing further Services under any pending Scope of Services, City agrees to pay County an amount which bears the same ratio to the total payment specified in the Scope of Services as the services satisfactorily rendered hereunder by County bear to the total services otherwise required to be performed for such total payment.

8.4 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of County. In addition, the Purchasing Agent or the Director of Transportation and Public Works, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of County. The City Council or City Manager has the authority to terminate this Agreement on behalf of City.

9. INDEPENDENT AGENCIES.

9.1 Each party is and shall at all times remain a wholly independent agency and nothing herein shall be construed or is intended to make either party an officer, employee or agent of the other party. Neither party shall have the authority to bind the other party in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against the other party, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the other party.

9.2 The personnel performing the Services under this Agreement on behalf of City shall at all times be under City's exclusive direction and control, and the personnel performing the

Services under this Agreement on behalf of County shall at all times be under County's exclusive control. Neither party, nor any elected or appointed boards, officers, officials, employees or agents of the party, shall have control over the conduct of the other party or any of the other party's officers, employees, or agents except as set forth in this Agreement. Neither party shall at any time or in any manner represent that the other party or any of the other party's officers, employees, or agents are in any manner officials, officers, employees or agents of the other party.

9.3 None of County's officers, employees or agents shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. None of City's officers, employees or agents shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to County's employees.

10. ADDITIONAL DOCUMENTS AND AGREEMENTS

The parties agree to cooperate in the execution of any additional documents or agreements that may be required to carry out the terms of this Agreement.

11. AGREEMENT CONTROLLING.

In the event of a conflict between the provisions of the body of this Agreement and the Exhibits, the provisions of the body of the Agreement shall prevail.

12. NOTICES.

Whenever notice is required there under, it shall be given in writing to the parties as follows:

City of Rohnert Park:
City Manager
130 Avram Avenue
Rohnert Park, CA 94927

County of Sonoma:
Director of Transportation and Public Works
2300 County Center Dr. B-100
Santa Rosa, CA 95403

When so addressed, notice shall be deemed served as follows:

- (a) If a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day.
- (b) When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time).
- (c) In all other instances, notices, bills and payments shall be effective upon receipt by the recipient.

Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Section 12.

13. ASSIGNMENT/DELEGATION.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

14. NON-DISCRIMINATION.

County and City shall comply with all applicable federal, state and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, sexual orientation, age, medical condition (including AIDS or HIV), handicap, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are deemed incorporated by this reference.

15. AMENDMENT.

Changes to this Agreement may be authorized only by written amendment, signed by both the Rohnert Park City Counsel and the Sonoma County Board of Supervisors.

16. CONSENT

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

17. ENTIRE AGREEMENT

This Agreement, including the attached Exhibits "A" and "B," is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No statements, representations or other Agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. Except for rates and contact information specified in Exhibits A, no modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties. The Department of Transportation and Public Works, in consultation with County Counsel, may execute minor amendments on behalf of County. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

18. WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement.

Acceptance by either party of any Services by the other party shall not constitute a waiver of any of the provisions of this Agreement.

19. EXCUSABLE DELAYS

County shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of County. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments not parties to this Agreement, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather.

20. APPLICABLE LAW; VENUE

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the City of Santa Rosa, in the County of Sonoma.

21. CONSTRUCTION/SEVERABILITY

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s). The parties acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. The parties acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

22. NO THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

23. CAPTIONS

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

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