

RESOLUTION NO. 2016-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER SERVICE AGREEMENT WITH WEST YOST ASSOCIATES FOR PLANNING AND ENGINEERING CONSULTING SERVICES AS NEEDED

WHEREAS, the City desires assistance from municipal engineering firms, design service firms, and specialty consulting firms; and

WHEREAS, staff hires consultants to supplement staffing, to provide replacement staffing, and to provide knowledge in areas where the staff require additional expertise; and

WHEREAS, there is a need to call on outside consultants to assist in various private and public projects for design, construction management, consulting, and other services as needed; and

WHEREAS, West Yost Associates has demonstrated expertise in the provision of consulting services including water, wastewater, stormwater, and infrastructure regulatory/permitting compliance, planning, design and operations and construction management, constructability review and owner's advisory services; and

WHEREAS, West Yost Associates has demonstrated knowledge of the City's procedures as well as quality design skills; and

WHEREAS, the City wishes to establish a Master Agreement with West Yost Associates to ensure it has access to this expertise when the need arises; and

WHEREAS, specific assignments under this Master Agreement will be awarded consistent with the City's Purchasing Policy; and

WHEREAS, assignments exceeding the amount that can be directed under the Master Agreement will be issued through Task Orders; and

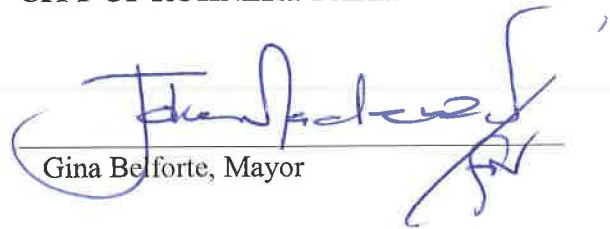
WHEREAS, whether working under these Master Agreements or a Task Order, the services shall not commence without a written notice to proceed from the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that the Master Services Agreement, which is attached hereto, incorporated by reference and included as Attachment A, is hereby approved, subject to minor modification by the City Manager or City Attorney.

BE IT FURTHER RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize the City Manager to execute a Master Services Agreement by and between West Yost Associates, a California Corporation, and the City of Rohnert Park, a municipal corporation, for various private and public projects for design, construction management, consulting, and other services as needed.

DULY AND REGULARLY ADOPTED this 12th day of July, 2016.

CITY OF ROHNERT PARK


Gina Belforte, Mayor

ATTEST:


Caitlin Saldanha, Deputy City Clerk

Attachment: Attachment A

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

MASTER AGREEMENT FOR CONSULTANT SERVICES

This MASTER AGREEMENT FOR CONSULTANT SERVICES ("**Agreement**") is entered into as of the twelfth day of July, 2016, by and between the City of Rohnert Park ("**City**"), a California municipal corporation, and West Yost Associates ("**Consultant**"), a California Corporation, with reference to the following facts, understandings and intentions.

Recitals

WHEREAS, City desires to obtain services listed in Exhibit A; 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, subject to the terms and conditions of this Agreement.

Agreement

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

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

2. Project Coordination. Authorized representatives shall represent City and Consultant in all matters pertaining to this Agreement.

A. City. The City Manager or his/her designee shall represent City for all purposes under this Agreement, except where approval for the City is specifically required by the City Council. The Senior Engineering Technician is hereby designated as the project manager ("**Project Manager**"). The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign John Goodwin 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 type of services generally set out in the Scope of Work attached hereto as Exhibit A and incorporated herein by reference. Consultant shall be assigned to provide particular services pursuant to the requirements of a task order that has been issued in conformance with the City's Purchasing Policy ("**Task Order**") executed by Consultant and City.

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 schedule attached to the Task Order. Any changes to these dates in either this Section 3 or the Task Order shall be approved in writing by the Project Manager.

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 performed 1) with due diligence, using its best efforts to perform and coordinate all activities in a timely manner; 2) in accordance with all applicable legal requirements; and 3) with the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise. Consultant shall correct, at its own expense, all errors made in the provision of services under this Agreement. In the event that Consultant fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Consultant.

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: (1) for services provided directly under this Agreement be at the rate and schedules more particularly described in Exhibit B, attached hereto and incorporated by this reference, or (2) for services authorized by Task Orders, be at the rate and schedules specified by said Task Order. However, in no event shall the amount City pays to Consultant for services provided directly under this Agreement exceed fifteen thousand dollars (\$15,000.00); nor shall the amount City pays to Consultant for work done by Task Order exceed the total compensation specified by the Task Order. Whether working under this Master Agreement or a Task Order, the services of the Design Professional shall not commence without a written notice to proceed from the City. City's obligation to pay compensation to Consultant as provided herein is contingent upon Consultant's compliance with the terms and conditions of this Agreement and any amendments thereto. 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. City shall pay Consultant as compensation in full for such services and expenses for the different elements of the scope of work as follows:

B. Timing of Payment.

- (1) Consultant shall submit itemized monthly statements for work performed. All statements shall include adequate documentation demonstrating work performed during the billing period and shall conform to Federal Funding invoicing requirements, if applicable. Except as otherwise provided herein, 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.

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

D. 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.

E. 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.

F. 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. 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, 2019 unless earlier terminated in accordance with this Agreement. 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.

6. 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.

7. Ownership of Documents. Title, including the copyright and all intellectual property rights, to all plans, specifications, maps, estimates, reports, manuscripts, drawings,

descriptions, designs, data, photographs, reports and any other final work products compiled, prepared or obtained 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. Consultant shall assume no responsibility for the unintended use by others of such final work products which are not related to the scope of the services described under this Agreement. Basic survey notes and sketches, charts, computations, 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.

8. 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.

9. 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.

- (1) Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:
- (2) 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
- (3) 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).)

10. 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. 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 or acceptance or otherwise.

11. Indemnity. To the fullest extent permitted by law, Consultant shall, at its own expense, indemnify, protect, defend and hold harmless City, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, or agents, in the performance of services under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of City.

A. Scope of Obligation. Consultant's duty to indemnify, protect, defend and hold harmless as set forth in this Section 11 shall include the duty to defend (by counsel reasonably satisfactory to the City) 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. Consultant waives any and all rights to express or implied indemnity against the Indemnified Parties concerning any Liability of the Consultant arising out of or in connection with the Agreement or Consultant's failure to comply with any of the terms of this Agreement.

Consultant's duty to indemnify, protect, defend and hold harmless as set forth in this Section 11 shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within thirty (30) calendar days to any tender by the City, unless the time for responding has been extended by an authorized representative of the City in writing. If the Consultant fails to timely accept such tender, in addition to any other remedies authorized by law, as much of the money due or that may become due to the Consultant under this Agreement as shall reasonably be considered necessary by the City may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first. Consultant agrees to fully reimburse all costs, including but not limited to attorney's fees and costs and fees of litigation incurred by the City in responding to matters prior to Consultant's acceptance of the tender.

12. 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 shall have responsibility for and control over the details and means of providing its services under this Agreement. Consultant shall furnish, at its own expense, all labor, materials, equipment, tools, transportation and services necessary for the successful completion of the services under this Agreement. 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. As an independent contractor, Consultant hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of the Consultant's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/ or performance of any services under this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

13. 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 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. City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph or in this Agreement.

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. Business Licenses. Except as otherwise allowed by City in its sole discretion, Consultant and all subconsultants shall have acquired, at Consultant's 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) shall be kept valid throughout the term of this Agreement. City may withhold compensation from Consultant until such time as Consultant complies with this section.

F. 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.

14. 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.

15. 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, which shall be in the City's sole discretion. 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.

16. Insurance. Without limiting Consultant's indemnification provided herein, Consultant shall, at its own expense, procure and maintain insurance that complies with the requirements set forth in Exhibit C to this Agreement, which is attached hereto and incorporated by reference. Consultant shall upon thirty (30) days' notice comply with any changes in the amounts and terms of insurance as may be required from time-to-time by City's risk manager.

17. 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 five (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.

18. 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 prior to the date of suspension. During the period of suspension, Consultant shall not receive any payment for services or expenses incurred by Consultant by reason of such suspension.

19. 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.

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

21. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

22. Time of the Essence. Time is of the essence of this Agreement. Upon receipt of a written notice from City to proceed with work required by a Task Order, Consultant shall immediately commence work to perform the services required by that Task Order according to the time requirements set in the Task Order.

23. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be

deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City:

City Clerk
City of Rohnert Park - City Hall
130 Avram Avenue
Rohnert Park, CA 94928

Phone: 707-588-2227

Fax: 707-792-1876

Email: cityclerk@rpcity.org

If to Consultant:

John Goodwin
West Yost Associates
2020 Research Park Drive, Suite 100
Davis, CA 95618

24. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

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.

25. 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.

26. 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.

27. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other consultants to provide, services that are the same or similar to the services described in this Agreement.

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. Remedies/Waiver. No failure on the part of either party to exercise any term, covenant, condition, right or remedy hereunder shall operate as a waiver of any other term, covenant, condition, right or remedy that such party may have hereunder. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative. As a condition precedent to commencing legal action involving a claim or dispute against the City arising from this Agreement, the Consultant must present a written claim to City in accordance with the Rohnert Park Municipal Code

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 and Schedule of Performance
- 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

By: _____
City Manager
Date: _____
Per Resolution No. 20 _____ of _____

CONSULTANT

By: Charles W. Lince
Title: President
Date: 9.28.16

CONSULTANT

By: W. J. [Signature]
Title: Asst. Treasurer
Date: 4/28/16

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

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 \$1,000,000 (One 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.

Exhibit C

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 President, and a duly authorized representative of the firm of West Vost and Associates Inc. whose address is 2020 Research Pk Dr. Davis CA 95618, 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.

4.29.16
Date

Chris Duncan
Signature

West Yost Associates – Services Overview

Water

- Permitting/ Regulatory
- Drinking Water Regulatory Compliance
- Distribution System Water Quality and Regulatory Compliance
- Sanitary Surveys
- Conservation and SBx7-7 Compliance

Water Resource Management/Planning

- Water Rights, Water Transfers, and Wheeling Arrangements
- Supply Reliability/Water Portfolio Planning
- Integrated Regional Water Resources Planning
- Water and Recycled Water Master Planning

Distribution System Master Planning

- Hydraulic Modeling (Selection, Optimization, Calibration, Engineering Analysis, Training)
- Specialized System Evaluations (Vulnerability Analysis, Wholesale/Resale Interface, Storage Optimization/Siting, etc.)
- Water Quality/Water Age Analysis
- Repair and Replacement Program Prioritization

Water Master Plans Plus+™

- Climate Change Scenarios and Planning Sustainability & Energy Programs
- Emergency Planning
- Water Conservation Planning
- Criticality Assessments

Additional Planning Services

- Water Treatment Plant Planning and Feasibility Studies
- Taste and Odor Studies and Programs
- Condition Assessments (Distribution System and Water Treatment Plants)

Design — See also Infrastructure Design

- Water Treatment Plant Design (New, Upgrades and Expansions)
- Water Treatment Plant Repair/Rehabilitation and Optimization
- Treatment Alternatives Analysis
- Treatment Technologies Pilot Testing

Operations

- Distribution System Optimization
- Unidirectional Flushing Programs
- Plant Start-Up and Operations Training
- Operations Optimization

Groundwater

Permitting/Regulatory Compliance

- Groundwater Impact Analysis
- Groundwater Management Plans
- State Department of Public Health Services and Regional Water Quality Control Board Coordination

West Yost Associates – Services Overview

Planning

- Field Investigations
- Groundwater Modeling
- Well Siting GIS Analysis
- Groundwater Investigations and Basin Management Planning
- Drought Response/Preparation
- Aquifer Testing
- Groundwater Monitoring Plans
- Feasibility Studies for Conjunctive Use, ASR, Groundwater Banking and Recycled Water
- Aquifer Storage and Recovery Programs
- Well Condition Assessments

Design — See also Infrastructure Design

- Groundwater Wells (Monitoring and Production) and Pump Stations
- Well Redevelopment and Rehabilitation
- Injection/Extraction, Aquifer Storage and Recovery Wells/Facilities
- Dewatering Systems and Facilities
- Groundwater Banking Facilities and Recharge Basins
- Groundwater Treatment Systems
- Well Development Bidding Assistance and Construction Oversight

Operations

- Monitoring Program Support
- Groundwater Facility Optimization and O&M Support
- Well Performance Assessments
- Monitoring of Groundwater Levels and Quality
- ASR System Optimization
- Recharge Basin Percolation Optimization
- Data Management

Stormwater

Permitting/Regulatory Compliance

- Stormwater Quality Management

Planning

- Stormwater Management Plans
- Drainage Master Plans
- Hydraulic Modeling and Analysis for Stormwater/Drainage Systems
- 3D Hydraulic Modeling and Analysis
- Floodplain Analysis and Mapping (CLOMRs and LOMRs)

Design — See also Infrastructure Design

- Detention, Storage and Conveyance Facilities
- Channels and Culverts
- Trash Racks and Water Quality Measures
- Habitat Restoration

West Yost Associates – Services Overview

Wastewater Treatment Planning and Design

Permitting/Regulatory Compliance

- Reports of Waste Discharge
- Permit Review & Negotiations
- Analysis of Data/Reasonable Potential Water Quality Studies
- Mixing Zone Applications/Studies
- Land Disposal Reports and Studies

Planning

- Treatment Plant Facilities Planning
- Recycled Water Facilities Planning
- Water Reuse Studies/Title 22
- Sustainability Analysis Using Envision™
- Treatment Plant Condition Assessment and Improvement Prioritization
- Hydraulic/Process Modeling
- Comprehensive Water Balances for Reuse Sites
- Source Control Studies
- Salinity Evaluation and Minimization Plans
- Nutrient Management Plans
- Treatment Technologies Pilot Testing

Design — See also Infrastructure Design

- Treatment Plant Facilities/Process Design (Expansion and Component Repair/Replacement for Natural and Conventional Treatment Alternatives)
- Nutrient Reduction Strategies
- Advanced Treatment Design (Title 22)
- Recycled Water Facilities Design
- Treatment Process Modeling

Operations

- Process Optimization & Rehabilitation
- Process Trouble Shooting

Collection System Management

Permitting/Regulatory Compliance

- Collection System Regulatory Compliance
- Review and Negotiation of Collection System Permits/Consent Decrees
- Annual Reporting for Consent Decrees and SSMP Requirements
- SSMP Audit Preparation and Support

Planning

- Collection System Master Planning
- Hydraulic Modeling
- Sewer System Management Plans
- Infiltration and Inflow Programs
- Condition Assessments and Ratings
- Condition Ratings of Pipes and Manholes Using NASSCO PACP and MACP
- Maintenance Planning Support and
- CMMS Optimization

West Yost Associates – Services Overview

- CCTV Program Development and Support
- Flow Monitoring Program Development and Support
- Prioritized/Phased Capital Improvement Program Development
- Elimination of Cross Connections
- Development Impact Analysis

Design — See also Infrastructure Design

Operations

- Operational Analysis/Realignment

Infrastructure Design

Facility Types

- Water Storage Tanks (Concrete and Steel)
- Pump Stations (Raw and Potable Water, Sanitary Sewer, and Stormwater)
- Water and Recycled Water Transmission Mains
- Sewer Pipelines (Trunk, Interceptor, Gravity and Force Mains)
- Stormwater Drainage and Detention Facilities
- Flood Control Reservoirs/Levees
- Site Civil (Grading, Paving, Utilities, and Roadways)

Planning

- Feasibility Studies
- Pipeline Alignment Studies
- Surge Analysis
- Condition Assessments
- GIS/Mapping and Surveying
- CEQA & NEPA Support
- Brownfields Assessment and Clean-Up
- Phase I and II Environmental Site Assessment
- Hazardous Materials Preferred Alternatives Analysis including Utility Corridors
- Remediation Planning and Implementation
- Storm Water Pollution Prevention Planning
- Project-Specific Health and Safety Planning

Design

- New Facility Design
- Pipeline Rehabilitation and Repair (Including: Pipeline CIPP, Sliplining, and Pipe Bursting)
- Pump Station and Lift Station Rehabilitation and Upgrades
- Cost Estimating
- Backyard Main Replacement and Relocation
- Trenchless Construction
- Corrosion
- Permitting and Utility Coordination

West Yost Associates – Services Overview

Construction Management

- Constructability and Value Engineering Reviews
- Bidability Reviews and Bidding Assistance
- Construction Contract Administration
- Construction Management (2nd and 3rd Party CM)
- SRF Funding Assistance
- Document Control and Management
- Construction Schedule Management
- Field Inspection
- Cost Control Monitoring
- Claims Management
- Project Closeout

Owner's Advisory Services

- Program Management
- Delivery Strategy Development and Implementation
- Alternative Delivery (DB, DBO, DBOF, CMAR, etc.)
- Procurement Management Services
- Procurement Documents (RFP/RFQ)
- Performance Specifications (Design, Service Contracts)
- Public-Private Partnership Strategy Development
- Evaluation and Selection Process Assistance
- Contract Negotiations
- Contract Administration/Construction Management

Asset Management

- Asset Management/Risk Management Models
- Integrated Infrastructure Management
- Utility Management

Additional Support Services

- Contract District/City Engineer
- Technical Training and Knowledge Transfer
- Funding Strategies and Assistance (Including SRF Funding) and Rates and Financing Assistance/Support
- GIS/Mapping and Surveying
- Stakeholder Coordination, Outreach and Communications Support (Presentations, Graphics, Flyers, Newsletters, etc.)
- CEQA/NEPA Support
- Intranet/Website and
- Social Media Support

2016 Billing Rate Schedule

(Effective January 1, 2016 through December 31, 2016)*

ENGINEERING

Position	Labor Charges (dollars per hour)
Principal/Vice President	266
Engineering/Scientist/Geologist Manager II	254
Engineering/Scientist/Geologist Manager I	244
Principal Engineer/Scientist/Geologist II	235
Principal Engineer/Scientist/Geologist I	222
Senior Engineer/Scientist/Geologist II	208
Senior Engineer/Scientist/Geologist I	198
Associate Engineer/Scientist/Geologist II	188
Associate Engineer/Scientist/Geologist I	175
Engineer/Scientist/Geologist II	165
Engineer/Scientist/Geologist I	143
Senior GIS Analyst	193
GIS Analyst	183
CAD Supervisor	153
Senior CAD Designer	133
CAD Designer	119
Engineering Aide	80
Technical Specialist IV	150
Technical Specialist III	133
Technical Specialist II	116
Technical Specialist I	97
Administrative IV	122
Administrative III	110
Administrative II	91
Administrative I	72

- Hourly rates include Technology and Communication charges such as general and CAD computer, software, telephone, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.
- Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, Travel, etc. will be billed at actual cost plus 15%.
- Mileage will be billed at the current Federal Rate.
- Subconsultants will be billed at actual cost plus 10%.
- Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.
- A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

Continues on following page

*This schedule is updated annually

2016 Billing Rate Schedule

(Effective January 1, 2016 through December 31, 2016)*

CONSTRUCTION MANAGEMENT

Position	Labor Charges (dollars per hour)
Senior Construction Manager	251
Construction Manager IV	218
Construction Manager III	175
Construction Manager II	164
Construction Manager I	152
Resident Inspector (Prevailing Wage – Group 1)	170
Resident Inspector (Prevailing Wage – Group 2)	164
Resident Inspector (Prevailing Wage – Group 3)	147
Resident Inspector (Prevailing Wage – Group 4)	132
Apprentice Inspector	121
CM Administrative II	88
CM Administrative I	66

SURVEYING

Position	Labor Charges (dollars per hour)
GPS, 3-Person	398
GPS, 2-Person	346
GPS, 1-Person	269
Survey Crew, 2-Person	293
Survey Crew, 1-Person	220

EQUIPMENT CHARGES

Equipment	Billing Rate (dollars per day)	Billing Rate (dollars per week)
DO Meter	18	86
pH Meter	5	27
Automatic Sampler	135	740
Transducer/Data Logger	43	214
Hydrant Pressure Gage	12	52
Hydrant Pressure Recorder (HPR)	—	214
Hydrant Wrench	5	34
Well Sounder	30	139
Ultrasonic Flow Meter	—	280
Vehicle	92	463
Velocity Meter	12	68
Water Quality Multimeter	183	1003

*This schedule is updated annually