

RESOLUTION NO. 2013-129

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING AN AGREEMENT FOR THE EAST SIDE TRUNK SEWER PHASE II PROJECT NO. 2007-02 WITH GHD FOR CONSTRUCTION MANAGEMENT SERVICES

WHEREAS, On June 25, 2013, Council directed staff to proceed with the construction of the East Side Trunk Sewer Project No. 2007-02 ("Project");

WHEREAS, on July 12, 2013, staff issued a Request for Proposals ("RFP") for the Project to identify a qualified consultant that can assist the City with the construction management of the Project;

WHEREAS, the City received four proposals on August 8, 2013; and

WHEREAS, the City project team chose GHD for an award of contract due to their (1) quality of team and ability to staff the Project, (2) experience and expertise in this particular type of work, (3) Public outreach plan and (4) understanding of the Project as demonstrated in the selection process.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Rohnert Park authorizes and approves an Agreement by and between GHD, a California corporation, and the City of Rohnert Park, a municipal corporation, for design review and value engineering and construction management and related services for the East Side Trunk Sewer Project No. 2007-02, for a not-to-exceed cost of \$845,900.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute such an Agreement in substantially similar form to Exhibit A, which is incorporated herein by this reference, subject to minor modification by the City Manager and City Attorney, on behalf of the City of Rohnert Park.

DULY AND REGULARLY ADOPTED by the City Council of the City of Rohnert Park this 10th day of September 2013.

CITY OF ROHNERT PARK

Pam Stafford
Pam Stafford, Mayor

ATTEST:

Anne Buergler
Anne Buergler, City Clerk

Attachment: Contract



AHANOTU: AYE BELFORTE: AYE MACKENZIE: AYE CALLINAN: AYE STAFFORD: AYE
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

City of Rohnert Park
130 Avram Ave.
Rohnert Park, CA 94928

**DESIGN PROFESSIONAL SERVICES AGREEMENT
RE: EAST SIDE TRUNK SEWER CONSTRUCTION MANAGEMENT SERVICES**

THIS AGREEMENT is entered into as of the 10th day of September, 2013, by and between the CITY OF ROHNERT PARK ("City"), a California municipal corporation, and GHD, Inc., ("Design Professional"), a California corporation.

Recitals

WHEREAS, City desires to obtain construction management services in connection with East Side Trunk Sewer Project No. 2007-02; and

WHEREAS, Design Professional hereby represents to the City that Design Professional is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Design Professional pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City may determine from time to time, Design Professional shall perform the services set out in the "Scope of Work and Schedule of Performance" attached hereto as Exhibit A.

2. Time of Performance. The services of Design Professional 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 Design Professional are to be completed not later than December 31, 2014. Design Professional shall perform its services in accordance with the schedule set out in the "Scope of Work and Schedule of Performance" attached hereto as Exhibit A. Any changes to the dates in this Section or Exhibit A must be approved in writing by the City.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Design Professional, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit B. However, in no event shall the amount City pays Design Professional exceed Eight Hundred Forty-five Thousand Nine Hundred Dollars and no

cents (\$845,900.00). 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.

- (1) Design Professional shall submit itemized monthly invoices for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by City.
- (2) Payments due and payable to Design Professional 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 Design Professional 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. Design Professional will not undertake any work that will incur costs in excess of the amount set forth in Section 3(A) without prior written amendment to this Agreement.

D. Standard of Quality. City relies upon the professional ability of Design Professional as a material inducement to entering into this Agreement. All work performed by Design Professional under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Design Professional's field of expertise.

E. Taxes. Design Professional 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 Design Professional.

F. No Overtime or Premium Pay. Design Professional 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, unless specifically required by the applicable task order and authorized by City in writing. Design Professional shall not receive a premium or enhanced pay for work performed on a recognized holiday. Design Professional 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.

G. Litigation Support. Design Professional agrees to testify at City's request if litigation is brought against City in connection with Design Professional's report. Unless the action is brought by Design Professional or is based upon Design Professional's negligence, City will compensate Design Professional for the preparation and the testimony at Design

Professional's standard hourly rates, if requested by City and not part of the litigation brought by City against Design Professional.

4. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Design Professional. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Failure of the Design Professional 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.

5. Duties of City. City shall provide all information requested by Design Professional that is reasonably necessary to performing the Scope of Work. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement.

6. Ownership of Documents.

A. The plans, specifications, estimates, programs, reports, models, and other material prepared by or on behalf of Design Professional under this Agreement including all drafts and working documents, and including electronic and paper forms (collectively the "Documents"), shall be and remain the property of the City, whether the Services are completed or not. Design Professional shall deliver all Documents to City, upon request at (1) the completion of the Services, (2) the date of termination of this Agreement for any reason, or (3) request by City in writing, or (4) payment of all monies due to Design Professional.

B. The Documents may be used by City and its officers, elected officials, employees, agents, and volunteers, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable without further employment of or payment of any compensation to Design Professional. If City desires to modify Documents before using them, City shall obtain written consent from Design Professional for any such modification, and such consent shall not unreasonably be withheld. If City modifies Documents without obtaining written consent from Design Professional, Design Professional shall not be liable to City for any damages resulting from use of such modified Documents, provided that the Design Professional was not a proximate cause of such damages.

C. Design Professional retains the copyright in and to the intellectual property depicted in the Documents subject to Design Professional's limitations and City's rights and licenses set forth in this Agreement. City's ownership interest in the Documents includes the following single, exclusive license from Design Professional: Design Professional, for itself, its employees, heirs, successors and assigns, hereby grants (and if any subsequent grant is necessary, agrees to grant) to City an irrevocable, perpetual, royalty-free, fully paid, sole and exclusive license and right to use and exercise any and all of the copyrights or other intellectual property rights that Design Professional may author or create, alone or jointly with others, in or with respect to the Documents, including without limitation all analysis, reports, designs and graphic representations. City's license shall include the right to sublicense, shall be for all purposes with respect to each right of copyright, and shall be without restriction.

D. Design Professional shall include in all subcontracts and agreements with respect to the Services that Design Professional negotiates, language which is consistent with this Section 6.

E. All reports, information, data, and exhibits prepared or assembled by Design Professional in connection with the performance of its Services pursuant to this Agreement are confidential until released by the City to the public, and the Design Professional shall not make any of these documents or information available to any individual or organization not employed by the Design Professional or the City without the written consent of the City before any such release. This provision shall not apply to information that (1) is already in the public domain, (2) was previously known by Design Professional, (3) Design Professional is required to provide by law, or (4) reasonably required by Design Professional to conduct its defense in a legal or similar proceeding, so long as Design Professional notifies City in writing before use of such information.

7. Employment of Other Design Professionals, Specialists or Experts.

A. Design Professional 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. Any consultants, specialists or experts approved by City are listed in Exhibit D.

B. Design Professional represents that it has, or will secure at its own expense, all personnel required in performing the Services. All of the Services required hereunder will be performed by the Design Professional or under Design Professional's supervision, and all personnel engaged in the work shall be qualified to perform such services.

C. Design Professional shall make every reasonable effort to maintain stability and continuity of Design Professional's Key Personnel assigned to perform the Services. Key Personnel for this contract are listed in Exhibit D.

D. Design Professional shall provide City with a minimum twenty (20) days prior written notice of any changes in Design Professional's Key Personnel, provided that Design Professional receives such notice, and shall not replace any Key Personnel with anyone to whom the City has a reasonable objection.

E. Design Professional plans to retain the subconsultants listed in Exhibit D, who will provide services as indicated in Exhibit D.

F. Design Professional will not utilize subconsultants other than those listed in Exhibit D without advance written notice to the City. Design Professional will not utilize a subconsultant to whom the City has a reasonable objection. Subconsultants providing professional services will provide professional liability insurance as required in Exhibit C unless the City waives this requirement, in writing.

8. Conflict of Interest.

A. Design Professional understands that its professional responsibility is solely to City. Design Professional warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Design Professional shall not knowingly, and shall take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If Design Professional discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Design Professional shall promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

B. Design Professional (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Design Professional's Services hereunder. Design Professional further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

C. Design Professional is not a designated employee within the meaning of the Political Reform Act because Design Professional:

(1) Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official other than normal contract monitoring; and

(2) Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a)(2)).

9. Interest of Members and Employees of City. No member of the City and no other officer, elected official, employee, agent or volunteer of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects its personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

10. Liability of Members and Employees of City. No member of the City and no other officer, elected official, employee, agent or volunteer of the City shall be personally liable to Design Professional or otherwise in the event of any default or breach of the City, or for any amount which may become due to Design Professional or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

11. Indemnity.

A. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Design Professional shall defend (with legal counsel reasonably acceptable to City), indemnify, and hold harmless City and its officers, elected officials, employees, agents, and volunteers (collectively "Indemnitees") from and against

any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Design Professional or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, reasonable court costs and reasonable attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such negligence, recklessness, or willful misconduct includes without limitation the failure of Design Professional to disclose information known by Design Professional to be material to performing the Services. Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of such Indemnitee. Notwithstanding any provision of this Agreement to the contrary, the extent of Design Professional's obligation to defend, indemnify, and hold harmless shall be governed by the provisions of California Civil Code Section 2782.8.

B. Neither termination of this Agreement nor completion of the Services shall release Design Professional from its obligations under this Section 11, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

C. Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement. If Design Professional fails to obtain such indemnity obligations from others as required, Design Professional shall be fully responsible for all obligations under this Section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Design Professional and shall survive the termination of this Agreement or this section.

D. Design Professional's compliance with the insurance requirements does not relieve Design Professional from the obligations described in this Section 11, which shall apply whether or not such insurance policies are applicable to a claim or damages.

12. Design Professional Not an Agent of City. Design Professional, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

13. Independent Contractor. It is understood that Design Professional, in the performance of the work and services agreed to be performed by Design Professional, shall act as and be an independent contractor as defined in Labor Code 3353 and not an agent or employee of City; and as an independent contractor, Design Professional shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Design Professional hereby expressly waives any claim it may have to any such rights. Design Professional, its officers, employees and agents shall not have any power to bind or commit City to any decision.

14. Compliance with Laws.

A. General. Design Professional shall (and shall cause its agents and subcontractors), at its sole cost and expense, comply with all applicable federal, state and local laws, codes, ordinances and regulations now in force or which may hereafter be in force during the term of this agreement. Except as otherwise allowed by City in its sole discretion, Design Professional and all subconsultants shall have acquired, at their expense, a business license from 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) must be kept valid throughout the term of this Agreement. Any corrections to Design Professional's reports or other Documents (as defined in Section 6) that become necessary as a result of Design Professional's failure to comply with these requirements shall be made at the Design Professional's expense.

B. Updates. Should Design Professional become aware that the requirements referenced in subparagraph A above change after the date of a report or other Document is prepared, Design Professional shall be responsible for notifying City of such change in requirements. Design Professional will bring the Documents into conformance with the newly issued requirements at the written direction of City. Design Professional's costs for providing services pursuant to this paragraph shall be submitted to City as Additional Services.

C. Licenses and Permits. Design Professional represents that it has the skills, expertise, licenses and permits necessary to perform the Services. Design Professional shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which Design Professional is engaged. All products of whatsoever nature which Design Professional delivers to City pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Design Professional's profession. Permits and/or licenses shall be obtained and maintained by Design Professional without additional compensation throughout the term of this Agreement.

D. Documents Stamped. Design Professional shall have documents created as part of the Services to be performed under this Agreement stamped by registered professionals for the disciplines covered by Design Professional's Documents as required by Section 6735 of the Business and Professions Code or any other applicable law or regulation. Design Professional shall not be required to stamp any documents not prepared under its direct supervision. The City will not be charged an additional fee to have such documents stamped. .

E. Workers' Compensation. Design Professional 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 Design Professional certifies that it will comply with such provisions before commencing performance of this Agreement.

F. Prevailing Wage. Design Professional and Design Professional's subconsultants, 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 City Clerk's office. This provision to comply with prevailing wage laws takes precedence over the provisions of paragraph 3.F.

G. Injury and Illness Prevention Program. Design Professional certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

H. City Not Responsible. City is not responsible or liable for Design Professional's failure to comply with any and all of the requirements set forth in this Agreement.

15. Nonexclusive Agreement. Design Professional understands that this is not an exclusive Agreement and that City shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Design Professional as the City desires.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Design Professional in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, as required by law, or as otherwise allowed by this Agreement.

17. Insurance. Design Professional shall provide insurance in accordance with the requirements of Exhibit C.

18. Assignment Prohibited. Design Professional shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of City and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. Termination.

A. If Design Professional at any time refuses or neglects to prosecute its Services in a timely fashion or in accordance with the schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its Services, or otherwise fails to perform fully any and all of the agreements herein contained, Design Professional shall be in default.

B. If Design Professional fails to cure the default within seven (7) days after written notice thereof, City may, at its sole option, take possession of any Documents or other materials (in paper and electronic form) prepared or used by Design Professional and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Design Professional under this Agreement; and/or (2) terminate Design Professional's right to proceed with this Agreement.

C. In the event City elects to terminate, City shall have the right to immediate possession of all Documents and work in progress prepared by Design Professional, whether located at Design Professional's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefore. In

case of such default termination, Design Professional shall not be entitled to receive any further payment under this Agreement until the Services are completely finished.

D. In addition to the foregoing right to terminate for default, City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Design Professional. In the event of termination without cause, Design Professional shall be entitled to payment in an amount not to exceed the Not-To-Exceed Amount which shall be calculated as follows: (1) Payment for Services then satisfactorily completed and accepted by City, plus (2) Payment for Additional Services satisfactorily completed and accepted by City, plus (3) Reimbursable Expenses actually incurred by Design Professional, as approved by City. The amount of any payment made to Design Professional prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2) and (3) above. Design Professional shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of such termination and payment. In addition, the City's right to withhold funds under Section 19.C. shall be applicable in the event of a termination for convenience.

E. If this Agreement is terminated by City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a Termination for Convenience under this Section 19 and Design Professional shall be entitled to receive only the amounts payable under Section 19.D..

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as he/she deems necessary due to unfavorable conditions or to the failure on the part of the Design Professional to perform any provision of this Agreement. Design Professional will be paid for satisfactory Services performed through the date of temporary suspension. In the event that Design Professional's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Design Professional's reasonable control, Design Professional's compensation shall be subject to renegotiation.

21. Entire Agreement and Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between City and Design Professional and supersedes any previous agreements, whether verbal or written, concerning the same subject matter. This Agreement may only be amended or extended from time to time by written agreement of the parties hereto.

22. 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.

23. 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.

24. Time of the Essence. Time is of the essence of this Agreement.

25. 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 herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City Manager
City of Rohnert Park -City Hall
130 Avram Avenue
Rohnert Park, CA 94928

If to Design Professional: Iver Skavdal
GHD, Inc.
2235 Mercury Way Suite 150
Santa Rosa, CA 95407

26. Design Professional's Books and Records.

A. Design Professional 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 for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Design Professional.

B. Design Professional shall maintain 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.

C. 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 Design Professional's address indicated for receipt of notices in this Agreement.

D. City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in the City Manager's office. Access to such records and documents shall be granted to any party authorized by Design Professional, Design Professional's representatives, or Design Professional's successor-in-interest.

E. Pursuant to California Government Code Section 10527, the parties to this Agreement shall be subject to the examination and audit of representative of the Auditor General

of the State of California for a period of three (3) years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

27. Equal Employment Opportunity. Design Professional is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Design Professional will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Design Professional will take affirmative action to ensure that applicants are treated during such employment without regard to race, 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. Design Professional further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

28. Unauthorized Aliens. Design Professional hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Design Professional so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Design Professional hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

29. Section Headings. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

30. City Not Obligated to Third Parties. City shall not be obligated or liable for payment hereunder to any party other than the Design Professional.

31. Remedies Not Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

32. 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.

33. No Waiver Of Default. No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power

and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

34. Successors And Assigns. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

35. 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 to Design Professional Services Agreement
- D. Exhibit D: Key Personnel and Other Consultants, Specialists or Experts Employed by Design Professional
- E. Exhibit E: Design Consultant Requirements

36. 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.

37. News Releases/Interviews. All Design Professional and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

38. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Sonoma, California.

39. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Design Professional hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Design Professional is obligated, which breach would have a material effect hereon.

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

CITY OF ROHNERT PARK

By: _____

Gabriel A. Gonzalez, City Manager

Date: _____

Per Resolution No. 2013-_____ adopted by the Rohnert Park City Council at its meeting of September 10, 2013 .

APPROVED AS TO FORM:

By: _____

City Attorney

ATTEST:

By: _____

City Clerk

DESIGN PROFESSIONAL



By: IVER SKAUDAL P.E. C35463

Title: OPERATING CENTER MANAGER

Date: SEPT. 3, 2013

DESIGN PROFESSIONAL

By: _____

Title: _____

Date: _____

EXHIBIT A

Scope of Work and Schedule of Performance

Eastside Trunk Sewer Phase II City Project No. 2007-02

Scope of Work

This scope of work is to provide a senior level On-site Observation/Inspection, Construction Manager, and construction support (Construction Management Team) for the installation of approximately 8,600 feet of 24-inch and 1,300 feet of 18-inch sanitary sewer trunk main, replacement of selected water and sewer service laterals, resurfacing of trench and pavement road overlay, traffic and pedestrian control, installing trench shoring with dewatering and soil stabilization, traffic striping, and observation of other work specified in the plans.

The Construction Management Team (CMT) will act as an extension/adjunct of the City of Rohnert Park staff. The CMT will coordinate with City of Rohnert Park staff to discuss project details, establish goals, review schedules, provide drafts for review and produce final documentation ready for City signature. The CMT will do this by providing daily updates, coordinating meetings and telephone calls, promptly transcribe meeting notes and distribute, and provide a web-based document management system, eadoc.

The scope of work was developed in conjunction with the RFP prepared, the pre-submittal meeting, and GHD's past experience working for the City of Rohnert Park.

The CMT will perform the following services:

Task 1.0 - Contract Administration

- 1.1 Project Coordination. Meet with the City staff to discuss and coordinate issues with the project. This will be accomplished by daily/weekly email updates of the activities that preceded the work accomplished in the time period with issues that occurred. The weekly update will be more in depth by providing a 2-3 week look ahead on the schedule, and will contain an ongoing list of outstanding critical issues. Quarterly, the CMT will provide the City Council with a memo updating them on the progress of the project. The CMT will also meet periodically with the geotechnical and design engineer to keep them posted on current issues and the progress. The design and geotechnical engineer will be included in distribution list to receive the daily/weekly updates.

In addition the Principle-In-Charge will provide higher level coordination with the City by weekly email Flash Reports, allowing the City Project Manager to quickly assess the progress of the project and keep up to date on the project issues. The Principle-In-Charge will also meet weekly with the GHD CMT to discuss the schedule, submittals, RFI's, change orders, pay requests, Public Communications and any construction issues.

The CMT will coordinate with the various businesses, residences, and schools along the pipeline route. For this the CMT will provide a web-based log of residents/business complaints and issues, including a description, contact number, and action. Coordination will begin with daily interaction by our field team, who will then engage the CM and assistant CM when necessary. Our fee estimate includes eadoc.

Estimate of time for task of 3 hours per week for the PIC, 9 hours per week for the CM and 2 hours per week for the assistant CM.

- 1.2 Pre-Construction Meeting. Conduct the pre-construction meeting, which will include the City, the design engineer, geotechnical engineer of record (Jacobs Associates), contractor, and major

- subcontractors. Prepare agenda and minutes for the pre-construction meeting. Prior to the Pre-Construction Meeting, the CM will prepare a draft contact list including the following permitting agencies: City of Santa Rosa for the permit to discharge to the sewers, SCWA for the crossing of the aqueduct, SMART for the crossing of their railroad. Contact information will be identified for key personnel from each agency to be contacted in the event of an emergency. The list will be updated, finalized and distributed after the meeting, including to police and fire departments.
- 1.3 Project Meetings. Conduct and document weekly progress meetings and other special technical meetings. Prepare agenda describing key issues, schedule status, and potential change orders. Prepare and distribute notes of the weekly meetings. Estimate of time for task of 3 hours per week for the CM and 2 hour per week for the assistant CM.
 - 1.4 Schedule Management. Review contractor's as-planned schedule for conformance with the specifications and for reasonableness of activity durations and sequence. Coordinate review comments by the City and design engineer and transmit review comments to the contractor. Meet with the contractor to discuss and clarify any significant issues. Review revised schedules. Review work progress as compared to the as-planned schedule and notify contractor of schedule slippage. Analyze schedule to determine impact of the weather and change orders on the construction schedule. Review contractor's updates of the construction schedule that incorporates actual progress, weather delays, and change order impacts. The CMT will create and maintain its own schedule in MS Project to provide an "as-built" schedule and be able to analyze scheduling changes due to change orders or other impacts to the project. Estimate of time for task of 2 hours per week for the CM.
 - 1.5 Maintain Project Records. Maintain project records including daily logs, weekly report of working days, inspection reports, compliance testing results, photos, measurement of quantities, schedules, submittals, RFI's, RFC's, PCO's, change orders, month pay requests, issues, and correspondence. Project records to be maintained in organized manner for quick reference. The project records are a combination of the web-based management system and our daily detailed field reports. Estimate of time for task of 2 hours per week for the CM and 4 hours per month for the assistant CM and the document control person.
 - 1.6 Review Monthly Progress Payments. Evaluate the monthly progress payment requests from the Contractor, negotiate differences over payment, and recommend payment to the City. Quantity vouchers to be checked and signed independently by the assistant construction manager to monitor quantities paid against estimated quantities. Monitor certified payrolls and conduct employee interviews. Estimate of time for task of 8 hours per month for the CM and 4 hours per month for the assistant CM.
 - 1.7 Prepare Monthly Progress Reports. Prepare and submit to the City a monthly progress report including construction progress summary, construction cash flow and payments, and summary logs for proposed change orders (PCOs) and change orders. Estimate of time for task of 2 hours per month for the CM.
 - 1.8 Requests for Information (RFIs) and Requests for Clarifications (RFCs). Coordinate and manage the RFI and RFC evaluation and response process. This includes receiving the RFI from the Contractor or transmitting the RFC to the Contractor, log, transmit to the design engineer for response, coordinate with design engineer on field status, track progress, review response, and transmit response to contractor. Estimate 20 RFIs/RFCs and 2 hours each for the CM.

- 1.9 Potential Change Orders (PCOs) and Change Orders. Coordinate and manage the change order process, including log, review in conjunction with design engineer and City, assist with determination of changed conditions and scope definition as needed, develop independent cost estimate, assist with negotiation, and incorporate change orders into the construction contract. Estimate 20 PCOs/COs and 4 hours each for the CM.
- 1.10 Coordinate Submittal and Shop Drawing Review Process. Coordinate and manage the submittal/shop drawing review process. This work includes log, transmit to design engineer for response, coordinate with design engineer on field status, track progress, review response, and transmit response to contractor. Incomplete submittals will be returned to the contractor prior to being submitted to the design engineer. Estimate 50 submittals and 1 hour for each submittal for the CM and ½ hour for the assistant CM.
- 1.11 Permits Compliance. Monitor and drive contractor compliance with construction permits, traffic and pedestrian control plans, and environmental compliance. Coordinate with design engineer and inspector/observer for compliance. Recommend course of action to City if required measures are not being met by the contractor. Estimate of time for task of 2 hours per month for the CM and 4 hours per month for the assistant CM.
- 1.12 Monitor Construction Record Drawings. Monitor and drive the contractor to maintain construction record drawings maintained by the contractor and on-site inspector in coordination with the progress pay request. Estimate of time for task of 2 hours per month for the assistant CM.
- 1.13 Claims Management. Analyze potential claims for additional compensation that are submitted during the construction period and make recommendations to resolve them. Perform claims administration, including coordination and monitoring claims response preparation, logging claims, and tracking claims status. Estimate 3 potential claims and 16 hours for each submittal for the CM.

Task 2.0 – Field Inspection/Observation

Provide a senior level inspector to observe and document daily construction activities.

- 2.1 Field Inspection/Observation. Provide full time senior level on-site construction inspector/observer to monitor the contractor's work for compliance with the contract documents, submittals, RFIs, change orders, traffic and pedestrian control plan, public outreach plan, and SWPPP requirements. Certified payrolls to be checked and documented by the inspector. Estimate of 240 working days and 8 hours for each day for the inspector/observer.
- 2.2 Photograph or Video Documentation. Prepare a video and photo documentation of initial site conditions prior to contractor's commencement of construction. Provide additional photos of construction progress. Estimate of 8 hours for one day for the inspector/observer.
- 2.3 Field Changes. Document field changes to the Drawings and Specifications. The estimate for the time on this task is included in Task 2.1 for the inspector and 2 hours per week for the CM.
- 2.4 Daily Reports. Prepare daily observation reports. The Daily report will be reviewed and signed by the resident engineer and will include: employee names and labor classification, equipment identification, hours that were work and equipment utilized, weather conditions, and issues, observations, conversations that occurred between the inspector and the contractor and public. The report will be a combination of web-based data and written. The daily reports will have photographs and material tags. The estimate for the time on this task is included in Task 2.1.

- 2.5 Materials Testing Coordination. Coordinate with the contractor regarding materials testing that is being performed according to the plans and specifications. The design engineer will have a contract with the geotechnical engineer of record to provide occasional observation and review of the Quality Assurance testing performed by the contractor. The estimate for the time on this task is included in Task 2.1. RGH Consultants will provide materials testing for the HMA acceptance testing.

Task 3.0 – Project Completion

- 3.1 Project Completion and Punch List. The CMT will have completed a preliminary punch list for the project and maintained a running punch list through the course of the project. Schedule with City and design engineer to conduct final completion inspections and issue punch lists.
- 3.2 Project Documents. Provide the City of Rohnert Park with a complete set of all records of the project, indexed and properly filed, and a listing of warranties provided under the project including the items covered and the warranty duration. The documentation will be all in electronic format.
- 3.3 Notice of Completion. Prepare the final pay estimate and balance change orders, prepare the Notice of Completion, and coordinate retention release.

4.0 Public Outreach

The ESTS alignment is located within a highly urban area, impacting traffic circulation patterns, on-street parking, and access to residences, commercial establishments, and public facilities. Project construction will disrupt everyday lives of City residents and visitors. Effective communication with the public is paramount to minimizing disruptions and impacts from construction. The City has witnessed our efforts first-hand during the Phase I project and other projects throughout the City recently.

The following tasks are included in the Public Outreach task:

- Create a Public Outreach Plan that will be used as a resource for the City to use to inform potentially affected residents and businesses of the project and provide resolution of the Project's construction-related impacts.
- Establish a hot-line phone number that may be called if questions or complaints about construction impacts arise. The number will be included in the notice given to affected persons during construction. Affected persons will be instructed to call between 8:00am and 5:00pm Monday through Friday with return phone calls within 24-hours. It is assumed that the contractor will field after-hour phone calls.
- Create a business card specifically for this project to hand out to affected persons that would include the Construction Manager Assistant's name, hot-line phone number, and City's website address for up to date project-related information. Business cards will also be provided to the City for distribution at City Hall.
- Coordinate with the City's webmaster to dedicate a web-page for the project on the City's website. Weekly construction updates will be added to the web-page. The website address will be included in notices sent to affected persons.
- Create one handout/mailer (1 document) for noticing of the public information meeting and information about project construction. The handout/mailer would be mailed to residents and business owners within 300-feet from construction corridor. The handout will also be used to distribute to affected persons during the door-to-door site walk and to schools for their distribution to students and parents. The handout/mail will include the hot-line phone number and website link.

- Construction Manager will hold meetings with the City Council to explain to the Council of the project issues as needed. Regular monthly updates will be provided to the Deputy City Engineer and the City Manager. Weekly progress updates will be provided to the City Engineer.
- A public information meeting will be held prior to construction to provide affected residents and businesses an opportunity to learn about the project and the potential temporary impacts of construction. GHD will facilitate the meeting and provide refreshments. The Construction Manager, Construction Manager Assistant, and Inspector will attend. It is assumed the City's Project Manager and Contractor's Public Outreach liaison will also attend.
- The Construction Manager Assistant and Project Coordinator will perform a site-walk along the construction corridor to notify the residents and businesses directly affected by the project of upcoming temporary construction-related impacts. For apartment and other managed residential facilities, GHD will speak with representatives at the main offices and provide multiple copies of the handouts for the management office to distribute to residents. It is assumed that GHD will not walk door-to-door to individual apartments/managed facilities.
- Schools will be notified of the project and GHD will coordinate with their PTOs for distribution of the handout to students to take home. It is assumed the schools will distribute the handout.
- GHD will contact School Superintendent, Michael Watenpaugh and individual schools along the route to keep them informed of construction impacts. Schools will be encouraged to visit the project's website for updates during construction.
- Coordinate traffic control and pedestrian plan provided by contractor with City Hall.
- Provide updates to changes to traffic conditions to City, Police, and Fire.

Assumptions

The Contractor is responsible for the means and methods on the project.

Control of Contractor's Work. The Construction Management Team (CMT) does not supervise and direct the Work of the Contractor. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

Site Safety. The Contractor shall be solely responsible for site safety.

Compliance with Contract Requirements. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the CMT in the CMT's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

Materials Testing and Geotechnical Observation. The construction documents require the contractor to perform the testing of soil, clsm, and other materials. This cost is not included in the Construction Management Proposal, except for asphalt testing which is included in Task 2.5. Geotechnical observation will be coordinated through the design engineers contract with the Geotechnical Engineer of Record, costs for Jacobs services are not included in this proposal.

Schedule

It is anticipated that the Notice to Proceed will be issued immediately after the Council Award of the Contract on September 10, 2013. This project duration is expected to be one year.

EXHIBIT B
Compensation

GHD Inc - PROJECT ESTIMATING SHEET

SHT # 1 of 1

PROJECT NAME: Eastside Trunk Sewer Phase II

PROJECT # 840900311
Date August 23, 2013
CLIENT: City of Rohnert Park

On-Site Inspector Roger Simpson
Construction Manager Jim Winter
Principle In Charge Iver Skavdal

PREPARED BY: Jim Winter

		LABOR COSTS						FEE COMPUTATION					
LABOR CATEGORY> RATE>	Principle In Charge \$200 /HR	Construction Manager \$165 /HR	On-Site Inspector \$135 /HR	On-Site Inspector \$115 /HR	Assist CM \$110 /HR	Document Control \$90 /HR	TOTAL HOURS	Other Services	Other Direct Costs* \$6	TOTAL FEE	350 Calendar Days 12 month Construction period month Inspection period		
Task 1: Construction Administration													
Task 1.1 Project Coordination	152 \$ 30,400	432 \$ 71,280	- \$ -	- \$ -	86 \$ 9,504	- \$ -	518	\$ 15,000	\$ 3,110	\$ 129,294	48 weekly updates 9 hours	Other Servies is Eadoc	
Task 1.2 Preconstruction Meeting	2 \$ 400	11 \$ 1,815	3 \$ 405	2 \$ 230	2 \$ 220	- \$ -	18		\$ 108	\$ 3,178	8 Preparation 1 hr Meeting notes preparation	2 hour meeting	
Task 1.3 Project Meetings	48 \$ 9,600	144 \$ 23,760	- \$ -	- \$ -	96 \$ 10,560	- \$ -	240		\$ 1,440	\$ 45,360	48 weekly contractor meetings 2.0 hr, notes & agenda	1 hr meeting	
Task 1.4 Schedule Management	- \$ -	48 \$ 7,920	- \$ -	- \$ -	- \$ -	- \$ -	48		\$ 288	\$ 8,208	48 Review Schedule 1.0 hr analyze weekly and develop as-built		
Task 1.5 Maintain Project Records	- \$ -	96 \$ 15,840	- \$ -	- \$ -	192 \$ 21,120	192 \$ 17,280	480		\$ 2,880	\$ 57,120	48 Maintain logs, inspection reports, 4 hrs/week - photos, schedules, and correspondence		
Task 1.6 Review Monthly Progress Payments	- \$ -	104 \$ 17,160	- \$ -	- \$ -	52 \$ 5,720	- \$ -	156		\$ 936	\$ 23,816	13 pay requests, including final 8 hrs each		
Task 1.7 Prepare Monthly Reports	- \$ -	26 \$ 4,290	- \$ -	- \$ -	- \$ -	- \$ -	26		\$ 156	\$ 4,446	13 months plus including final 2 hrs for writing each		
Task 1.8 RFI's/ RFC's	- \$ -	40 \$ 6,600	- \$ -	- \$ -	- \$ -	- \$ -	40		\$ 240	\$ 6,840	20 Assumed Number of RFI's/RFC's 2 hrs each		
Task 1.9 PCO's and Change Orders	- \$ -	80 \$ 13,200	- \$ -	- \$ -	- \$ -	- \$ -	80		\$ 480	\$ 13,680	20 Assumed Number of PCO's 4 hrs each		
Task 1.10 Coordinate Shop Drawing Review	- \$ -	50 \$ 8,250	- \$ -	- \$ -	25 \$ 2,750	- \$ -	75		\$ 450	\$ 11,450	50 Assumed Number of shop drawings/submittals 1 hrs each		
Task 1.11 Permit Compliance	- \$ -	48 \$ 7,920	- \$ -	- \$ -	96 \$ 10,560	- \$ -	144		\$ 864	\$ 19,344	48 Monitor Contractor compliance with 2 permits & coordination		
Task 1.12 Monitor Record Drawings	- \$ -	- \$ -	- \$ -	- \$ -	24 \$ 2,640	- \$ -	24		\$ 144	\$ 2,784	12 Months 2 hrs per month		
Task 1.13 Claims Management	24 \$ 4,800	48 \$ 7,920	- \$ -	- \$ -	- \$ -	- \$ -	48		\$ 288	\$ 13,008	3 Assumed Number of PCO's that go towards claims 16 hrs each		
Sub-Total										\$ 338,528			
Task 2: Field Inspection													
Task 2.1 Field Inspection/Observation	- \$ -	- \$ -	1,920 \$ 259,200	640 \$ 73,600	- \$ -	- \$ -	2,560		\$ 15,360	\$ 348,160	8 hours per day inspection 240 working days		
Task 2.2 Photograph and Video Documentation	- \$ -	- \$ -	8 \$ 1,080	8 \$ 920	- \$ -	- \$ -	16		\$ 96	\$ 2,096	Prior to Pre-construction		
Task 2.3 Field Changes	- \$ -	96 \$ 15,840	- \$ -	- \$ -	- \$ -	- \$ -	96		\$ 576	\$ 16,416	48 Document field changes to drawings 2 or specifications.		
Task 2.4 Daily Reports	- \$ -	- \$ -	- \$ -	- \$ -	- \$ -	- \$ -			\$ -	\$ -	Included in task 2.1		
Task 2.5 Materials Testing Corrdination	- \$ -	- \$ -	- \$ -	- \$ -	- \$ -	- \$ -		\$ 46,000	\$ -	\$ 46,000	RGH		
Sub-Total										\$ 412,672			
Task 3: Project Completion													
Task 3.1 Project Completion and Punchlist	- \$ -	8 \$ 1,320	8 \$ 1,080	- \$ -	8 \$ 880	- \$ -	24		\$ 144	\$ 3,424			
Task 3.2 Project Documents	- \$ -	4 \$ 660	16 \$ 2,160	- \$ -	40 \$ 4,400	40 \$ 3,600	100		\$ 600	\$ 11,420	Record Drawings, warranty items Indexes, logs and binders		
Task 3.3 Notice of Completion	- \$ -	- \$ -	- \$ -	- \$ -	4 \$ 440	- \$ -	4		\$ 24	\$ 464	Final pay request, coordinate retention release City Council Agenda		
Sub-Total										\$ 15,308			
Task 4: Public Outreach Compliance													
Task 4.1 Public Outreach Compliance	- \$ -	94 \$ 15,510	- \$ -	- \$ -	384 \$ 42,240	191 \$ 17,190	669	\$ 438	\$ 4,014	\$ 79,392	48 weeks 8.0 hrs, calls, update web-site, Mtg w/schools		
Sub-Total										\$ 79,392			
Project Totals													
	226 \$ 45,200	1,329 \$ 219,285	1,955 \$ 263,925	650 \$ 74,750	1,009 \$ 111,034	423 \$ 38,070	5,366	\$61,438	\$ 32,198	\$ 845,900			

* OTHER DIRECT COSTS Include: Telephone, Mileage, Printing, Photo-copies and other misc. direct expenses.

EXHIBIT C

Insurance Requirements to Agreement For Design Professional Services Re: East Side Trunk Sewer Project No. 2007-02

Design Professional shall, at all times it is performing services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. Design Professional will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Design Professional agrees to amend, supplement or endorse the existing coverage to do so. Design Professional acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Design Professional in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

1. Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 00 01 or an approved equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review, but in no event shall be less than \$2,000,000 (Two Million Dollars) each occurrence;

2. Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or an approved equivalent. Limits are subject to review, but in no event shall be less than \$2,000,000 (Two Million Dollars) each occurrence. If Design Professional or its employees will use personal autos in any way in connection with performance of the Services, Design Professional shall provide evidence of personal auto liability coverage for each such person.

3. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers liability insurance, with minimum limits of \$1,000,000 (One Million Dollars) per occurrence.

4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Design Professional, subconsultants or others involved in performance of the Services. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000 (Two Million Dollars) per occurrence.

5. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Design Professional and "Covered Professional Services" as designated in the policy must include the type of work performed under this Agreement. The policy limit shall be no less than \$2,000,000 (Two Million Dollars) per claim and in the aggregate.

6. Insurance procured pursuant to these requirements shall be written by insurers that are authorized to transact the relevant type of insurance business in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

7. General conditions pertaining to provision of insurance coverage by Design Professional. Design Professional and City agree to the following with respect to insurance provided by Design Professional:

A. Design Professional agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officers, elected officials, employees, agents, and volunteers, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or an equivalent. Design Professional also agrees to require all contractors, and subcontractors to do likewise.

B. No liability insurance coverage provided to comply with this Agreement, except the Business Auto Coverage policy, shall prohibit Design Professional, or Design Professional's employees, or agents, from waiving the right of subrogation prior to a loss. Design Professional agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

C. All insurance coverage and limits provided by Design Professional and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

D. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

E. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

F. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises, and City shall be responsible for the cost of any additional insurance required. Design Professional shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

G. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Design Professional's general liability policy, shall be delivered to City at or prior

to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City may terminate this agreement in accordance with Section 19 of the Agreement.

H. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Design Professional agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

I. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Design Professional or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to City.

J. Design Professional agrees to ensure that subconsultants, and any other party involved with the Services who is brought onto or involved in the Services by Design Professional, provide the same minimum insurance coverage required of Design Professional; provided, however that only subconsultants performing professional services will be required to provide professional liability insurance. Design Professional agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Design Professional agrees that upon request, all agreements with subcontractors and others engaged in the Services will be submitted to City for review.

K. Design Professional agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, architect, consultant or other entity or person in any way involved in the performance of work on the Services contemplated by this agreement to self-insure its obligations to City. If Design Professional's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Design Professional, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

L. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Design Professional ninety (90) days advance written notice of such change. If such change results in additional cost to the Design Professional, and the City requires Design Professional to obtain the additional coverage, the City will pay Design Professional the additional cost of the insurance.

M. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

N. Design Professional acknowledges and agrees that any actual or alleged failure on the part of City to inform Design Professional of non-compliance with any insurance

requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

O. Design Professional will endeavor to renew the required coverages for a minimum of three years following completion of the Services or termination of this agreement and, if Design Professional is unable to do so, Design Professional will notify City at least thirty days prior to the cancellation or expiration of the policy or policies.

P. Design Professional shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Design Professional's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

Q. The provisions of any workers' compensation or similar act will not limit the obligations of Design Professional under this agreement. Design Professional expressly agrees that any statutory immunity defenses under such laws do not apply with respect to City, its officers, elected officials, employees, agents, and volunteers.

R. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

S. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

T. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

U. Design Professional agrees to be responsible for ensuring that no contract entered into by Design Professional in connection with the Services authorizes, or purports to authorize, any third party to charge City an amount in excess of the fee set forth in the agreement on account of insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

V. Design Professional agrees to provide immediate notice to City of any claim or loss against Design Professional arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

EXHIBIT D

Key Personnel and Other Consultants, Specialists or Experts Employed by Design Professional

Project Director – Iver Skavdal, PE
Construction Manager – Jim Winter, PE
Lead Inspector – Roger Simpson
Construction Manager Assistant – Terrie Zwillinger
Public Communication – Terrie Zwillinger
Project Coordinator – Laura Bryan
Materials Testing – RGH

Exhibit E
Design Consultant Requirements

The Consultant agrees to the following standards and practices in performance of engineering design duties.

1. The consultant shall assign one project manager who is responsible for the overall completion of the project and fulfillment of these requirements.
2. Reimbursable expenses shall be considered to be included in the not to exceed price. Consultant project managers are expected to stay within the not-to-exceed price. It is the responsibility of the consultant to document any work outside the agreed upon scope of work including the cost of such work. Work outside the scope of work completed without prior authorization by the City is done at risk by the consultant.
3. All plan check design drawings shall be submitted full size (34" x 22" or equivalent) for review, unless otherwise requested by the City.
4. A minimum of two copies of the plans and specifications will be submitted for each plan check.
5. The specification will use the latest version of the City of Rohnert Park boilerplate Contract Document and Specifications for the project. The consultant will receive the most current version of the specification from the Engineering Administrative Assistant for each design project via email. This shall be modified by the City for insurance requirements, contract time, liquidated damages and environmental mitigation measures.
6. The Division 1 technical specifications shall include a project description. The project description will generally describe the location, and the extents of the project and what work is included in the project. This description shall be suitable for insertion into legal documents and council summary packages. It shall provide a quick overview of the project that a lay person can understand.
7. Technical specifications shall include a description of bid items. If the technical specifications are in CSI format, a list of bid descriptions shall be included in the Division 1 sections. The bid descriptions shall match the bid line items.
8. Division 1 shall include a complete consolidated list of submittals for the project.
9. Electronic documents sent to the City for review shall be in Word format.
10. Plans and specifications shall, as much as possible and within good engineering practice, refer to the City of Rohnert Park Manual of Standards, Details and Specifications which can be downloaded from the City's website at www.rpcity.org . When Standard Details are incorporated they shall be by reference rather than shown on the plans.
11. The consultant shall note the need for any permitting through the State or other entities including Caltrans, Corps of Engineers, RWQCB, BAAQMD, SCWA, and the County of Sonoma. Consultant is responsible for initiating contact with the permitting agency, meeting with the permitting agency as needed and

- completing all permit applications as completely as possible prior to sending to the City for signature.
12. The consultant shall note the need for any easements or rights of way required for the project including private landowners, Caltrans, SCWA, and the County of Sonoma. Consultant is responsible for initiating contact with the other entity and completing all easement or right of way forms, including property descriptions as needed, as possible prior to sending to the City for review.
 13. The consultant shall develop a project checklist which includes all project paperwork requirements resulting from permitting, easements and funding agreements.
 14. At least 45 days prior to bid opening, the consultant shall provide a draft staff report for presentation to City Council requesting to authorize advertisement for bids.
 15. The consultant shall complete all noticing and bidding of the project. This includes mailing notices to the City's five required Trade Journals/Plan Check Houses. Notice shall be mailed at least 30 days prior to the bid opening.
 16. The consultant shall make bid copies of the bidding documents, plans and specifications, distribute these and collect payment for the plans and specifications to offset their cost.
 17. The consultant shall arrange for and conduct the pre-bid meeting, if such a meeting is deemed necessary.
 18. The consultant shall provide all addenda for the bid package as needed, using the City's addendum form available on the City's website.
 19. After issuance of final addenda and prior to issuance of the Notice to Proceed, the consultant will produce ten (10) conformed sets of plans and drawings that incorporate all the addenda. This shall be done by making the changes on the full size drawings adding the addenda to the front of the specifications books. Consultant shall note the changes on the drawings and in the appropriate place in the Specifications by using the Delta symbol (Δ). All addenda shall also be bound into the front of the specifications book, behind the front cover and before the cover page, with most recently issued addendum on top. Addenda pages shall be printed on different color paper than the specifications.
 20. Before bid date, consultant shall provide all electronic files to the City. The project plans shall be in pdf format in one file folder with a separate document for each page. Specifications shall be in Word format; the Engineer's Estimate shall be in Excel format.
 21. After bidding the consultant will check the bids for conformance with the contract and bid requirements and determine the responsiveness of each bidder. This includes checking any applicable licenses and qualifications. This shall include checking as required, references to determine required experience. The consultant shall analyze the bids to determine the lowest responsive bidder and comment on any large discrepancies between the engineer's estimate and the low bid. The consultant shall create the bid table in Excel format, recommend

- selection of the lowest responsive bid, and justify the rejection of any bids as needed. The consultant shall create a staff report for submission to the City Council providing recommendations for award and or rejection of bids.
22. The consultant shall review submittals pertaining to the project and provide comments, rejection, or stamp "No Exceptions Taken" as appropriate.
 23. The consultant shall review submittals and RFIs pertaining to the project and provide responses and guidance as required.
 24. After construction is complete, the consultant will create Record Drawings (as-built drawings) based on the contractors marked up set of plans, in electronic format and scan the as-built drawings into pdf format and deliver one copy on bond paper and electronic as-built drawings to the City.

The requirements for as-built plans are as follows:

- a. The As-Built shall include the contractor's name, address, phone number and approximate date of project completion.
- b. Archived Plans shall be of the **originally approved plans** (Conformed Plans), including signatures of approval, with all contract change order(s), field directives and as-built information added over the originally approved information.
- c. Archived Plans shall be provided in an electronic format such as Adobe PDF or Tiff file formats, a minimum of 200 Dot per Inch resolution, optimized to a file size not to over burden the typical computer workstation or take more than 5 seconds to open on said workstation.
- d. The entire set of plans may be in one file or one file for each sheet but not both, in order to comply with number 3 above.
- e. The Archived Plans shall not be made directly from the electronic drawing files, because this introduces a chance for error or something changed, deleted or otherwise different from the originally approved plans. As a secondary option, the Archived Plans made be provided in duplicate; one set of the originally approved plans (conformed plans) and a second set of the electronic drawings revised to include contract change order, field directives and as-built information added (no deletions) to the plans, then provided in one of the file formats described in number 3 above.