

RESOLUTION NO. 2014-115

RESOLUTION OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING THE FIFTH AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT WITH DUDEK FOR BIOLOGICAL AND REGULATORY PERMITTING SERVICES IN CONNECTION WITH DOWDELL AVENUE CONSTRUCTION – BUSINESS PARK DRIVE TO 850' S OF BUSINESS PARK DRIVE, CITY PROJECT NO. 2011-11

WHEREAS, the City of Rohnert Park Municipal Code Title 3 Chapter 3.04 provides that the city's purchasing functions shall be governed by the city's purchasing policy;

WHEREAS, on October 15, 2012, City and Dudek ("Consultant") entered into that certain agreement entitled "*Consultant Services Agreement*" ("Agreement") to provide biological and regulatory permitting services related to the construction of a new segment of Dowdell Avenue from Business Park Drive to 850' South of Business Park Drive for the amount of \$37,000.00 authorized per Rohnert Park Municipal Code Chapter 3.04 Purchasing Program;

WHEREAS, on March 23, 2013, the First Amendment to the Agreement to provide for consulting with CDFW on an Incidental Take Permit for State-listed species (i.e. California Tiger Salamander, Sebastopol meadowfoam) was authorized through the Purchasing Ordinance for an additional amount of \$2,500.00, thereby increasing the total cost of the Agreement to \$39,500.00;

WHEREAS, on September 18, 2013, the Second Amendment to the Agreement to provide for identification of mitigation banks for credit purchase, conducting Phase I Environmental Site Assessment (i.e. hazardous materials survey) was authorized through the Purchasing Ordinance for an additional amount of \$8,940.00, thereby increasing the total cost of the Agreement to \$48,440.00;

WHEREAS, on December 10, 2013, the Third Amendment to the Agreement to provide for the preparation of CEQA document for the Dowdell Avenue roadway extension to satisfy CDFW and RWQCB requirements for permitting was authorized pursuant to Council Resolution No. 2013-168 for an additional amount of \$10,000.00, thereby increasing the total cost of the Agreement to \$58,440.00;

WHEREAS, on July 8, 2014, the Fourth Amendment to the Agreement to provide for California Tiger Salamander (CTS) monitoring and reporting pursuant to CDFW Incidental Take Permit was authorized pursuant to Council Resolution No. 2014-080 for an additional amount of \$42,988.00, thereby increasing the total cost of the Agreement to \$101,428.00; and

WHEREAS, City and Consultant now desire to enter into a Fifth Amendment to the Agreement to provide for additional work for special status species monitoring and reporting, post-construction botanical monitoring and reporting, and additional work supporting permitting and environmental mitigation for the Dowdell Avenue Construction project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AS FOLLOWS:

Section 1. Recitals. That the above recitations are true and correct and material to this Resolution.

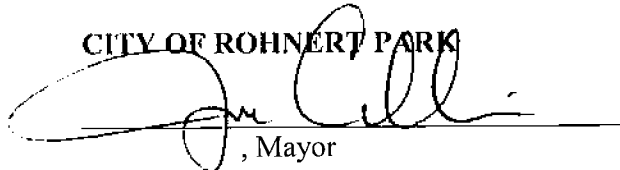
Section 2. Environmental Clearance. That the adoption of this Resolution and accompanying Amendment is exempt from review under the California Environmental Quality Act because the activity in question is not a project as defined under CEQA Guidelines Section 15378 in that there is no potential that the activity will result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

Section 3. Agreement. That the Fifth Amendment to the Agreement between Dudek and the City of Rohnert Park is hereby authorized and approved in an amount not to exceed an additional sixty-eight thousand four-hundred and nine dollars (\$68,409.00).

Section 4. Authorization. That the City Manager is hereby authorized and directed to take all actions to effectuate the Fifth Amendment to the Amendment for and on behalf of the City of Rohnert Park, including execution if necessary, in substantially similar form to the Fifth Amendment attached hereto and incorporated by this reference as Exhibit "A," subject to minor modifications by the City Manager or City Attorney.

DULY AND REGULARLY ADOPTED this 14th day of October, 2014.



CITY OF ROHNERT PARK

, Mayor

ATTEST:


JoAnne Buergler, City Clerk

Attachment (Exhibit "A") – Fifth Amendment

BELFORTE: ABSENT MACKENZIE: AYE STAFFORD: AYE AHANOTU: AYE CALLINAN: AYE
AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

EXHIBIT "A" TO RESOLUTION NO. 2014-115

**FIFTH AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT WITH
DUDEK FOR BIOLOGICAL AND REGULATORY PERMITTING SERVICES
IN CONNECTION WITH DOWDELL AVENUE CONSTRUCTION –
BUSINESS PARK DRIVE TO 850' S OF BUSINESS PARK DRIVE,
CITY PROJECT NO. 2011-11**

This Fifth Amendment to Consultant Services Agreement between the City of Rohnert Park ("City") and Dudek ("Consultant") for additional services ("Fifth Amendment") is entered into as of the _____ day of _____, 2014, ("Effective Date"), by and between City and Consultant.

RECITALS

- A. City and Consultant entered into that certain agreement entitled "*Consultant Services Agreement*" ("Agreement") to provide biological and regulatory permitting services related to the construction of a new segment of Dowdell Avenue from Business Park Drive to 850' South of Business Park Drive for the amount of \$37,000.00 authorized per Rohnert Park Municipal Code Chapter 3.04 Purchasing Program;
- B. On March 23, 2013, the First Amendment to the Agreement to provide for consulting with CDFW on an Incidental Take Permit for State-listed species (i.e. California Tiger Salamander, Sebastopol meadowfoam) was authorized through the Purchasing Ordinance for an additional amount of \$2,500.00, thereby increasing the total cost of the Agreement to \$39,500.00;
- C. On September 18, 2013, the Second Amendment to the Agreement to provide for identification of mitigation banks for credit purchase, conducting Phase I Environmental Site Assessment (i.e. hazardous materials survey) was authorized through the Purchasing Ordinance for an additional amount of \$8,940.00, thereby increasing the total cost of the Agreement to \$48,440.00;
- D. On December 10, 2013, the Third Amendment to the Agreement to provide for the preparation of CEQA document for the Dowdell Avenue roadway extension to satisfy CDFW and RWQCB requirements for permitting was authorized pursuant to Council Resolution No. 2013-168 for an additional amount of \$10,000.00, thereby increasing the total cost of the Agreement to \$58,440.00;
- E. On July 8, 2014, the Fourth Amendment to the Agreement to provide for California Tiger Salamander (CTS) monitoring and reporting pursuant to CDFW Incidental Take Permit was authorized pursuant to Council Resolution No. 2014-080 for an additional amount of \$42,988.00, thereby increasing the total cost of the Agreement to \$101,428.00; and
- F. City and Consultant now desire to enter into this Fifth 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. **Scope of Services.** In addition to the services provided under the Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment, Consultant shall provide additional services, including but not limited to, the preparation of necessary reports and documents with additional meetings as is more particularly described in **Attachment A**, which is attached hereto and incorporated by this reference.
2. **Compensation.** Consultant shall perform the services described in this Fifth Amendment for a total not-to-exceed amount of \$68,409 thus increasing the total cost of the Agreement as amended to \$169,837.
3. **Agreement in Effect.** Except as amended by this Fifth Amendment, the Agreement and all of its amendments shall remain in full force and effect.
4. **Counterpart Signatures.** This Fifth 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 Fifth Amendment as of the date first written above.

CITY OF ROHNERT PARK:

DUDEK:

By: _____ / _____
Darrin Jenkins, City Manager (Date)
Per Resolution No. 2014-_____ adopted by the Rohnert Park
City Council at its meeting of October 14, 2014.

By: _____ / _____
Name: _____ (Date)
Title: _____

ATTEST:

By: _____ / _____
Name: _____ (Date)
Title: _____

City Clerk

APPROVED AS TO FORM:

City Attorney

Scope of Work
for the
Dowdell Road Extension Project
California Tiger Salamander Monitoring

SCOPE OF WORK – Amendment 1 - 09/16/14

This scope of work amends Dudek's 6/11/14 scope of work for CTS monitoring to provide for additional monitoring days required to complete the project. Dudek initially estimated that monitoring of covered activities would be required for up to 20 full days and 24 half days. This was based on estimates received from the developer and the City. Dudek initiated monitoring on July 29 and has conducted mostly full days of monitoring since construction began. No CTS have been observed to date and no non-compliance incidents have been recorded by our monitor. Monitoring has been carried out consistent with the terms and conditions of the ITP (CDFW) and BO (USFWS). The contractor has indicated that covered activities such as excavation and grading could continue for an additional 14 to 21 days. All covered activities must be observed by a qualified onsite monitor. This amendment provides for up to 21 additional full days and 20 half days of monitoring and associated project management and worker training, as well as final reports. Half days would be used for pre-construction morning inspections prior to the start of work each day, weekly compliance checks when covered activities are not occurring, and for short duration covered activities that may occur intermittently up to project completion. Reports are included in this amendment since monitoring to date has utilized some of the original budget allotted to report preparation. This cost estimate also includes a 10% contingency.

Dudek staff, Senior Aquatic Ecologist Craig Seltenrich who holds a recovery permit for California tiger salamander (CTS), will continue as the Designated Representative for the project and associated monitoring for CTS, the only covered species, and will be responsible for communications with CDFW and USFWS and overseeing compliance with the California Department of Fish and Wildlife's Incidental Take Permit (ITP) No. 2081-2013-062-03 (revised May 29, 2014) and USFWS's letter (May 6, 2014) appending the project to the Programmatic Biological Opinion for the Santa Rosa Plain.

Our subconsultant, Vollmar Natural Lands Consulting, Inc., will continue to provide the Designated Biologist for this project. The Designated Biologist has extensive knowledge and experience with CTS including their biology and natural history, and protocols for surveying (sampling), collecting, and handling the species. The Designated Biologist will be responsible for monitoring Covered Activities (as stipulated in the ITP) to help minimize and fully mitigate or avoid the incidental take of individual CTS and to minimize disturbance to CTS habitat.

The Designated Biologist will follow all required monitoring and reporting requirements stipulated in the ITP under Section 5 General Provisions. The Designated Representative and Designated Biologist will also comply with all Monitoring, Notification, and Reporting provisions listed under Section 6 of the ITP and as listed and referenced in USFWS's letter. Additionally, to ensure that the incidental take of CTS is minimized, the Designated Biologist will follow Take Minimization Measures listed under Section 7 that apply to the biological monitor including 7.1 pre-construction surveys, 7.4 wildlife checks, 7.5 trench escape, 7.6 temporary barriers, 7.7 CTS relocation, 7.8 CTS handling, and 7.9 CTS injury. Pre-construction surveys include surveys for CTS and nesting bird species (Mitigation Measure BIO-3 from the CEQA Mitigation Monitoring and Reporting Plan).

COST ESTIMATE

The following cost estimate includes costs for both the Designated Representative/Project Manager (Dudek – Craig Seltenrich) and for the Designated Biologist/Biological Monitor (Vollmar Natural Lands Consulting, Inc.). The costs below provide for up to 21 full days of monitoring of covered activities and 20 half days of monitoring.

Designated Representative/Project Manager

Craig Seltenrich (Dudek)

Tasks

- 1) Project Management; communications/notifications with CDFW, Designated Biologist, and Project Foreman; overseeing activities of Designated Biologist; and overseeing compliance with ITP

Cost: \$1,600.00

- 2) Final site visit prior to completion of monitoring period to meet with Designated Biologist and project superintendent or onsite foreman, preparation and submittal of Quarterly Compliance Reports and Final Mitigation Report

Cost: \$3,900.00

Cost for Designated Representative/Project Manager: \$5,500.00

Designated Biologist/Biological Monitor

Vollmar

Tasks

- 1) Conduct monitoring and reporting requirements as stipulated in the ITP for the remainder of covered activities that will be carried out for the project.

ATTACHMENT A to AMENDMENT

Since the number of days that the Designated Biologist will need to be on-site for the project and the time required for the Designated Biologist to be on-site to conduct all necessary monitoring and reporting requirements will vary according to the timing and duration of Covered Activities, the following billing rate will be used:

- Full day (8 hrs on-site plus 2 hrs. drive time) @ \$990.00/day
- 1/2 day (3 hrs on-site plus 2 hrs. drive time) @ \$495.00/day

Our efforts will be as-needed and the level of effort and frequency and duration of monitoring will be evaluated in collaboration with USFWS and CDFW. Dudek will only charge for work actually completed.

Our monitor will be required to be on-site for full days for an estimated 21 days during which excavation and earthwork will occur. After that it is assumed that half days will be adequate to conduct morning inspections prior to work, train new workers, and receive updates from the onsite foreman. Half days could include once daily or once weekly inspections depending on construction activities and agency direction. This scope of work assumes up to 20 half days will be required prior to project completion. Based on these assumptions, the total estimated cost for the on-site monitor is:

21 full days @ \$990.00/day = \$20,790.00

20 half days @ \$495.00/day = \$9,900.00

Cost for Designated Biologist = \$30,690.00

Total Combined Estimated Cost = \$36,190

10% Contingency = \$3,619

Total Contract Amendment Cost Estimate = \$39,809

Dowdell Road Extension Project

Post-Construction Restoration Plan Implementation Monitoring Scope and Cost

SCOPE OF WORK – 09/16/14

TASK 1: Task 1 of this work program includes conducting post-construction monitoring of restoration plan implementation.

1. Dudek will conduct post-construction botanical monitoring of the revegetation plant establishment for three (3) years. We will perform both qualitative and quantitative monitoring to track the progress of the mitigation areas relative to the restoration plan, and to determine in a timely manner if remedial measures are needed.

The monitoring will be conducted monthly within the initial 90-day Plant Establishment Period during Year 1, then once every 3 months for the remainder of Year 1. In addition, we will conduct monitoring once every six months for two (2) more years.

Following each monitoring event, we will prepare a memorandum documenting our observations and summarizing our recommendations for any remedial actions, and will include representative site photos of the revegetation establishment progress. At the end of each year of the monitoring, we will prepare an Annual report in a memorandum format for submittal to CDFW; the report at the end of Year 3 will be prepared as a final report. The monitoring reports will document the progress of the revegetation areas relative to the success standards, and identify any recommended remedial measures.

Our cost proposal assumes the following:

Year 1:

- 1 initiation visit
- 3 visits during 90-day establishment period
- 3 visits during remainder of year at 90-day intervals
- 6 monitoring memos
- 1 annual memo report

Years 2 and Year 3:

- 2 visits per year (4 visits total) at 6-month intervals
- 2 monitoring memos
- 1 annual memo report
- 1 final memo report

City Staff Assistance: While this cost estimate assumes that Dudek personnel will conduct all monitoring visits, City staff can assist in monitoring efforts and thereby reduce overall costs for monitoring. Dudek will facilitate involvement by City staff by including a member of City staff in the initial site visit to identify photopoints and discuss monitoring methodology. This may include photodocumentation, species ID, estimating survival rate of plantings or other necessary field measurements or observations. It is reasonable to assume that City staff could serve as Dudek's "eyes in the field" to document field observations for monthly and quarterly monitoring and thereby reduce overall costs of monitoring involved in having Dudek travel to the site for these shorter interval site visits.

COST ESTIMATE

Tasks

- 1) Post-construction monitoring of restoration plan implementation (three years)

Cost: \$21,000.00

10% Contingency: \$2,100

TOTAL COST ESTIMATE: \$23,100

Please contact me at 530-863-4643 with any questions. – Markus Lang, Dudek

**SCOPE of WORK
for the
Dowdell Avenue Extension Project**

Task 1 (09/16/2014): Out of Scope Assistance with Permitting and Mitigation Measure Compliance, Mitigation Measure Implementation, and Compensatory Credits

Scope of Work: This scope of work identifies tasks performed by Dudek to assist in project permitting, mitigation measure compliance (CEQA and agency permit terms and conditions), and purchase and contract agreements for compensatory credits that were outside the previously approved scope of work and amendments thereto for the Dowdell Avenue Extension Project. Costs for work completed to date are approximately \$8,000; we are asking for out of scope charges to be approved up to a total amount of \$5,500. These charges have not been billed to date and are in addition to the original scope of work and any previous amendments. These tasks were authorized and performed on short notice and on an as-needed basis to facilitate obtaining authorizations from permitting agencies to proceed with construction during the 2014 construction season. It is our understanding that the City needed to have these approvals in place this year pursuant to an agreement that requires the Fiori Estates developer (AG Spanos) to construct the subject extension of Dowdell Avenue. Dudek (Cathy Spence-Wells) was given authorization to proceed with out of scope work and charges by Development Services Director, Marilyn Ponton, on or about April 16, 2014. Dudek performed a variety of tasks at the city's request and to ensure that the permits were obtained and authorizations to proceed from permitting agencies were in place to allow for the developer to break ground in late July 2014.

Out of Scope tasks performed include the following:

- Prepared RFP for mitigation credits;
- Addressed issues with staff and agency representatives regarding planned location of drainage inlets and advised the city regarding redesign and relocating the inlets;
- Reviewed staff reports and resolutions regarding mitigation credit purchase, status updates, and project summaries;
- Reviewed contract language regarding mitigation credit purchases and bank documentation and advised as needed;
- Addressed agency concerns regarding impacts and mitigation strategy, including numerous rounds of communication regarding draft mitigation quantities to respond to agency input and ensure consistency among all agency permits and project plans;
- Numerous emails and phone calls to agency personnel to facilitate a quick turnaround and get permits by July, including negotiating for reduced timeframes for review of bills

of sale, approval of monitoring qualifications, and other time-sensitive needs to obtain authorizations;

- Advised/assisted with language on bid set of plans to ensure mitigation measure compliance;
- Worked with agency personnel to obtain approval for no CTS fencing exclusion period. This effort was successful and allowed the project to move forward this year;
- Reviewed Incidental Take Permit approval letter and advised city regarding priority action items and important content;
- Prepared a mitigation measure matrix to assist city in compliance / project kickoff;
- Prepared several next steps and summary / status memos for the city throughout the duration of the project;

Contract Amendment 3, Out of Scope, Task I
(approximately \$8,000 expended to date)

\$5,500.00