

RESOLUTION NO. 2015-045

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING A DESIGN PROFESSIONAL SERVICES AGREEMENT RE: PUBLIC INFORMATION AND OUTREACH SERVICES WITH DATA INSTINCTS

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 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, the City will also be undertaking the Rohnert Park Expressway Rehabilitation Project (Commerce Boulevard to Snyder Lane) and the Developer of the University District will be constructing offsite improvements on Rohnert Park Expressway between Snyder Lane and Petaluma Hill Road; and

WHEREAS, the combined projects will result in significant traffic control and work area detours on and around the Snyder Lane and Rohnert Park Expressway during the summer of 2015; and

WHEREAS, the City desires to develop and maintain a proactive and credible public information strategy to assist the public in planning for and avoiding the potential disruptions caused by the combined construction projects; and

WHEREAS, the work required to develop and maintain a proactive and credible public information project is unique and specialized work that cannot be performed by the engineering consultants working on the City's projects; and

WHEREAS, Data Instincts (Consultant) is a qualified, local public information firm that assisted the City with a number of complex communication matters in the past including public outreach related to previous phases of the Eastside Trunk Sewer Project and as a result of this experience they bring a unique understanding of the Rohnert Park Community and the City's public information needs; and

WHEREAS, City reviewed Consultant's qualifications during the process of securing Construction Management Services for the Eastside Trunk Sewer Phase III and Snyder Lane Widening Project and is electing to contract with Consultant independently to avoid the mark-up on services that would occur if Consultant were a sub-consultant to the Construction Manager.

WHEREAS, the City has obtained a proposal from Consultant 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 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 City of Rohnert Park Purchasing Policy Section 7.2, the City Council hereby finds that the Consultant meets the requirements for Sole Source purchasing as they perform a "complex and unique function and by virtue of their extensive experience with the City's system, they understand the work required and are therefore in the best position to assist the City with efficiently developing a public information and outreach program; 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: Public Outreach and Information Services with Data Instincts in an amount not to exceed \$36,000.00.

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)

Resolution Exhibit A

**DESIGN PROFESSIONAL SERVICES AGREEMENT
RE: PUBLIC INFORMATION AND OUTREACH SERVICES**

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 DATA INSTINCTS, a California sole proprietorship.

Recitals

WHEREAS, City desires to obtain public information and outreach services to support its Eastside Trunk Sewer Phase III and Snyder Lane Widening Project and Rohnert Park Expressway 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 twelve 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 A. However, in no event shall the amount City pays Design Professional exceed Thirty-Six Thousand Dollars (\$ 36,000.00). 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.

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 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.

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 B.

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: Data Instincts
239 Windsor River Road
Windsor, CA 95492
Attn: Mark Millan

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, Schedule and Compensation
- B. Exhibit B: Insurance Requirements to Design Professional Services Agreement

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, Schedule and Compensation

[to be inserted]



February 12, 2015

Public outreach in support of the *City of Rohnert Park Sewer Line Extension Project*

Scope of Work

Data Instincts, the Consultant, (DI) in coordination with GHD, will assist and provide guidance to the City of Rohnert Park (City) with public outreach services in response to upcoming construction associated with the *City of Rohnert Park Sewer Line Extension*. Activities and materials produced will assist in being proactive and responsive to stakeholders, residents, businesses, schools, local commuters and the media. A reliable communications system can be vital to a project's successful completion.

A strong public information program will provide the following:

- Ensure the community is well informed throughout implementation of the project.
- Facilitate and encourage the project team's receptiveness and timely response to community concerns that may arise during construction. Guide project team in integrating and assimilating responsive efforts and actions.
- Provide timely information to community members about the upcoming construction process of the distribution system. Describe sequence of construction, how traffic impacts will be managed, and how they can be kept informed during the process.
- Establish the City as a reliable and credible source of project information.

Task 1 – Review and evaluate affected project area, develop outreach approach and make recommendations to City staff

Gather input from various potentially affected businesses and residents in the construction area to shape best informational approach to meet the needs of these constituents. Utilize interviews, small information gathering sessions, and one-on-one discussions. Acquire business cards and appropriate contact information of affected residents and/or businesses to develop email broadcast system mentioned in Task 2. These efforts will gain insight into concerns and needs, test approaches, and provide a higher degree of understanding of sensitivities. Recommended approaches will be conveyed to City staff and the selected contractor.

Task 2 – Develop and create public outreach materials and notification systems.

Provide design and support for production of outreach materials in various formats. With input from staff, develop and create public outreach materials. Provide services for production coordination, creative direction, copywriting, preparation of maps, presentation materials and handouts for informing business and residents of upcoming construction activities.

These may involve a variety of media, including but not limited to the following:

- Postcards/Fliers /Handouts
- Brochure
- Fact Sheets
- Frequently Asked Questions (FAQ's)
- Adaptable Web Pages
- Utility Bill Inserts
- Email Broadcasts
- Social Media (Facebook, Twitter, etc.)
- Speakers Bureau/Presentations

Establish an email broadcast notification system

Manage permission-based email broadcast and distribution of messages as needed. All outreach materials will include the option to request to be included in the email notification system.

Periodic emails will be distributed to notify and keep residents, businesses and local media informed of construction activities. Names and email addresses do not appear in broadcasts in respect to privacy.

Establish a construction hotline number to address construction questions and concerns.

During construction, DI will establish and maintain a project hot-line phone number that may be called if questions or complaints about construction impacts arise. The number will be included in notices given to affected persons during construction. Complaints will be logged and calls routed to appropriate project members; City Staff, Contractor, Construction Manager or Resident Engineer.

Update Web Site Project Information

DI will maintain comprehensive Web content covering construction impacts from the *Rohnert Park Sewer Line Extension*. This content will utilize existing pages of the City's web site at: <http://www.ci.rohnert-park.ca.us/>. This content will be developed specifically to keep residents, commuters, and businesses informed about potential impacts in their area, establishing a one-stop resource for construction-related information. Web pages are a convenient way for citizens and businesses to view all relevant notices and schedules and maps in a timely and responsive manner that meets community expectations for information about construction activities. The website URL address shall be included in all notices sent to affected residents and businesses.

Task 3 – Implement outreach program throughout construction period

In particular, the Consultant (DI) shall:

- Distribute outreach materials developed in Task 2.
- Respond to inquiries received via hot line calls, emails and mail.
- Assist the City in contacting and communicating with affected businesses and residents who express concerns, as needed.
- Assist the City with media relations as may be needed.
- Support project team efforts for information gathering/sharing for troubleshooting or solving challenges that may arise during construction.
- Manage incoming telephone inquiries from potential customers, key stakeholders and special interest groups of the project areas.
- Manage permission-based email broadcast customer and community group lists and distribution of messages as needed.
- Work with the City staff to maintain and provide support for project related Web page content development as needed.
- Manage consistent graphic look and feel of all City outreach materials.
- Coordinate any printing and mailing services consistent with City's practices for securing printing and mail services, Costs for printing and postage of outreach materials are not included. Providers of any such services shall be paid directly by the City.

Task 4 – Attend Project Construction Meetings.

DI will attend Project Construction Meetings and as deemed necessary to stay current with project information. Other Project Management tasks may be included as need arises. DI will attend meetings, consultations and conferences related to public information and notification outreach materials. Includes meetings and conferences with City staff, public officials, and team members, members of the media, potentially impacted individuals and interest groups.

Estimate for Tasks 1-4: If determined necessary; time and materials, *not to exceed \$36,000* through the contract period of April through September 2015. Work will be billed on a time and materials basis in accordance with the following rate schedule.



Public Outreach Consultants
239 Windsor River Road, Windsor, CA 95492
Tel: 707.836.0300 Fax: 707.836.0842

RATES FOR SERVICES

As of January 2015

Principal – Mark Millan	\$195
Associate – Robin Gordon	\$165
Associate – Lisa Brew-Miller	\$165
Graphics – Web/PowerPoint – Keith Smith	\$120
Graphics – Alicia Deguchi	\$100
Print Media Coordination	\$100
Web Traffic Mgmt/Database Mgmt	\$95
Clerical Support	\$75
Copies	\$0.10 per page
Postage	at cost
Overnight mail	at cost
Mileage business travel	\$0.57 per mile (at Fed rate)
Lodging	at cost

For communications pieces that are to be professionally printed, Data Instincts will provide materials in the appropriate format; recommend printing services; and interact with and deliver materials to print vendors. However, it is our policy that the client pays directly for such services as printing, list rentals, mail processing fees, postage and media related expenses. Focus groups, In-depth Interviews, and Telephone Surveys will be billed separately with estimates provided in advance.

Multi- or bi-lingual translations, as needed, for handouts/brochures and other information sources will be extra. Consultant will utilize local or client resources whenever possible for these purposes.

Data Instincts bills for actual work performed on a monthly basis, and shall supply summary reports delineating each task, the budgeted amount, amount expended in the billing period, and cumulative expended totals.

Data Instincts carries over a \$1,000,000 in General Liability with The Hartford insurance company. Representation is with Cook, Disharoon & Greathouse of Oakland, California. Policy number is 57DBALD2227. A certificate verifying insurance shall be submitted when required.

Tax ID number is 90-0005625.

EXHIBIT B

Insurance Requirements to Agreement for Design Professional Services Re: Public Information and Outreach Services

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.