

RESOLUTION NO. 2013-009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING CITY MANAGER TO ENTER INTO A CONSULTANT SERVICE AGREEMENT WITH DUDEK FOR PLANNING AND ENVIRONMENTAL SERVICES

WHEREAS, the City desires to obtain general planning and environmental services; and

WHEREAS, Dudek submitted a proposal indicating they have the experience and expertise to provide said services; and

WHEREAS, Dudek provides similar services to the City for planning and environmental review services.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Rohnert Park that:

1. The Consultant Services Agreement by and between Dudek and the City of Rohnert Park for ongoing on-call general planning and environmental review services is hereby approved.
2. The City Manager is hereby authorized and directed to execute this agreement in substantially similar form to the attached agreement attached hereto as **Exhibit A** and incorporation by this reference, for and on behalf of the City of Rohnert Park.
3. The Director of Development Services or his designee is authorized to manage said agreement on behalf of the City.

DULY AND REGULARLY ADOPTED this 22nd day of January 2013.

CITY OF ROHNERT PARK

Pam Stafford
Mayor

ATTEST:

John M. Buehler
City Clerk



Attachment: Agreement

Ahanotu: AYE Belforte: AYE Mackenzie: AYE Callinan: AYE Stafford: AYE
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

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

CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement is entered into as of the ____ day of _____, 2013, by and between the CITY OF ROHNERT PARK ("City"), a California municipal corporation, and Dudek ("Consultant"), a California corporation.

Recitals

WHEREAS, City desires to obtain development review and environmental planning services and biological resource studies, permitting and services, and

WHEREAS, Consultant hereby warrants to City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee shall represent City for all purposes under this Agreement. The Planning and Building Manager is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Cathy Spence-Wells to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services

A. Scope of Services. Subject to such policy direction and approvals as City may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence upon receipt of a written notice to proceed from City, but in no event prior to

receiving a fully executed agreement from City and obtaining and delivering the required insurance coverage, and satisfactory evidence thereof, to City. Consultant shall perform its services in accordance with the Scope of Services.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant 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 Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit B, and incorporated herein by reference. Under no circumstances shall the total amount City pays Consultant for the Services exceed \$95,000.

B. Ninety Five Thousand Dollars (\$95,000); provided, however, that work authorized by authorization to proceed as contemplated by this Agreement shall be subject to the compensation set forth in the Agreement and may not exceed \$95,000. 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. City shall pay Consultant as compensation in full for such services and expenses for the different elements of the scope of work as follows:

- (1) For work pertaining to Development Review Services (see Exhibit A, paragraphs 1 and 2) the hourly rates for said service is at Consultant's standard hourly rates set forth in Exhibit B.
- (2) Any changes to Consultants standard hourly rates must be provided to and approved by the City thirty (30) days prior to such rates taking effect.

C. Timing of Payment.

- (1) Consultant shall submit itemized monthly statements for work performed. Compensation for work for specific development projects (see Exhibit A, paragraphs 1 and 2) will be by monthly invoice and categorized by development project name. City shall make payment, in full, within thirty (30) days after approval of the invoice by City.
- (2) Payments due and payable to Consultant 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 Consultant 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.

D. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Section 4(A) without prior written amendment to this Agreement.

E. Taxes. Consultant 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 Consultant.

F. No Overtime or Premium Pay. Consultant 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. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant 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.

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

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant 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.

6. Term. The term of this Agreement shall commence on the date of its execution by both parties and shall continue in full force and effect until December 31, 2017, unless earlier terminated in accordance with Section 18. Notwithstanding the foregoing, this Agreement may be extended for successive one-year term(s) upon mutual, written approval by the City Manager or his/her designee and Consultant. Work authorized by a separate Task Order as contemplated by this Agreement shall be performed in accordance with the schedule set forth in the Task Order.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the

requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic project notes, reports, graphics, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant 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 the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees at all times to avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- (1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the 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.
(2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, elected official, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount

which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, elected officials, employees, agents, and volunteers from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement. This indemnification shall be regardless of and not in any way limited by the insurance requirements of this contract. This indemnification is for the full period of time allowed by law and shall survive the termination of this agreement.

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

14. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant 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 Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) 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 the City's office of the City Clerk.

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

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Business Licenses. Except as otherwise allowed by City in its sole discretion, Consultant and all subconsultants shall have acquired, at their expense, a business license from the 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.

G. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its officers, elected officials, employees, agents and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for City.

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

16. Assignment; Subcontractors; Employees

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper

manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

17. Insurance. Without limiting Consultant's indemnification provided herein, Consultant shall comply with the requirements set forth in Exhibit C to this Agreement.

18. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5 days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violates any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

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 it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory services performed through the date of temporary suspension.

20. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

26. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

27. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, religion, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, religion, 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. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

28. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than Consultant.

29. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that such party may have hereunder.

30. 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.

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

- A. Exhibit A: Scope of Work
- B. Exhibit B: Compensation
- C. Exhibit C: Insurance Requirements

32. 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.

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

34. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that a trial of such action shall be held exclusively in a state court in the County of Sonoma, California.

35. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

36. STATEMENT OF ECONOMIC INTEREST. If City determines Consultant comes within the definition of Consultant under the Political Reform Act (Government Code §87100), Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with the Clerk of the City of Rohnert Park disclosing Consultant and/or such other person's financial interests.

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

CITY OF ROHNERT PARK

CONSULTANT

By: _____
City Manager
Date: _____
Per Resolution No. 2013-____ adopted by the Rohnert
Park City Council at its meeting of _____.

By: _____
Title: _____
Date: _____

CONSULTANT

By: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

EXHIBIT A
SCOPE OF WORK

1. Development Review Planning Services

Consultant will provide contract staffing services to assist the City of Rohnert Park staff with the project management and entitlement processing tasks for development projects under review at the City. Service covered under this section is for service that is reimbursed by private development and applicants under the City's cost recovery program. Tasks to be performed shall be specifically requested by City before and work is initiated and may include:

- A. Environmental Document Preparation and Management Provide oversight and direction to project applicants and environmental consultants throughout completion of the EIR process, serving as primary contact between the City, the applicant and EIR consultant. Review and comment on the environmental documents on behalf of the Planning Division. Compile all EIR review comments completed by the various City departments and assist with the interdepartmental coordination of EIR-related comments as needed. Oversight and management of the EIR preparation; ensure routing of submittals to the appropriate departments and agencies; and provide EIR status/schedule updates. Ensure departmental files provide a legally-adequate EIR administrative record. Complete or review environmental documentation to ensure compliance with CEQA and other state regulations.
- B. Application Review and Coordination Assist staff in ongoing processing and management of the applications; update and organize all project files; review and comment on all project submittals; and be responsible for scheduling regular meetings on an individual and group basis between City staff, applicant and other agencies as needed to ensure steady progress of the application processing. This would include communication and coordination with each of the City departments and agencies in a manner that will provide consistent responses and direction to the project applicant.
- C. Development Agreement Provide support to City staff with Development Agreement negotiations and completion of draft DAs.
- D. Staff Report Preparation Prepare staff reports for Park and Recreation Commission, Planning Commission and City Council hearing, conditions of approval and findings, as directed by the Planning and Building Manager.
- E. Public Hearing Preparation Prepare public presentation materials, including staff reports and exhibits for the Commission and Council hearings.
- F. Annexation Prepare annexation applications and coordinate process through LAFCO.

Exhibit A

G. Project Implementation Review and provide input on all supporting plans, programs and actions to ensure that the project is consistent with City policies and environmental mitigation requirements. Coordinate update of Specific Plan, General Plan Diagram and Zoning Map to reflect final decision on development projects.

H. Other Work As directed by the Planning and Building Manager.

2. Biological Resources Studies, Permitting and Services

Consultant will provide biological services to assist the City of Rohnert Park staff with the project management and entitlement processing tasks for development projects under review at the City. Service covered under this section is for service that will be reimbursed by private development and applicants under the City's cost recovery program. Tasks to be performed shall be specifically requested by City before and work is initiated and may include:

- A. Biological Resources Assessments Review background information (soils, aerial photos, topographic maps, other environmental documents). Obtain report from the California Natural Diversity Data Base for special status species occurrences in the region. Perform query of the California Native Plant Society database for rare plants with potential to occur in the project area. Obtain a database report from the USFWS for special-status species with potential to occur in the project area and critical habitat. Conduct field survey of site to inventory vegetation types and wildlife habitat. Prepare a list of observed plants and animals. Prepare exhibits including habitat maps, species occurrence data, critical habitat, and ground photos. Identify the location of any special status species populations. Prepare Biological Resources Assessment report documenting results of research and field survey(s).
- B. Special-status Plant and Animal Surveys Biologists will survey the site for the occurrence of special-status species according to applicable regulatory guidance for surveys within the Santa Rosa Plain Conservation Strategy Area. Prepare a list of species observed and field map locations of any rare plant populations or special-status animal species observed. Prepare exhibits to identify the locations of species mapped during the field survey. Incorporate the results of the survey into survey report include recommendations for appropriate mitigation strategies for any species identified.
- C. Wetland Delineations and Verifications Wetland delineations will be conducted to the standards established by the San Francisco District Corps office. Obtain and evaluate background data, such as aerial photographs, soils maps, and other pertinent information. Conduct a wetland delineation according to the Corps' 1987 manual using the three parameter method described in the manual. Create a wetland delineation map showing the features identified as waters of the United States during the delineation site visit. Prepare a Wetland Delineation Report for submission to the U.S. Army Corps of Engineers. Work with the Corps to finalize verification of the Wetland Delineation map.

- D. Resource Agency Consultation and Permitting Resource specialists will work on behalf of the City with applicable state and federal agencies to consult regarding Clean Water Act, Endangered Species Act and other regulations to obtain information and permits, as needed.
- E. Other Work As directed by the Planning and Building Manager.

EXHIBIT B
COMPENSATION

Fee Schedule for Consultant Services Agreement

	Title	Hourly Rate
PLANNING	Principal Planner	155.00
	Senior Planner	130.00
	Associate Planner	110.00
	Assistant Planner	85.00
	Resource Specialist	100.00
NATURAL RESOURCES	Senior Biologist	130.00
	Associate Biologist	110.00
	Assistant Biologist	85.00
PROJECT SUPPORT	CAD/GIS/Mapping Specialist	95.00
	Project Administrator/Editor	95.00
	Word Processing/Production/Admin	65.00
	Support	

REIMBURSABLE EXPENSES

Subcontractors include a 10% administration charge.

Mileage is charged at the IRS approved rate.

EXHIBIT C

INSURANCE REQUIREMENTS for Consultant Services Agreement

Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant 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 City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Consultant shall provide the following types and amounts of insurance:

General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact 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 less than \$2,000,000 (Two Million Dollars) per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form CA 0001 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$2,000,000 (Two Million Dollars) per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 (One Million Dollars) per accident or disease.

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 \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" 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 the 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 Consultant, subconsultants or others involved in the Work. 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.

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 consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$2,000,000 (Two Million Dollars) per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the

insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Best's rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant.

1. Consultant 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 20 10 or an approved equivalent. If completed operations coverage is excluded, the policy must be endorsed to include such coverage. Consultant also agrees to require all contractors, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant 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.
3. The worker's compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, elected officials, employees, agents, and volunteers for losses paid under the terms of this policy which arise from the work performed by the named insured for the City.
4. All insurance coverage and limits provided by Contractor 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 the City or its operations limits the application of such insurance coverage.
5. 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.
6. 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.
7. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant 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.
8. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant'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 has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement.

and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.

9. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Consultant 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.
10. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant 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.
11. Consultant agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant 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. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
12. Consultant 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, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
13. 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 Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.
14. 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.
15. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant 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.
16. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
17. Consultant 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 Consultant'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.

18. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its officers, elected officials, employees, agents, and volunteers.
19. 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.
20. 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.
21. 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.
22. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional 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.
23. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant 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.

CERTIFICATE OF CONSULTANT

I HEREBY CERTIFY that I am the _____, and a duly authorized representative of the firm of _____, whose address is _____, and that neither I nor the above firm I here represent has:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit to secure this Agreement.
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement;

Except as here expressly stated (if any);

I acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature