

RESOLUTION NO. 2013-115

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
AUTHORIZING AND APPROVING THE FIRST AMENDMENT TO THE
CONSULTANT SERVICES AGREEMENT WITH DUDEK**

WHEREAS; the City, pursuant to Resolution No. 2013-009, entered into a Consultant Services Agreement dated February 6, 2013 with Dudek for professional planning services; and

WHEREAS; in light of increased long range planning needs wishes to amend the scope of services by describing additional services to be supplied and amend the compensation to provide for compensation for the additional services; and

WHEREAS, the City and Consultant now desire to enter into a First Amendment of the Consultant Services Agreement to modify the Scope of Work and compensation;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize and approve the First Amendment of the Consultant Services Agreement by and between Dudek and the City of Rohnert Park for long-range planning services.

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

DULY AND REGULARLY ADOPTED this 13th day of August, 2013.



CITY OF ROHNERT PARK:

Pam Stafford
Pam Stafford, Mayor

ATTEST:

JoAnne Buergler
JoAnne Buergler, City Clerk

AHANOTU: AYE BELFORTE: AYE MACKENZIE: ABSENT CALLINAN: ABSENT STAFFORD: AYE
AYES: (3) NOES: (0) ABSENT: (2) ABSTAIN: (0)

**FIRST AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT WITH
DUDEK
FOR GENERAL PLANNING AND ENVIRONMENTAL CONSULTING SERVICES**

This First Amendment to the Consultant Services Agreement between the City of Rohnert Park ("City") and Dudek ("Consultant") for additional services ("First Amendment") is entered into as of the _____ day of _____, 20____, ("Effective Date"), by and between City and Consultant.

RECITALS

- A. City and Consultant are parties to that certain Agreement entitled "*Consultant Services Agreement*" dated February 6, 2013, and authorized by Resolution No. 2013- 009, for general planning, environmental and development review services for the Specific plan projects and other reimbursable projects; and.
- B. The City has major land development projects in Specific Plan / Planned Development Areas underway or scheduled for hearing, action or implementation in 2013/2014. The City anticipates processing the environmental documents, entitlements, and annexations on these areas within the next year.
- C. City and Consultant now desire to enter into this First Amendment to provide for additional work as described below.

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual promises, the parties hereby amend the Agreement as follows:

- 1. **Amendment to Scope of Services.** In addition to the services provided under the Agreement pursuant to Exhibit A, Consultant shall provide additional services, including but not limited to, the preparation of necessary reports and documents and additional meetings as described in the attached Attachments A, which shall be considered to be part of Exhibit A.
- 2. **Amendment to Compensation.** Consultant shall perform the services described in this First Amendment for a total not-to-exceed amount of ninety-five thousand dollars (\$ 95,000).

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. However, in no event shall the amount City pays Consultant exceed Ninety- five thousand dollars (\$95,000). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment. 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.

B. Timing of Payment.

- 1. Consultant shall submit itemized monthly statements for work performed. Compensation for work for specific development projects 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. **Interpretation.** In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall take precedence.

3. **Agreement in Effect.** Except as expressly set forth in this First Amendment, the Agreement is otherwise unmodified and shall remain in full force and effect and is incorporated and restated herein as if set forth at length. Each reference in the Agreement to itself shall be deemed to also refer to this First Amendment.

4. **Counterpart Signatures.** This First Amendment may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

IN WITNESS THEREOF, the parties have executed this First Amendment as of the date first written above.

CITY OF ROHNERT PARK:

CONSULTANT:

By: _____ / _____
City Manager per Resolution No. 2013-

By: June Collins 18/1/13
Name: Executive Vice President (Date)
Title: June Collins

ATTEST:

By: Cathleen Spence-Wells 18/1/13
Name: Cathleen Spence-Wells (Date)
Title: Principal

City Clerk
APPROVED AS TO FORM:

City Attorney

CERTIFICATE OF CONSULTANT

I HEREBY CERTIFY that I am the Executive Vice President and a duly authorized representative of the firm of Dudok, whose address is 853 Lincoln Way, Suite 208 Auburn CA 95603, 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.

8.1.13
Date



Signature

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.

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.

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 Support	65.00

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.