

## **RESOLUTION NO. 2015-44**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING A DESIGN PROFESSIONAL SERVICES AGREEMENT RE: CONSTRUCTION MANAGEMENT SERVICES FOR THE EASTSIDE TRUNK SEWER PHASE III AND SNYDER LANE WIDENING PROJECT NO. 2014-01 WITH GHD, INC.**

**WHEREAS**, the City of Rohnert Park General Plan and Public Facilities Finance Plan describe the Eastside Trunk Sewer and Snyder Lane Widening as infrastructure necessary to support new development; and

**WHEREAS**, the City of Rohnert Park (City) has formed an Underground Utility District along Snyder Lane to facilitate a Pacific Gas & Electric Company (PG&E) Rule 20A Project to underground the overhead electrical and communication utilities on Snyder Lane between Southwest Boulevard and Copeland Creek; and

**WHEREAS**, PG&E is completing its design of the utility undergrounding project in anticipation of undertaking construction in the spring of 2015; and

**WHEREAS**, the City is currently completing its design of the Eastside Trunk Sewer Phase III and Snyder Lane Widening Project No. 2014-01, in anticipation of beginning construction in the summer of 2015; and

**WHEREAS**, the scope of Eastside Trunk Sewer Phase III and Snyder Lane Widening Project No. 2014-01 has been expanded to include a planned overlay of the Community Center Parking Lot and an overlay of a portion of Snyder Lane between Southwest Boulevard and East Cotati Avenue because these can be effectively and efficiently accomplished in conjunction with the Snyder Lane widening work; and

**WHEREAS**, both PG&E's Utility Undergrounding Project and the City's Eastside Trunk Sewer Phase III and Snyder Lane Widening are significant public works construction projects requiring oversight and inspection to achieve quality results for the City; and

**WHEREAS**, the City does not have sufficient staff resources to accomplish the oversight and inspection of these projects in addition to its other work; and

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

**WHEREAS**, consistent with the Purchasing Policy Section 3.6.6(D) the City solicited proposals for the construction management and inspection services associated with the Eastside Trunk Sewer Phase III and Snyder Lane Widening Project and received four proposals from qualified consultants; and

**WHEREAS**, City staff reviewed the proposals and unanimously recommends the selection of GHD, Inc., to perform the work because of proven qualifications of the firm's proposed staff and the firm's proven experience with the City's Eastside Trunk Sewer Phase I and II projects; and

**WHEREAS**, Consultant has provided a proposal and Consultant and staff have negotiated to arrive at a proposed cost representing a reasonable proportion of the estimated construction costs; and

**WHEREAS**, the City's Finance Director has been authorized to make the appropriations necessary to cover these new contract services.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that it does hereby authorize and approve the Design Professional Services Agreement re: Construction Management Services for the Eastside Trunk Sewer Phase III and Snyder Lane Widening Project No. 2014-01 with GHD, Inc. in the amount of \$959,500.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to take all actions to effectuate this agreement for and on behalf of the City of Rohnert Park, including execution, if necessary, in substantially similar form to the amendment attached hereto as Exhibit "A," subject to minor modifications by the City Manager or City Attorney.

**DULY AND REGULARLY ADOPTED** this 10th day of March, 2015.



**CITY OF ROHNERT PARK**

Amy O. Ahanotu, Mayor

**ATTEST:**

JoAnne M. Buergler, City Clerk

Attachments: Exhibit A

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

Exhibit A to Resolution

**DESIGN PROFESSIONAL SERVICES AGREEMENT  
RE: CONSTRUCTION MANAGEMENT SERVICES FOR THE EASTSIDE TRUNK  
SEWER PHASE III AND SNYDER LANE WIDENING PROJECT NO. 2014-01**

THIS AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2015, 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 and inspection services in connection with its Eastside Trunk Sewer Phase III and Snyder Lane Widening Project; 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 no later than twenty-four months from the date of this contract, unless an extension is authorized by the City. 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 Nine-Hundred Fifty-Nine Thousand Five Hundred Dollars (\$ 959,500.00). 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.

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, incidental and consequential damages, 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 Indemnatee shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of such Indemnatee. 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.

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 sub-consultants, 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.E.

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 therefor. 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 hereinbelow. 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: GHD Inc  
2235 Mercury Way Suite 150  
Santa Rosa, CA 95405  
Attn: Iver Skavdal

## 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 of 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
- 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

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

DESIGN PROFESSIONAL

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_  
Per Resolution No. 20\_\_ - \_\_ adopted by the Rohnert Park  
City Council at its meeting of March 10, 2015.

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

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

DESIGN PROFESSIONAL

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

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

ATTEST:

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

APPROVED AS TO FORM:

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

EXHIBIT A

Scope of Work and Schedule of Performance

[to be inserted]





840900311

February 9, 2015

Ms. Mary Grace Pawson, P.E.  
City Engineer  
City of Rohnert Park Development Services  
130 Avram Avenue  
Rohnert Park, CA 94928

**RE: Eastside Trunk Sewer Phase III & Snyder Lane Widening Project - City Project No. 2014-01**

Dear Ms. Pawson:

Thank you for the opportunity to submit our scope and fee for Construction Management (CM) services for the Eastside Trunk Sewer (ESTS) Phase III Project (No. 2014-01). We have carefully reviewed the requirements in the original request for proposal, site conditions, plans and specifications, supporting information, and discussions with City of Rohnert Park (City) to develop this scope of work and fee. Our team is experienced with the construction management services essential for the construction of utility projects with challenging soil and groundwater conditions paired with community impacts and roadway construction/restoration. This is demonstrated by our work with the City for its most recent large diameter sewer projects: Eastside Trunk Sewer Phase I, Eastside Trunk Sewer Phase II, and the Interceptor/Outfall Project.

Our proposed team was assembled specifically for this assignment to exceed your expectations for the project. This is demonstrated through three key points:

1. Our project team is local and understand the City's need for responsiveness from the entire CM team, including the Project Director, Resident Engineer, inspectors, and all of the construction management support team;
2. We know the project better than anyone, having supported various aspects of the design development and having managed the construction efforts for ESTS Phase I, ESTS Phase II; and
3. We are highly qualified for the construction management and inspection of challenging roadway construction, utility infrastructure projects, and providing public outreach.

#### **Unmatched Project Understanding**

We also understand the drivers and specific needs for the project: having worked with the design team for constructability review and design assistance for various aspects of the project. Through this work, we know that the primary goal of the project is to promote quality construction and simply put, to get the job done with minimal to no delays and/or complications. We are familiar with current and potential issues, project details, have met with City staff and walked the project route numerous times.



### Scope Highlights

**Confirming Rule 20 Locations:** We have estimated our inspector to be on site part time to monitor the location and the elevations of the proposed relocated utilities so that they will not conflict with our future work. The amount of time will be split between the inspector and survey to accurately locate the new locations of the utilities. Our on-site inspector, Roger Simpson, understands the repercussions and actions needed if the utility company moves the installation of their utilities during installation.

**Materials Testing:** We are teaming with RGH Geotechnical & Environmental Consultants to provide quality assurance testing on the project. RGH is very familiar with working for the City of Rohnert Park and they have a certified laboratory located in Santa Rosa.

**Public Outreach:** Our proposal is to provide support to the City's Public Outreach Consultant and the City. GHD will attend public meetings and provide input to the current schedule of work activities which impact the general public.

GHD is a long-standing engineering firm in Sonoma County with a proven ability to deliver similar services for the City of Rohnert Park and other agencies. Utilizing the same firm that prepared the design documents to conduct the construction management services adds greater project value. Our construction manager, Jim Winter, will be the City's advocate for construction phase needs and independent of design phase decisions. We believe our collective firm strengths and location are tailored to successfully complete the Eastside Trunk Sewer Phase III & Snyder Lane Widening Project for you.

If you have any questions about this scope and fee, our proposed methods or other elements of the proposal, please do not hesitate to contact us. This proposal is valid for 90 days from the submittal date and has been signed by Iver Skavdal, P.E. Iver, has the authority to negotiate and bind our firm to the terms of the contract. This proposal is submitted on behalf of the GHD consultant team.

Sincerely,

GHD Inc.

Iver Skavdal, P.E.

Principal / Project Manager

707.523.1010 (office)

707.479.4837 (mobile)

iver.skavdal@ghd.com

Jim Winter, P.E.

Construction Manager / Resident Engineer

707.523.1010 (office)

707.689.7534 (mobile)

jim.winter@ghd.com

# **RP ESTS SCOPE OF WORK**

## **GENERAL PROJECT DESCRIPTION**

GHD will provide construction management and observation/inspection services for the East Side Trunk Sewer Phase III and Snyder Lane Widening Project. This scope of work is based on providing a Principal in Charge, a senior level Construction Manager, a senior-level on-site observer/inspector, and construction support (Construction Management Team) for the project. The widening of Snyder Lane includes expanding the existing road from a two-lane road to four lanes with turn pockets, bike lanes, curb, gutter, sidewalk, a new traffic signal at Rancho Cotati High School, traffic signal modifications at Snyder and the Expressway, new street lighting, and the extension of a box culvert at Copeland Creek.

The project also includes the relocation of several existing utilities, including storm drains, above ground electrical -telephone poles, telephone conduit, cable TV and the 8-inch high pressure gas main. The final segment of the East Side Trunk Sewer (ESTS) involves extension from the existing stub out from Phase II at the intersection of Snyder Lane and Southwest to Rohnert Park Expressway ending with a connection to the University District system. The proposed ESTS is approximately 2,400 feet of 24-inch sanitary sewer trunk main. Sewer service laterals are to be reconnected, including Rancho Cotati High School, a business park, two apartment complexes, residential housing tracks, Sonoma State University, and the Spreckels Performing Arts Center. There are also water services and storm drain inlets that will need to be extended and connection locations modified due to the street widening. The project will require traffic and pedestrian control during all phases of the construction process. Communication of traffic impacts will be important due to the large volume of traffic in this section of roadway. The scope of work also includes subcontracts with RGH Geotechnical & Environmental Consultants to perform the Materials Testing of concrete, controlled low-strength material, soils, and asphalt.

## **SCOPE OF WORK**

The Scope of Work consists of four primary tasks:

- Task 1: Rule 20 Observations
- Task 2: Contract Administration
- Task 3: Project Completion
- Task 4: Public Outreach Support

The specific scope of work for each Task is presented below.

### **TASK 1: RULE 20 OBSERVATIONS**

The Rule 20 Observations activities include review of the construction for the Rule 20 undergrounding work to be completed under the direction of the utility companies. The work will include documentation of the as-built conditions plus reviewing the placement of the undergrounding utilities in relationship of the work proposed for East Side Trunk Sewer Phase III and Snyder Widening Project.

### **TASK 2: CONTRACT ADMINISTRATION**

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, review schedules, provide draft documents for review and produce final documentation ready for City signature. The CMT will do this by providing weekly updates, coordinating meetings and telephone calls, promptly transcribing and distributing meeting notes, and through the use of a web-based document management system.

# RP ESTS SCOPE OF WORK

We anticipate weekly meetings with the City's project manager after the weekly Contractor construction meeting to review the upcoming work activities and provide status updates to the ongoing construction issues.

The CMT will perform the following services:

**Task 2.1 Perform Project Coordination.** GHD will coordinate with the City staff to discuss and address issues with the project. This will be accomplished via weekly email updates (daily when necessary) that includes a listing of the activities that preceded the work accomplished in the time period and a listing of issues and action items including those open and those closed. The weekly update will also include a 2-3 week look ahead on the schedule, and will contain an ongoing list of outstanding critical issues. The CMT will meet periodically with the Geotechnical Engineer and Design Engineer to keep them posted on current issues and project progress. The Design and Geotechnical Engineer will be included in distribution list to receive the daily/weekly updates.

The CMT will coordinate with the various businesses, residences, and schools along the project 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 Construction Manager (CM) and assistant CM when necessary.

**Task 2.2 Prepare and Conduct Pre-Construction Meeting.** The pre-construction meeting will include the City, the Design Engineer, Geotechnical Engineer of record, various utility companies, Contractor, and major subcontractors. The CM will prepare the agenda and meeting minutes. 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); Sonoma County Water Agency, for the box culvert on Copeland Creek; California Department of Fish and Wildlife, U.S. Army Corps of Engineers; and the State Regional Water Quality Control Board. 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 to all participants after the meeting, as well as to the police and fire departments.

**Task 2.3 Conduct and Document Project Meetings.** The CM will conduct weekly progress meetings and other special technical meetings throughout the project. The CM will prepare the agenda, describing key issues, schedule status, and potential change orders, and distribute notes to meeting participants.

**Task 2.4 Review Contractors Construction Schedule.** The CM will review the Contractor's project schedule for conformance with the specifications and for reasonableness of activity durations and sequence. The CM will perform the following activities:

- 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.

**Task 2.5 Maintain Project Records.** CMT will 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 will be maintained in an organized manner for

# RP ESTS SCOPE OF WORK

quick reference. The project records are a combination of the web-based management system and our daily detailed field reports.

- Task 2.6 Review and Evaluate Monthly Progress Payments.** CM will review and evaluate monthly progress payment requests submitted by the Contractor, negotiate differences over payment, and recommend payment to the City. Quantity vouchers will be checked independently by the CM to monitor quantities paid against estimated quantities.
- Task 2.7 Prepare Monthly Progress Reports.** CM will prepare and submit to the City a monthly progress report, which will include a construction progress summary, construction cash flow and payments, and summary logs for proposed change orders (PCOs) and change orders.
- Task 2.8 Respond to Requests for Information (RFIs) and Issue Requests for Clarifications (RFCs).** CM will coordinate, evaluate, and manage the process of responding to RFIs and issuing RFCs. This effort includes receiving the RFI from the Contractor or transmitting the RFC to the Contractor, logging into the system, transmitting them to the Design Engineer for response, coordinating with the Design Engineer on field status, tracking progress, reviewing responses, and transmitting responses to the Contractor.
- Task 2.9 Prepare Potential Change Orders (PCOs) and Change Orders.** CM will coordinate and manage the change order process, including logging, reviewing them in conjunction with Design Engineer and City, assisting with determination of changed conditions and scope definition as needed, developing independent cost estimates, assisting with negotiation, and incorporating change orders into the construction contract.
- Task 2.10 Coordinate Submittal and Shop Drawing Review Process.** CM will coordinate the submittal and shop drawing review process, including logging submittals from the Contractor, transmitting to Design Engineer for response, coordinating with Design Engineer on field status, tracking progress, reviewing responses, and transmitting responses to the Contractor. Incomplete submittals will be returned to the contractor prior to being submitted to the Design Engineer.
- Task 2.11 Monitor Permit Compliance.** CM will monitor contractor compliance with construction permits, traffic and pedestrian control plans, and environmental compliance. CM will coordinate with the Design Engineer and Inspector/Observer for compliance and will recommend a course of action to City if required measures are not being met by the Contractor.
- Task 2.12 Monitor Construction Record Drawings.** CM will monitor the contractor's development of construction record drawings in coordination with the progress pay request.
- Task 2.13 Perform Claims Management.** CM will analyze potential claims for additional compensation that are submitted during the construction period and make recommendations to the City for resolution. CM will coordinate and monitor claims response preparation, logging and tracking status.
- Task 2.14 Provide Field Inspection/Observation.** GHD will provide a full-time 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, environmental compliance, including SWPPP requirements.
- Task 2.15 Prepare Photograph or Video Documentation.** GHD will document initial site conditions prior to contractor's commencement of construction using either still photographs or video, and will provide additional photos of construction progress periodically throughout construction.
- Task 2.16 Document Field Changes to the Drawings and Specifications.** GHD will document field changes to the contract documents on a real-time basis during the progress of construction.
- Task 2.17 Prepare Daily Observation Reports.** The Inspector/Observer will prepare daily observation reports, which will be reviewed by the Construction Manager. The report will include: employee names and labor classification, equipment identification, hours that were work and equipment utilized, weather conditions, and issues, observations, and conversations that occurred

# RP ESTS SCOPE OF WORK

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.

**Task 2.18 Materials Testing.** GHD will sub-contract with RGH Geotechnical Engineers and coordinate the materials testing that are being performed in accordance with the contract documents.

## TASK 3: PROJECT COMPLETION

The CMT will provide the following services during project closeout prior to completion of construction.

**Task 3.1 Develop Punch List.** The CMT will develop a preliminary punch list for the project and maintain a running punch list through the course of the project. The CMT will schedule the City and Design Engineer to conduct final completion inspections and issue final punch lists.

**Task 3.2 Compile Final Records.** The CMT will 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.

**Task 3.3 Prepare Final Pay Estimates.** The CM will prepare the final pay estimate and balance change orders, assist with the Notice of Completion, and coordinate retention release at the conclusion of construction.

## TASK 4: PUBLIC OUTREACH SUPPORT

The CMT will provide the following services prior to the start of construction and continuing through the construction project:

**Task 4.1 Public Outreach Support.** As part of the CMT, GHD will support public outreach activities of the City's Public Outreach Consultant. This will include public meetings and assist with communication of construction schedule so the City can post to their website and the Public Outreach Consultant.

## ASSUMPTIONS

The scope of work is based on the following assumptions:

- **Means and Methods.** 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.

EXHIBIT B  
Compensation  
[to be inserted]







## US WEST FEE SCHEDULE

(Effective July 2014)

### Hourly Rates

Principal Professional	\$205 - 270
Senior Professional	\$160 - 205
Professional	\$ 90 - 160
Principal Technical Officer	\$140 - 170
Senior Technical Officer	\$115 - 140
Technical Officer / Drafting	\$ 75 - 115
Senior Administrative Officer	\$125 - 180
Administrative Officer	\$ 70 - 125
Senior Service Group Support	\$125 - 180
Service Group Support	\$ 70 - 125
Construction Manager	\$210 - 230
Senior Site Engineer	\$125 - 180
Site Engineer	\$ 85 - 125
Senior Inspector	\$125 - 180
Inspector	\$ 85 - 125
Survey	\$ 60 - 180

Employee time will be billed in accordance with the fees listed above. These rates are subject to change on a semi-annual basis. For other than professional employees, time spent over 8 hours per day, times spend on swing shifts, and time spent on Saturdays will be charged at 1.5 times the hourly billing rate. Work on Sundays will be charged at 2.0 times the hourly billing rate and holiday work will be charged at 2.5 times the hourly billing rate. All field personnel charges are portal to portal. Professional employees will not be charged out a premium charge rates for overtime work.

Expenses and other similar project related costs are billed out at cost plus 15%. The cost of using equipment and specialized supplies is billed on the basis of employee hours dedicated to projects. Our rates are:

Office Consumables	\$ 6.00/hr
Environmental Dept/Construction Inspection consumables	\$11.00/hr
Survey Field consumables	\$15.00/hr
Various Environmental, Construction and Land Survey Equipment	At market

Payment for work and expenses is due and payable upon receipt of our invoice. Amounts unpaid thirty (30) days after the issue date of our invoice shall be assess a service charge of one and one half (1.5) percent per month.

(\*) These rates do not apply to forensic-related services, or to work for which Prevailing Wage obligations exist. It is the responsibility of the client to notify GHD Inc. in writing if Prevailing Wage obligations are applicable, in which case the fees will be adjusted proportionate to the increase in labor costs.

## EXHIBIT C

### Insurance Requirements to Agreement for Design Professional Services Re: Construction Management Services for the Eastside Trunk Sewer Phase III and Snyder Lane Widening Project 2014-01

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

Principal-in-Charge: Iver Skavdal, PE

Construction Manager: Jim Winter, PE

Construction Inspector: Roger Simpson

Geotechnical Engineering and Materials Testing: RGH Inc.