

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into this ___ day of _____ 2020, between the CITY OF STOCKTON, a municipal corporation ("City"), and **WEST YOST ASSOCIATES** whose address is **2020 RESEARCH PARK DRIVE #100, DAVIS, CA 95618** ("Consultant") for the **OAK STREET SEWER TRUNK REHABILITATION (PROJECT NO. M20016)**, hereinafter referred to as "Project".

RECITALS

- A. Consultant represents that it is licensed in the State of California and is qualified to provide the services proposed in the SCOPE OF WORK section of this Contract.
- B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Contract.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions in this Contract, City and Consultant agree as follows:

1. SCOPE OF SERVICES. Subject to the terms and conditions set forth in this Contract, Consultant shall undertake and complete the services described in **Exhibit A**. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A and compatible with the standards of the profession. Consultant agrees that it shall produce a fully complete project that is acceptable to the City.

2. COMPENSATION. City shall pay Consultant for services outlined in **Exhibit A** according to the fee not to exceed the schedule detailed in **Exhibit B**, which is attached to this Contract and incorporated by this reference. Consultant agrees this fee is for full remuneration for performing all services and furnishing all staffing and materials called for in the scope of services. The payments shall be made on a monthly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall not exceed **\$298,716.00** or as otherwise mutually agreed to in a Contract Amendment.

3. INSURANCE. During the term of this Contract, Consultant shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit D** and shall otherwise comply with the other provisions of **Exhibit D**.

4. INDEMNITY AND HOLD HARMLESS. With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, Consultant shall indemnify, and hold harmless City, its Mayor, Council, officials, and employees from and

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(Updated 02/28/18)

against any and all claims and causes of action which result in liabilities, judgments, awards, losses, damages, expenses, and costs (including reasonable attorneys' fees, expert and consultant fees, and other expenses of litigation) including, but not limited to, death or injury to persons, or damage to property, which arise out of any violation of federal, state, or municipal law or ordinance, to the extent damages are caused by the Consultant's negligent services provided under this Agreement, or are in any way caused by the negligent performance of work by the Consultant or Consultant's officers, agents, employees, or subcontractors. Consultant shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Consultant to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Consultant under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Consultant shall indemnify, defend, and hold harmless City, its Mayor, Council, officials, representatives, and employees from and against claims, losses, expenses, and costs including, but not limited to, reasonable attorneys' fees, arising out of any claim brought against the City by an employee of Consultant, regardless of whether such claim may be covered by any applicable workers compensation insurance. Consultant's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant under workers' compensation acts, disability acts, or other employee benefit acts.

5. SCHEDULE AND TERM. Consultant shall perform the scope of work as described in **Exhibit #A** according to the schedule detailed in **Exhibit C**, which is attached to this Contract and incorporated by this reference. This Contract shall commence on the date written above and shall expire on **December 31, 2025**, unless extended by mutual agreement through the issuance of a Contract Amendment.

- a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used, and include the City project number. Payment shall be made within thirty (30) days of approval of invoice by City.
- b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. City shall have no obligation or liability to pay any invoice for work performed which Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after work is accepted by City.

6. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with all applicable federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Contract on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

a. TITLE VI

Title VI of the Civil Rights Act of 1964 requires that “no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” (42 USC Section 2000d).
<http://www.dol.gov/oasam/regs/statutes/titlevi.htm> .

The City of Stockton requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

b. DISCRIMINATION AND HARASSMENT POLICY

The City of Stockton has a Discrimination and Harassment Policy (**Exhibit E**). The purpose of this policy is to reaffirm the City’s commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement. https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2.

d. PREVAILING WAGE RATES

Consultant and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay

as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. Consultant performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime Consultant and each subcontractor's responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

- i. The Consultant performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>. The Consultant shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.
- ii. Should the Consultant choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the Consultant shall reimburse the City the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the City, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to City the sum of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under Consultant, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.
- iii. PAYROLL RECORDS - The Consultant to whom the contract is awarded shall insure that the prime and each subcontractor will, in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention: Contract Compliance Officer. It shall be the Consultant's responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.

- iv. **APPRENTICESHIP STANDARDS** - The Consultant shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

7. RIGHTS AND DUTIES OF CITY. City shall make available to Consultant all data and information in the possession of City which both parties deem necessary to complete the work, and City shall actively aid and assist Consultant in obtaining such information as may be deemed necessary from other agencies and individuals.

8. OBLIGATIONS OF CONSULTANT. Throughout the term of this Contract, Consultant represents and warrants that it has or will have at the time this Contract is executed, all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required for the Consultant to practice its professions, and Consultant shall, at its own cost and expense, keep in effect during the life of this Contract all such licenses, permits, qualifications, insurance, and approvals. Consultant shall meet with the Public Works Director or other personnel of City or third parties as necessary on all matters connected with the carrying out of Consultant's services. Such meetings shall be held at the request of either party hereto. Consultant further warrants that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

9. OWNERSHIP OF WORK. All reports, drawings, designs, plan review comments, work product, and all other documents completed or partially completed by Consultant in the performance of this Contract shall become and remain the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Contract. If any materials are lost, damaged, or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Consultant shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Contract and shall not be disclosed to anyone not connected with these services unless the City expressly provides prior written consent.

10. CONTRACT AMENDMENTS. City reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion of the work contemplated by Consultant. Any such changes will be set forth in a Contract Amendment which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any,

and the basis of compensation for such work. A Contract Amendment will not become effective until approved by the authorized City official.

11. TERMINATION. The City may terminate this Contract at any time by mailing a notice in writing to Consultant. The Contract shall then be deemed terminated and no further work shall be performed by Consultant. If the Contract is so terminated, the Consultant shall be paid for that percentage of work actually completed at the time the notice of termination is received.

12. CONSULTANT STATUS. In performing the obligations set forth in this Contract, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees, and are not agents of the City. Subcontractors shall not be recognized as having any direct or contractual relationship with the City. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of Consultant. The Consultant shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Contract. The Consultant is responsible to the City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

- a. If in the performance of this Contract any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Consultant.
 - i. It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's personnel.
 - ii. As an independent contractor, Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against the City based upon any contention by any third party that employer-employee relationship exists by reason of this Contract.

13. ASSIGNMENT. Consultant shall not assign, sublet, or transfer this Contract or any interest or obligation in the Contract without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

14. HEADINGS NOT CONTROLLING. Headings used in the Contract are for reference purposes only and shall not be considered in construing this Contract.

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(Updated 02/28/18)

15. NOTICES. Any and all notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Consultant:	West Yost Associates	To City:	Public Works Director
	2020 Research Park Dr.		City of Stockton
	#100		22 E. Weber Ave., Rm. 301
	Davis, CA 95618		Stockton, CA 95202

16. LICENSES, CERTIFICATIONS, AND PERMITS. Prior to the City's execution of this Contract and prior to the Consultant's engaging in any operation or activity set forth in this Contract, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Contract. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Contract.

17. RECORDS AND AUDITS. City reserves the right to periodically audit all charges made by Consultant to City for services under this Contract. Upon request, Consultant agrees to furnish City, or a designated representative, with necessary information and assistance.

Consultant agrees that City or its delegate shall have the right to review, obtain, and copy all records pertaining to performance of the Contract. Consultant agrees to provide City or its delegate with any relevant information requested, and shall permit City or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purposes of determining compliance with this Contract. Consultant agrees to maintain such records for a period of three years from the date that final payment is made.

18. CONFIDENTIALITY. Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

19. CONFLICTS OF INTEREST. Consultant covenants that other than this Contract, Consultant has no financial interest with any official, employee, or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner or degree by the performance of Consultant's services under this Contract. If such an interest arises, Consultant will immediately notify City.

20. WAIVER. In the event either City or Consultant at any time waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or of any other covenant, condition, or obligation.

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26. **AUTHORITY.** The undersigned hereby represent and warrant that they are authorized by the parties to execute this Contract.

IN WITNESS WHEREOF: the parties have executed this Contract the day and year first hereinabove written.

CITY OF STOCKTON

WEST YOST ASSOCIATES

By: _____
HARRY BLACK
CITY MANAGER

By: Charles Duncan
Signature

ATTEST:

Charles Duncan
Print Name

BY: _____
ELIZA R. GARZA, CMC
CITY CLERK

Title: President & CEO

APPROVED AS TO FORM:

BY: _____
DEPUTY CITY ATTORNEY

Detailed Work Plan

To complete the work, West Yost will perform the following services:

Task 1. Preliminary Design

The purpose of the Preliminary Design Report (Report) is to determine the structural integrity, capacity, and useful life of the pipes, evaluate multiple rehabilitation alternatives, perform a preliminary environmental assessment, and provide a recommendation for the most cost-effective rehabilitation method.

1.1 – Project Management. West Yost will monitor the progress of individual tasks, coordinate the completion of work products, and monitor the task budgets and project schedule. West Yost will provide monthly invoicing with progress reports. West Yost will perform internal quality assurance and quality control reviews of all design submittals.

1.2 – Meetings. West Yost will attend a project kickoff meeting and up to one additional progress meeting (via phone conference). West Yost will provide meeting agendas and notes.

1.3 – Closed-Circuit Television (CCTV) Review. For each pipe segment reach, West Yost will review existing CCTV inspection reports and videos to confirm deficiencies, assess the suitability for trenchless rehabilitation or replacement, locate maintenance holes, and determine the locations of laterals. The City will provide existing CCTV inspection videos and reports of the sewer mains. For areas that are missing CCTV inspection reports and videos, we have assumed that the City will provide new CCTV.

1.4 – Maintenance Hole Survey and Inspection. West Yost will work with the surveyor to obtain horizontal locations, prepare DIP sheets for invert measurements, and perform above-ground maintenance hole inspections, to include maintenance hole interior photographs, along the Project alignment. We will also coordinate with the City to access maintenance holes. The surveyor will perform the record research necessary to determine existing monumentation locations within the project area and locate found monuments.

1.5 – Capacity Assessment. West Yost is under negotiations with the City to perform the Wastewater Master Plan Update. Under this separate contract, it is assumed that the City's wastewater collection system model will be rebuilt. We will use the latest model to assess the need for increasing the capacity of the trunk sewer. We will coordinate with the City during the planning process of the new Wastewater Master Plan. We have assumed 24 hours for this effort.

1.6 – Prepare Preliminary Design Report. West Yost will evaluate rehabilitation measures to extend the useful life of each pipe segment. The recommendation of rehabilitation measures will be as specific as possible and include product names, estimated costs, etc. Costs will include all engineering, design, construction, and permit acquisition. West Yost will provide a preferred final recommendation based on the following items:

- Costs for recommended rehabilitation alternatives
- Permit requirements
- Impacts to residential neighbors and businesses
- Sewage flow bypassing requirements

EXHIBIT A

1.7 – Background Research and Utility Coordination. The City’s protocol for gathering existing utility information and coordinating the design of public improvement projects is based upon procedures that were prepared by the members of the American Public Works Association Joint Utilities Coordination Committee in 1992. These procedures describe how each agency should initiate communication with utility companies and other agencies that may have facilities in the project area three times during the design phase.

- “A” Letter – Near the beginning of the design process, the A Letter, along with a project location map, is sent to utility companies that may have facilities in the project area, requesting utility information and maps of their facilities.
- “B” Letter – At the 65% design stage, the B Letter, along with 65% design plan & profile sheets (B Plans) are sent to each utility company that has facilities in the project area. Based on information received in the A Letter stage, the B Letter notifies each utility company whether they need to relocate their facilities. The B Plans contain the necessary information required to initiate utility relocation design.
- “C” Letter – When final design plans are completed, the C Letter, along with final plans, is sent to each utility company with facilities in the area notifying them that the project has been advertised for construction and confirming the schedule for any utility relocation identified at the B Letter stage.

West Yost will prepare and send “A” letters on behalf of the City. West Yost will review existing topographic mapping, right-of-way maps, “as-built” plans, record maps, surveys, assessor maps, improvement plans, design standards and specifications provided by the City; and West Yost will conduct field reconnaissance of the project limits. All utilities, except project sewers, will be plotted from maps provided by the utility companies, and verified by visual inspection. Project sewers will be surveyed under Task 1.4 and utility coordination “B” and “C” letters will be prepared during design under Task 2.5.

TASK 1 ASSUMPTIONS

- Manned entry will not be required for maintenance hole inspection.
- No new CCTV will be performed by West Yost.
- Boundary surveys are not anticipated and are not included.
- Based on our project review, we do not anticipate that access to private property will be required.
- West Yost will prepare the wastewater collection system model under separate contract, and this model will be used to assess the need for increasing the capacity of the trunk sewer. Up to 24 hours of effort was assumed.

TASK 1 DELIVERABLES

- Two (2) hard-copies and one (1) electronic (PDF) format of Draft and Final Report.
- West Yost will provide review comments from the City, and we will itemize written responses. West Yost will prepare a written response to each comment in a comment matrix and attached to the Final Report.
- West Yost will provide copies of all utility correspondence.
- West Yost will provide copies of maintenance hole survey information.

Task 2. Engineering Design

Under this task, West Yost will conduct background research and prepare plans, specifications, and cost estimates.

2.1 – Project Management. West Yost will monitor the progress of individual tasks and coordinate the completion of work products and monitor the task budgets and project schedule. West Yost will provide monthly invoicing with progress reports. West Yost will perform internal quality assurance and quality control reviews of all design submittals.

TASK 2.1 DELIVERABLE

- West Yost will provide monthly invoices with progress reports.

2.2 – Meetings. West Yost will attend up to two progress meetings (via phone conference).

TASK 2.2 DELIVERABLES

- West Yost will provide meeting agenda and minutes.
- West Yost will update project schedules with each submittal, if necessary.

2.3 – Plans, Specifications, and Cost Estimates (PS&E). West Yost will prepare one complete PS&E package including design drawings, traffic control plans, bypass schematics, specifications, and an engineer's estimate in accordance with City standards and the California Manual on Uniform Traffic Control Devices, as appropriate.

Using the City's latest benchmark information, West Yost will prepare base maps showing existing information and design of all necessary improvements. The base map limits will be sufficient to facilitate all necessary improvements. After reviewing CCTV reports and videos, we assume we will perform rehabilitation using cured-in-place pipe (CIPP).

West Yost will incorporate all previous review comments, survey information, technical requirements, right-of-way information, utility verification/protection, minimum contractor qualifications, regulatory agency permits and mitigation monitoring requirements, applicable encroachment permits, and City requirements in the final submittal.

TASK 2.3 ASSUMPTIONS

- Design assumes rehabilitation by CIPP. Besides maintenance hole surveys, limited survey will be performed.
- No potholing is included.
- Acquisition of easements are not anticipated and are not included.

TASK 2.3 DELIVERABLES

- One electronic (PDF) copy, four (4) 24"x36" sets of plans, and three (3) 11"x17" sets of plans at the 50% and 90% phase.
- One electronic (PDF) copy and one (1) hard copy set of specifications at the 50% and 90% design phase.
- Preliminary cost estimates at the 50% and 90% design phase.
- West Yost will return original red-line comments from the reviewing agency with the succeeding submittal. With each stage, West Yost will itemize the review comments from previous stages and prepare a written response to each comment in a comment matrix.
- One electronic (PDF) format copy at the 100% phase for final review prior to plotting.

EXHIBIT A

- Final submittal will include one complete plan set of reproducible (24"x36" on mylar), the stamped and signed final cost estimate, and the stamped and signed set of specifications.
- One CD with drawing files in AutoCAD and PDF format, specifications in Word format and cost estimate in Excel format.
- One CD with all West Yost correspondence for the City's files.

2.4 – Permitting. This task includes permitting with affected agencies along the alignment.

This project will require work within a Caltrans-controlled right-of-way. West Yost will prepare an encroachment permit application (parent permit) for the rehabilitation work and bypass pumping for City signature.

This project will require work within a Union Pacific Railroad (UPRR)-controlled right-of-way. West Yost will coordinate with the railroad company and prepare a permit application.

This task assumes up to 120 hours of effort for coordination with Caltrans and UPRR to acquire necessary construction permits. West Yost will prepare exhibits and meet with Caltrans and railroad staff in person or by conference call, as necessary.

West Yost anticipates that the Project will fall under a Categorical Exemption for California Environmental Quality Act (CEQA) documentation. The City will prepare, as applicable, a statement of Categorical Exemption and file with the appropriate lead agency. West Yost has not included any effort to assist with environmental documentation.

TASK 2.4 ASSUMPTIONS

- The Contractor will be responsible for obtaining a Caltrans double permit prior to performing the work.
- Caltrans will not dispute the encroachment permit application or make requests beyond minor revisions.
- Permit fees will be paid by the City.
- Project work will be categorically exempt for CEQA documentation.
- A statement of Categorical Exemption will be prepared and processed by the City.

TASK 2.4 DELIVERABLE

- Permit applications for City signature.

2.5 – Utility Coordination. West Yost will prepare and send utility letters "B" and "C" on behalf of the City. All utilities, except project sewers, will be plotted from maps provided by the utility companies, and verified by visual inspection. Project sewers will be surveyed under Task 1.4 and utility coordination "A" letters will be prepared under Task 1.7.

- "B" Letter – At the 65% design stage, the B Letter, along with 65% design plan & profile sheets (B Plans) are sent to each utility company that has facilities in the project area. Based on information received in the A Letter stage, the B Letter notifies each utility company whether they need to relocate their facilities. The B Plans contain the necessary information required to initiate utility relocation design.
- "C" Letter – When final design plans are completed, the C Letter, along with final plans, is sent to each utility company with facilities in the area notifying them that the project has been advertised for construction and confirming the schedule for any utility relocation identified at the B Letter stage.

TASK 2.5 DELIVERABLE

- West Yost will provide copies of all utility correspondence.

EXHIBIT A

2.6 – Public Outreach. In support of the City’s public outreach efforts, West Yost will prepare public notices in electronic format. The City will provide printing and mailing services for the public notice. West Yost will also assist the City in obtaining right-of-entry documentation from property owners where work is required on properties, if necessary.

West Yost will identify impacts to all residences and businesses and present mitigation measures on the design improvement plans. Impacts will include service interruptions, property encroachments, access restrictions, and potential damage to property.

TASK 2.6 ASSUMPTION

- Right-of-entry on private property is not anticipated.

TASK 2.6 DELIVERABLE

- Right-of-entry forms from property owners where work is required on properties.

2.7 – Bid Support Services. West Yost will attend one pre-bid meeting and be available and respond to questions concerning the PS&E prior to the bid opening. West Yost will prepare contract addenda, letters of clarification, and supplemental project drawings, as needed.

TASK 2.7 ASSUMPTION

- West Yost will prepare up to one (1) addendum, if necessary.

TASK 2.7 DELIVERABLES

- Written summaries of discussions with bidders.
- Attendance at pre-bid meeting.
- Electronic copy of addenda.

Task 3. Construction Phase

Under this task, West Yost will provide engineering support during construction.

3.1 – Project Management. West Yost will monitor the progress of individual tasks and coordinate the completion of work products, monitor task budgets, and monitor the project schedule. West Yost will provide monthly invoicing with progress reports.

3.2 – Preconstruction Meeting. West Yost will attend one preconstruction meeting. The preconstruction meeting will be led by the City or the City's designated construction manager.

3.3 – Submittals and Requests for Information (RFIs). West Yost will review shop drawings, submittals, and RFIs, and prepare clarification sketches, if required.

3.4 – Field Meetings. West Yost will perform field observations as requested by the City during the construction period.

3.5 – Record Drawings. After completion of the construction, West Yost will incorporate the red lines (provided by the Contractor) into an as-built set on re-signed mylars.

TASK 3 ASSUMPTIONS

- West Yost will review up to 20 original submittals, up to four resubmittals, and up to four RFIs.
- West Yost will attend up to three meetings during construction.

TASK 3 DELIVERABLES

- Monthly invoices with progress reports.
- Responses to submittals, as required.
- Responses to RFIs and clarifications, as required.
- One set of 24"x36" record drawings on mylar.
- One CD containing record drawings in AutoCAD and PDF format.

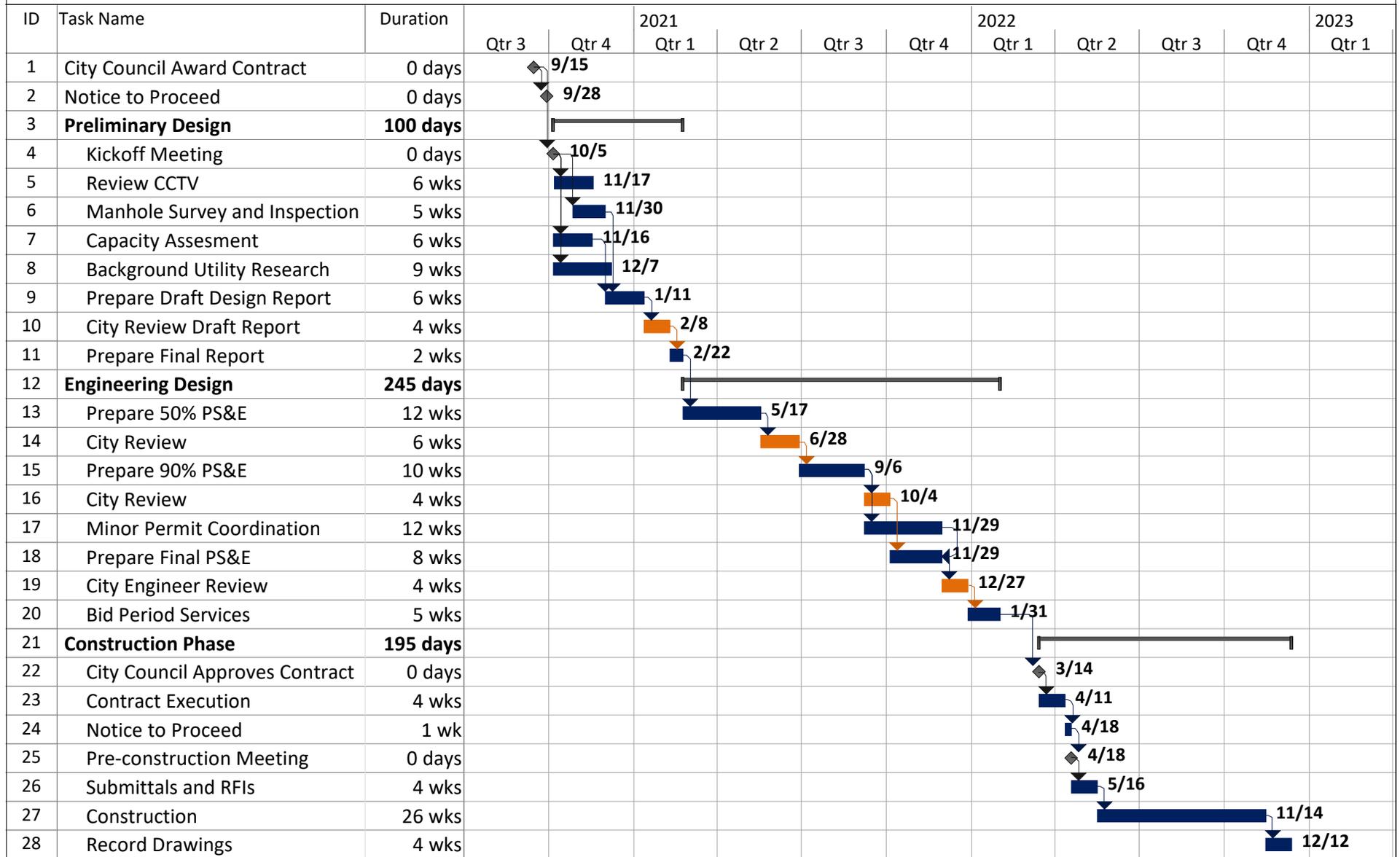
West Yost Associates PROJECT: Oak Street Sewer Trunk Rehabilitation	P/V/P \$298 Goodwin	SE/SS/SG II \$241 Johnston	AE/AS/AG II \$212 Olson	AE/AS/AG II \$212 Ramirez	AE/AS/AG I \$198 Pavicic	ADM IV \$135	QC Team	Labor		SIG	Costs			
								Hours	Fee		Sub. w/ markup 10%	Other Direct	Total Costs	
Task 1	Preliminary Design													
1.1 Project Management	6		16					22	\$ 5,180					\$ 5,180
1.2 Meetings	4		12	4				20	\$ 4,584			\$ 200		\$ 4,784
1.3 Review CCTV			6	24	40			70	\$ 14,280					\$ 14,280
1.4 Maintenance Hole Survey and Inspection			16	16	50			82	\$ 16,684	\$ 14,250	\$ 15,675	\$ 400		\$ 32,759
1.5 Capacity Assessment	4	8	8	2			2	24	\$ 5,784					\$ 5,784
1.6 Prepare Preliminary Design Report	4		32	16	16	8	6	82	\$ 17,404					\$ 17,404
1.7 Background Research and Utility Coord.	4		8	20	44			76	\$ 15,840					\$ 15,840
Subtotal, Task 1 (hours)	22	8	98	82	150	8	8	376						
Subtotal, Task 1 (\$)	\$ 6,556	\$ 1,928	\$ 20,776	\$ 17,384	\$ 29,700	\$ 1,080	\$ 2,332		\$ 79,756	\$ 14,250	\$ 15,675	\$ 600		\$ 96,031
Task 2	Engineering Design													
2.1 Project Management	12		40					52	\$ 12,056					\$ 12,056
2.2 Meetings	4		4	4				12	\$ 2,888					\$ 2,888
2.3 Plans, Specifications, and Cost Estimates	25		115	150	220	35	24	569	\$ 118,707			\$ 800		\$ 119,507
2.4 Permitting			32	64	24			120	\$ 25,104					\$ 25,104
2.5 Utility Coordination				4	16			20	\$ 4,016					\$ 4,016
2.6 Public Outreach	2		6	6	6			20	\$ 4,328					\$ 4,328
2.7 Bid Support Services	4		16	8		2		30	\$ 6,550			\$ 100		\$ 6,650
Subtotal, Task 2 (hours)	47	0	213	236	266	37	24	823						
Subtotal, Task 2 (\$)	\$ 14,006		\$ 45,156	\$ 50,032	\$ 52,668	\$ 4,995	\$ 6,792		\$ 173,649			\$ 900		\$ 174,549
Task 3	Construction Phase													
3.1 Project Management	2		4					6	\$ 1,444					\$ 1,444
3.2 Preconstruction Meeting			8					8	\$ 1,696			\$ 100		\$ 1,796
3.3 Submittals and RFIs	4		12	24	24			64	\$ 13,576					\$ 13,576
3.4 Field Meetings			8	8				16	\$ 3,392			\$ 200		\$ 3,592
3.5 Record Drawings				8	24	8		40	\$ 7,528			\$ 200		\$ 7,728
Subtotal, Task 3 (hours)	6	0	32	40	48	8	0	134						
Subtotal, Task 3 (\$)	\$ 1,788		\$ 6,784	\$ 8,480	\$ 9,504	\$ 1,080			\$ 27,636			\$ 500		\$ 28,136
TOTAL (hours)	75	8	343	358	464	53	32	1,333						
TOTAL (\$)	\$ 22,350	\$ 1,928	\$ 72,716	\$ 75,896	\$ 91,872	\$ 7,155	\$ 9,124		\$ 281,041	\$ 14,250	\$ 15,675	\$ 2,000		\$ 298,716



EXHIBIT C

City of Stockton
Public Works Department
West Yost Associates

Oak Street Sewer Trunk Rehabilitation
City Project No. M20016
PROJECT SCHEDULE



Project: Oak Street Sewer Trunk Rehabilitation
Date: Mon 7/27/20



NOTE: The City of Stockton is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s).

Insurance Requirements for Professional Services

Contractor 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 Contractor, 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 **\$2,000,000** 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 Contractor 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 Contractor provides written verification it has no employees)
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate. (If Claims-made, see below.)

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater. No

representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

Limits of Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Other Insurance Provisions

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

Additional Insured Status

The City of Stockton, 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 Contractor 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 Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

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

Waiver of Subrogation

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

Self-Insured Retentions

All Self-insured retentions must be disclosed to Risk Management for approval and shall not reduce the limits of liability. The City of Stockton may require the Contractor to purchase coverage with a lower retention or 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 of Stockton.

Acceptability of Insurers

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

Claims Made Policies (note – applicable only to professional liability)

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 Contractor must purchase "extended reporting" coverage for a minimum of **five (5)** years after completion of contract work.

Verification of Coverage

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies.

Subcontractors

Contractors shall require and verify that all subcontractors, or other parties hired for this work, purchase and maintain coverage for indemnity and insurance requirements as least as broad as specified in this agreement to the extent they apply to the scope of the subcontractor's work with the same certificate of insurance requirements and naming as additional insureds all parties to this contract. Contractor shall include the following language in their agreement with Subcontractors: *"Subcontractors hired by Contractor agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the contract documents and provide a valid certificate of insurance and the required endorsements included in the agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the owner contract document indemnity and insurance provisions will be furnished to the subcontractor upon request."* Contractor shall provide proof of such compliance and verification to the City upon request.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton Attn: City Risk Services
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

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PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

I. PURPOSE

The purpose of this policy is to reaffirm the City’s commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

II. POLICY

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care “Market Place” or “Exchange.”
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

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maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.

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III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT

- A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:
1. Soliciting applications from a source where all or most of potential workers are of the same race or color.
 2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
 3. Questioning a job applicant about the existence, nature and severity of a disability.
- B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

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otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. Verbal Harassment: Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
 2. Physical Harassment: Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
 3. Visual Harassment: The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
- C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is made a term or condition of employment; or
 2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or

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3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

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- i. Retaliation for making harassment reports or threatening to report harassment.

D. Affordable Care Act (ACA) Anti-Retaliation

Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:

1. Receives a health insurance tax credit or subsidy through the Health Care “Marketplace” or “Exchange”, by which can trigger a penalty payable by the employer;
2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
3. Testifies in a proceeding concerning such violation;
4. Assists or participates in a proceeding concerning a violation; or
5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

IV. REPORTING AND COMPLAINT PROCEDURES

A. Immediate Action Required

The City’s reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

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employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment

- a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
- b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
- c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

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with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.

2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment

- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
- b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
- c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

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- d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.

- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.

- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.

V. INVESTIGATION PROCEDURES

A. Determination of Responsibility for Investigation

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

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responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

B. Investigative Guidelines

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially

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supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

VI. RESPONDING TO THE COMPLAINT

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

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make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
 - 1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
 - 2. Unfounded: The investigation proved that the act(s) or omission(s)

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complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. Sustained: The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.

F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

VII. DISCIPLINE

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

VIII. ALTERNATIVE REMEDIES

If upon exhausting all internal remedies to file, investigate, and respond to a charges of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e *et seq.*), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

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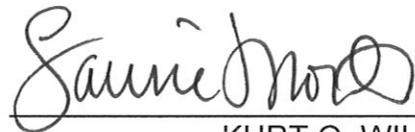
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

IX. COMMUNICATION OF POLICY

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



KURT O. WILSON
CITY MANAGER

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