

# ATTACHMENT C

## CONSULTANT SERVICES AGREEMENT

RE: **PROJECT NAME**

This AGREEMENT FOR CONSULTANT SERVICES ("Agreement") is entered into as of the <<day>> day of <<month>>, 20<<last two digits of year>>, by and between the City of Rohnert Park ("City"), a California municipal corporation, and << Name of Consultant>> ("Consultant"), a <<type of entity – corporation, limited partnership (LP), limited liability company (LLC), sole proprietorship with or without a fictitious business name (dba or doing business as), etc.; also include the state of formation for any entity – i.e. "a California corporation">>, with reference to the following facts, understandings and intentions.

*{NOTE: (i) check on Secretary of State website at <https://bizfileonline.sos.ca.gov/search/business> for entity registration for corporations, LLCs and LPs and include print out with approval packet; and (ii) note that a dba cannot include "Inc.", "corporation" or "LLC" because a dba does not create a new legal entity, but only registers a business name for a sole proprietor or existing legal entity.*

*Also, legal entity status must be checked because it determines who is authorized to sign the contract:*

*For a partnership, must be signed by a general partner.*

*For an LLC, should be signed by a member, unless the articles of organization provide that it is a manager-member LLC, in which case it must be signed by the manager.*

*For corporations, there should be TWO signatures, one from the operational group of the corporation and one from the financial group. Per Corporations Code 313, a signature of a single corporate officer is not always enough to bind a company. The relevant titles are:*

*Operational group: Chairman of the board, president or vice president*

*Financial group: Secretary, assistant secretary, chief financial officer or assistant treasurer.*

*}*

### Recitals

WHEREAS, City desires to obtain << type of services - general municipal engineering services, general city planning services, development review services, construction management/inspection services, etc.>> for name of project ; 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 <<insert title of city staff>> 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 <<insert name of person Consultant is assigning to project>> 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 the City through its staff may determine from time to time, Consultant shall perform the services set out in the “Scope of Work” attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence upon receipt of a written notice to proceed from City, but in no event prior to receiving a fully executed agreement from City and obtaining and delivering the required insurance coverage, and satisfactory evidence thereof, to City. The services of Consultant are to be completed not later than \_\_\_\_\_ << insert completion date >>. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit A, and incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit A must be approved in writing by the City.

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 be at the rate and schedules attached hereto as Exhibit B, and incorporated herein by reference. However, notwithstanding the foregoing, Consultant shall be required to complete all work identified in the in Exhibit A in an amount not to exceed the total cost identified in Exhibit B, and in no event shall the amount City pays Consultant exceed \_\_\_\_\_ *<< insert written dollar amount >> Dollars (\$\_\_\_\_\_)*. 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.

B. Timing of Payment.

*<<Select one of the following options and delete the other>>*

- (1) *<<OPTION 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.

*<<OPTION 2>>* Progress payments will be tied to completion of tasks so that all payments are proportional to the work completed. A copy of the progress payment schedule is attached to the rate and schedules set forth in Exhibit B.

- (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. This Agreement shall commence upon its execution by both parties and shall continue in full force and effect until completed, amended pursuant to Section 19, or otherwise terminated as provided herein.

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 Requirements.

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.

*<<Select one of the following options and delete the other>>*

*{NOTE: Review updated conflict of interest code. Consultants may be considered "public officials" required to file a Form 700 when they have authority to render decisions on behalf of the City, or if they will render advice to any person at the City who has authority to make a City decision and there is no meaningful intervening review by a City employee before they render advice to that decision-maker. If the City Manager, City Attorney or department head determines the Consultant is a designated position under the City's Conflict of Interest Code, use OPTION 2 and notify the City Clerk of the agreement's commencement date.}*

B. **<<OPTION 1>>** Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- (1) will not have the power to make any governmental decision, including whether to: approve any rates, rules, regulations, policies, standards, or guidelines of the City or any of its subdivisions; adopt or enforce any laws; issue, deny, suspend, or revoke any permit, license, application, certificate, order, or any similar authorization or entitlement; authorize, modify, or renew any form of City contract; grant approval to any City contract specifications on behalf of the City; or grant City approval for any plans, designs, reports, or similar; and
- (2) will not participate in the making of any governmental decision in the equivalent of a staff capacity — for the purposes of this provision, "participating in a governmental decision" including providing information, an opinion, or a recommendation directly to any person at the City empowered to make a decision on behalf of the City without significant intervening substantive review; and

- (3) will not perform the same duties for the City that would otherwise be performed by a staff member required to report under the City's conflict of interest code. (2 Cal. Code Regs. § 18700.3.)

B. <<OPTION 2>> City determines Consultant comes within the definition of Consultant under the Political Reform Act (Government Code § 82048) and FPPC implementing regulations (2 Cal. Code Regs. §§ 18700.3 and 18734). Within thirty days of this Agreement's commencement date, 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 (Form 700) and Agency Report of Consultants (Form 805) with the City Clerk of the City of Rohnert Park disclosing Consultant's financial interests.

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. To the maximum extent permitted by law, the City shall have 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.

A. Indemnification. To the fullest extent permitted by law, Consultant shall, at its own expense, indemnify, protect, defend (by counsel reasonably satisfactory to the City) and hold harmless City and any and all of its officers, officials, employees, agents and volunteers ("**Indemnified Parties**") from and against any and all liability (including liability for claims, demands, damages, obligations, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs and expert witness fees) of any nature ("**Liability**"), whether actual, alleged or threatened, which arise out of, pertain to, or relate to the performance or failure to comply with this Agreement, regardless of any fault or alleged fault of the Indemnified Parties.

For design professionals (as that term is defined by statute) acting within the scope of their professional capacity, to the fullest extent permitted by law, Consultant shall, at its own expense, indemnify, protect, defend (by counsel reasonably satisfactory to the City) and hold harmless any Indemnified Parties from and against any and all Liability, whether actual, alleged or threatened, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or as may be provided by statute in Civil Code § 2782.8, as may be amended from time to time.

The only exception to Consultant's responsibility to indemnify, protect, defend, and hold harmless the Indemnified Parties from Liability is due to the active negligence or willful misconduct of City or its elective or appointive boards, officers, agents and employees.

B. 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. 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 and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. 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. Unless exempt by law, 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.

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 this Agreement, Consultant shall immediately commence work to perform the services required in accordance with the schedule of work. In the event that the Agreement does not include a fixed schedule for completion of work, Consultant shall diligently prosecute all work until completion.

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

If to Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 shall comply with claims presentation requirements under the Government Tort Claims Act, California Government Code Sections 900 et seq. and 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.

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

**CITY OF ROHNERT PARK**

By: \_\_\_\_\_

Name, Title

Date:

Per Resolution No. 20\_\_ - \_\_ adopted by the Rohnert Park City Council at its meeting of <<Date of meeting>>.

{NOTE: If this agreement did not go to Council for approval, then change this to "Per Purchasing Policy adopted by Resolution 2022-052."}

**<<CONSULTANT>>**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**<<CONSULTANT>>**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

## EXHIBIT A

### Scope of Work and Schedule of Performance

Exhibit A

EXHIBIT B

Compensation

[to be inserted]

Exhibit B

## EXHIBIT C

### INSURANCE REQUIREMENTS for Consultant Services Agreement

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

#### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (Not required if consultant provides written verification it has no employees)
4. Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

#### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

##### **Additional Insured Status**

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85, or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms, if later revisions used).

Exhibit C



**Primary Coverage**

For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

**Notice of Cancellation**

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the City.

**Waiver of Subrogation**

Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**Self-Insured Retentions**

Self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**Acceptability of Insurers**

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

**Claims Made Policies**

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

**Verification of Coverage**

Consultant shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the

required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**CERTIFICATE OF CONSULTANT** *{NOTE: Consultant must fill this out and sign.}*

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

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

Except as here expressly stated (if any);

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature