

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: April 7, 2015

SUBJECT: AWARD A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$1,209,534 TO GRANITE ROCK COMPANY OF SAN JOSE; REJECT A BID PROTEST SUBMITTED BY GHILOTTI CONSTRUCTION COMPANY; AND APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH VALI COOPER OF EMERYVILLE IN THE AMOUNT OF \$194,040 FOR CONSTRUCTION MANAGEMENT SERVICES FOR PROJECT NO. 2144 (CLAYTON RD/TREAT BLVD INTERSECTION CAPACITY IMPROVEMENTS); AND AUTHORIZE THE MAYOR AND CITY MANAGER TO EXECUTE THE AGREEMENTS (FUNDED BY: MEASURE J, MEASURE C & OSIP FUNDS)

Report in Brief

The Clayton Road/Treat Blvd. Intersection Capacity Improvements Project (Project No. 2144) includes several different elements, including: (1) an upgraded traffic signal at the Clayton Road and Treat Boulevard intersection; (2) construction of geometric improvements to provide increased capacity and maximize the operational efficiency of the intersection during peak traffic periods; and (3) various pedestrian enhancements including sidewalk widening and ADA accessibility improvements. Bids to construct the project were opened at 11:00 AM on Wednesday, February 25, 2015. Granite Rock Company (Granite Rock) was the low bidder and submitted a responsive and responsible bid in the amount of \$1,209,534. Granite Rock has an appropriate and valid contractor's license and satisfactory work references. Additionally, staff recommends that Vali Cooper and Associates (Vali Cooper) provide Construction Management (CM) services in the amount of \$194,040 for this project.

Staff recommends that the City Council award a Construction Contract in the amount of \$1,209,534 to Granite Rock Company of San Jose; reject a bid protest by Ghilotti Construction Company; approve a Professional Services Agreement with Vali Cooper of Emeryville in the amount of \$194,040 for Construction Management services for Project No. 2144 (Clayton Road/Treat Blvd. Intersection Capacity Improvements); and authorize the Mayor and City Manager to execute the agreements.

**AWARD A CONSTRUCTION CONTRACT; REJECT A BID PROTEST;
APPROVE A PROFESSIONAL SERVICES AGREEMENT TO PROVIDE
CONSTRUCTION MANAGEMENT SERVICES FOR PROJECT NO. 2144
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Background

In June 2009, the City Council approved Project No. 2144 (Clayton Rd/Treat Blvd Intersection Capacity Improvements) with the adoption of the Capital Improvement Program (CIP) Ten Year Plan. This project will improve the level of service at this intersection during weekday peak traffic hours and reduce vehicle delay and queuing conditions. The proposed improvements include widening the northbound Treat Boulevard approach to include two (2) left-turn lanes, two (2) thru lanes and one (1) right-turn lane, as well as upgrading the traffic signal at the intersection. This project will improve traffic flow and reduce congestion along the Clayton Road/Treat Boulevard corridor which experiences an average daily traffic count of over 42,000 vehicles during the commute peak periods. Additionally, the State of California has deemed this corridor a Route of Regional Significance based on the high travel use by local and regional traffic (Attachment 1). Finally, this project will construct several pedestrian improvements to provide increased safety along this busy stretch of roadway. These improvements will include: sidewalk widening, utility obstruction removal, and installation of a bioswale (landscape elements designed to remove silt and pollution from surface runoff water) section between the sidewalk and the traffic lane to increase safety along Treat Boulevard. Also included are various ADA-accessibility improvements such as installation of curb ramps and truncated domes.

The improvements proposed with this project required right-of-way acquisition of a portion of the privately-owned property located at 4300 Clayton Road and 4420 - 4498 Treat Boulevard. To achieve that acquisition, the City had the property interests appraised and sent an offer to the property owner pursuant to Government Code Section 7267.2. Despite subsequent negotiations with the property owner, the City and the owner were unable to reach an agreement as to the fair market value for the property. Consequently, on April 8, 2014, the City Council passed and adopted Resolution No. 14-22 ("Resolution of Necessity"), which authorized the City to file an eminent domain action to obtain a right-of-way and utility easement consisting of 7,978 square feet and a temporary construction easement consisting of 9,786 square feet along Treat Boulevard. Pursuant to its authority under the Resolution of Necessity, the City filed a Complaint in Eminent Domain initiating the condemnation action on May 1, 2014. Thereafter, the City filed a motion to obtain prejudgment possession. That motion was granted and the Court issued an Order of Possession on October 1, 2014, which authorized the City to take possession of the property on or after November 7, 2014, allowing for the continuation of the project.

Discussion

Bids Received

The bid opening of Project No. 2144 was held at 11:00 A.M. on Wednesday, February 25, 2015. Six (6) bids were received, ranging from \$1,209,534 to \$1,550,734.90 for the Total Bid as shown on the Bid Results (Attachment 2). The Engineer's Estimate was \$1,196,575. A summary of the three lowest bids and the Engineer's Estimate are as follows:

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Bidder	Base Bid
Granite Rock Construction	\$1,209,534.00
Bay Cities Paving & Grading, Inc.	\$1,253,982.70
Ghilotti Construction Company	\$1,321,475.00
Engineer's Estimate	\$1,196,575.00

Bid Protest

Ghilotti Construction Company (Ghilotti Construction), the 3rd low bidder submitted a bid protest on February 26, 2015. This protest is based on the lack of submission of an installation certificate for truncated domes in the bids received by Granite Rock Company (the low bidder) and Bay Cities Paving and Grading (the second lowest bidder). Staff reviewed the matter with the City Attorney's office and has determined that since Granite Rock Company does hold/possess the necessary certificate and was able to produce it immediately upon request, the lack of submission of this certificate with the original bid is deemed an inconsequential deviation from the specifications. Moreover, Section 3-02 of the contract documents specifically states that the protestor shall concurrently submit a copy of the protest to the low bidder. Staff has determined that Ghilotti Construction did not submit a copy of their protest to either Granite Rock or Bay Cities Paving and Grading. The section further states that non-compliance with the procedures shall constitute a waiver of any right to pursue the protest. For the above reasons, staff recommends that the City Council reject the bid protest of Ghilotti Construction Company.

Additional Design Considerations

Subsequent to bidding the project, four people interested in bicycle advocacy requested a meeting with staff to review the project improvements and discuss the potential for additional roadway markings or other methods to better accommodate bicycle traffic along Treat Boulevard. Staff is still considering the opportunities and options for the requested delineation including adding sharrow markings and other pavement markings in the northbound approach. If implemented, such delineation should be consistent with accepted standards and consistent with City policies. There is ample time to further evaluate the options and incorporate as appropriate during construction of the project.

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Construction Contract

Granite Rock's Base Bid of \$1,209,534 is approximately 2% higher than the Engineer's Estimate. Staff contacted the low bidder to obtain confirmation of their bid amount. Granite Rock confirmed that they are comfortable with their bid and ready to perform the work as bid. Staff has completed its analysis of Granite Rock's bid, determining that Granite Rock: possesses an appropriate and valid contractor's license, which is not on any debarred list; that they and their subcontractors are registered with the Department of Industrial Relations as required by SB 854; and that this company has satisfactory references and are experienced in the construction of similar projects. As an additional note of interest, Granite Rock is currently constructing City Project No. 2251 (Farm Bureau Road Safe Routes to School Project – Willow Pass Road to Wren Avenue).

Professional Services Agreement for Construction Management

Staff solicited proposals from three construction management (CM) firms that have worked with the City in the past and have experience with this type of project: Harris and Associates, Vali Cooper and Associates, and Ghirardelli and Associates. Staff reviewed proposals from each of the three firms which included resumes from the proposed CM team members to evaluate their professional qualifications and experience, as well as the proposed fee for the intended services. Based on this review, staff has selected Vali Cooper's proposal and has determined that the assumptions of time necessary to complete the project, as well as their rates, allocation of hours, and total costs are reasonable for this project. Vali Cooper's fee of \$194,040 is approximately 16% of the total construction cost of \$1,209,534 which falls within a reasonable range for this type of work. Approving the Agreement with Vali Cooper will allow the project to proceed in a timely manner. The proposed Agreement has been reviewed by the City Attorney's office (Attachment 3).

The current project schedule estimates commencing construction in May 2015, although the actual start date may shift depending upon the time necessary to order and receive long lead items, such as traffic signal poles. Staff will work in conjunction with the contractor to give advanced construction notice to all residents and businesses in the affected area.

This project qualifies for a Mitigated Negative Declaration under the California Environmental Quality Act (CEQA) with Mitigation Monitoring and Reporting Program (MND/MMRP). As such, an MND/MMRP was approved by Resolution 13-05PC and filed with the County Clerk on April 22, 2013.

Fiscal Impact

The project budget of \$3,124,000 includes Gas Tax, Measure J, Measure C and OSIP funds, and is sufficient to fully fund the cost of this \$1,209,534 Construction Contract and \$194,040 Professional Services Agreement for Construction Management services.

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Public Contact

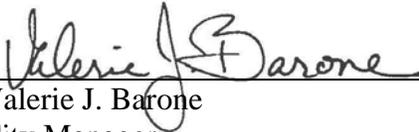
The City Council agenda was posted in accordance with legal requirements.

Recommendation for Action

1. Staff recommends that the City Council reject the bid protest of Ghilotti Construction Company.
2. Staff further recommends that the City Council award a Construction Contract in the amount of \$1,209,534 to Granite Rock of San Jose and approve a Professional Services Agreement with Vali Cooper of Emeryville in the amount of \$194,040 for Construction Management services for Project No. 2144 (Clayton Road/Treat Blvd Intersection Capacity Improvements); and authorize the Mayor and City Manager to execute the agreements.

Prepared by: Mark Migliore
mark.migliore@cityofconcord.org

Reviewed by: Robert Ovadia, PE
Robert.ovadia@cityofconcord.org



Valerie J. Barone
City Manager

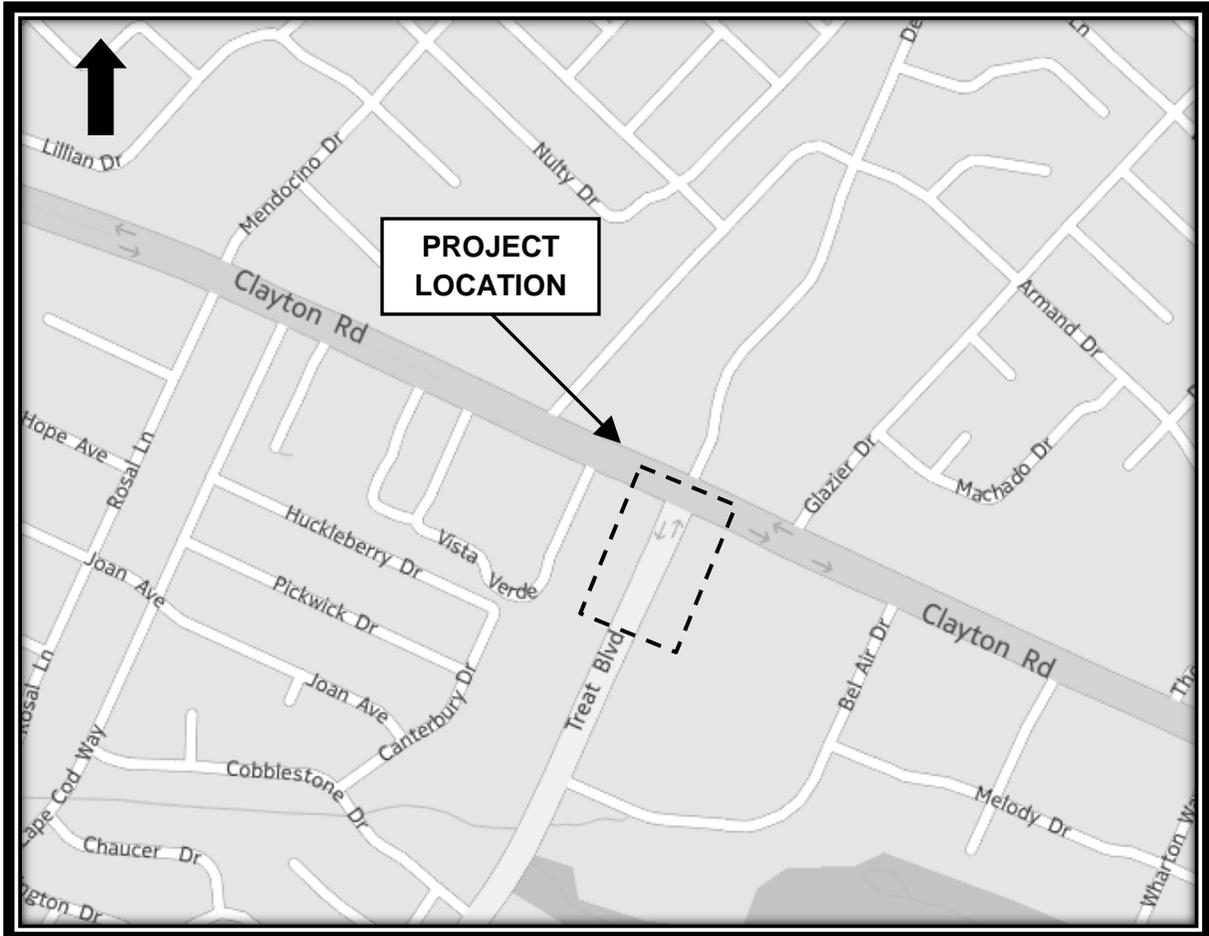
valerie.barone@cityofconcord.org

Reviewed by: Victoria Walker
Dir. of Comm. & Econ. Dev.
victoria.walker@cityofconcord.org

Attachment 1: Location Map

Attachment 2: Bid Results

Attachment 3: Professional Services Agreement (Vali Cooper)



LOCATION MAP

PROJECT NO. 2144

Clayton Road/Treat Boulevard Intersection Capacity Improvements

NO SCALE

**City of Concord
Bid Sheet**

PROJECT #2144
Clayton Rd/Treat Blvd
Intersection Capacity Improvements

Bid Opening:
Wednesday,
February 25, 2015
11:00 am.

City Manager's Conference Room

Engineer's Estimate: \$1 Mil and \$1.25 Mil

To be awarded:

COMPANY	TOTAL BID
Graniterock Construction 120 Granite Rock, Way San Jose, CA 95136	\$1,209,534.00
Bay Cities Paving & Grading, Inc. 5029 Forni Drive Concord, CA 94520	\$1,253,982.70
Ghilotti Construction Company 246 Ghilotti Avenue Santa Rosa, CA 95407	\$1,321,475.00
Ghilotti Bros., Inc. 525 Jacoby Street San Rafael, CA 94901	\$1,348,776.95
Lister Construction Inc. 896 Aldridge Road, Suite B Vacaville, CA 95688-9264	\$1,377,726.00
Grade Tech, Inc. 10250 Crow Canyon Road Castro Valley, CA 94552	\$1,550,734.90

Contact: Mark Migliore x3422

AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT (“Agreement”) is entered into on March 24, 2015 between the City of
2 Concord (“CITY”) and Vali Cooper & Associates, Inc., 2000 Powell Street, Suite 550, Emeryville,
3 CA 94608 (“CONSULTANT”).

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings
5 and intentions:

6 The CITY desires to contract with Vali Cooper & Associates, Inc. and Vali Cooper &
7 Associates, Inc. to contract with the CITY for provision by Vali Cooper & Associates, Inc. to the City
8 for professional services with Project No. 2144 (Clayton Rd/Treat Blvd Intersection Capacity
9 Improvements) as further described in Section 2 of this Agreement, upon the terms and conditions
10 hereinafter set forth.

11 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the
12 parties herein contained, the parties hereto agree as follows:

13 **1. TERM.** This Agreement shall commence on March 24, 2015 and expire on June 30,
14 2016.

15 **A. Extension of Term.** Upon mutual written agreement by the parties, the term of
16 this Agreement may be extended for one additional period(s) of one year(s) each commencing upon
17 the expiration of the initial or extended term, subject to the same terms and conditions of this
18 Agreement. CONSULTANT shall give written notice of its request for extension of the term of the
19 Agreement to the City’s Authorized Representative, as identified in Section 4 below, at least thirty
20 (30) days prior to expiration of the initial or extended term.

21 The extension(s) of the term of this Agreement shall be subject to a review of
22 CONSULTANT’S performance in accordance with the terms and conditions of this Agreement and
23 shall be subject to City approval. Such extension of time shall be in writing by a duly executed
24 Amendment to this Agreement.

25 **2. SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by
26 the CITY's Authorized Representative, CONSULTANT shall provide construction management
27 services for Project No. 2144 (Clayton Rd/Treat Blvd Intersection Capacity Improvements) described
28 in detail in Exhibit A, a proposal from Vali Cooper & Associates, Inc. dated February 20, 2015 is

1 attached hereto and made a part hereof. CITY retains all rights of approval and discretion with respect
2 to the projects and undertakings contemplated by this Agreement.

3 **3. PAYMENT.** The compensation to be paid to CONSULTANT including payment for
4 professional services and reimbursable expenses, shall be at the rate and schedules in detail in Exhibit
5 A. However, in no event shall the amount CITY pays CONSULTANT exceed one hundred ninety-
6 four thousand, forty dollars (\$194,040) for the term of this Agreement. Any Amendment to this
7 Agreement that includes an increase to this compensation amount shall be made in accordance with
8 Section 5 below.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period. It is
11 intended that CITY review such statement and pay CONSULTANT for services rendered within 30
12 days of receipt of a statement that meets all requirements of this Agreement. Payment by CITY shall
13 not be deemed a waiver of unsatisfactory work, even if such defects were known to the CITY at the
14 time of payment.

15 **4. AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent
16 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered
17 by CONSULTANT under this Agreement except where approval for the CITY is specifically required
18 by the City Council. The CITY's authorized representative is Robert Ovadia, City Engineer of the
19 Community & Economic Development Department. The CONSULTANT's authorized representative
20 is John Collins, Chief Operating Officer.

21 **5. AMENDMENT TO AGREEMENT.** This Agreement may be amended in writing,
22 subject to approval by both parties. If additional services are requested by CITY other than as
23 described in the above Scope of Services, this Agreement may be amended, modified, or changed by
24 the parties subject to mutual consent and in accordance with the CITY's Municipal Code by execution
25 of an Amendment by authorized representatives of both parties setting forth the additional scope of
26 services to be performed, the performance time schedule, and the compensation for such services.

27 **A. Amendment for Additional Compensation.** CITY's Authorized
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1 Representative is authorized to execute amendments to the Agreement on behalf of CITY, including
2 amendments providing for additional compensation to CONSULTANT not to exceed \$50,000 during
3 the fiscal year, including the base contract amount, throughout the term of this Agreement. Any
4 additional compensation to CONSULTANT that is \$50,000 or more for the fiscal year, including the
5 base contract amount, must be approved by City Council.

6 Consultant's failure to secure CITY's written authorization for additional compensation or
7 changes to the Scope of Work shall constitute a waiver of any and all right to adjustment in the price
8 or time due, whether by way of compensation, restitution, quantum meruit, or similar relief.

9 **6. INDEPENDENT CONTRACTOR.** Both parties understand and acknowledge that
10 CONSULTANT, its agents, employers and subcontractors are and shall at all times remain as to the
11 CITY wholly independent contractors. Neither the CITY nor any of its officers or employees shall
12 have any control over the manner by which the CONSULTANT performs this Agreement and shall
13 only dictate the results of the performance. CONSULTANT shall not represent that CONSULTANT
14 or its agents, employees or subcontractors are agents or employees of the CITY, and CONSULTANT
15 shall have no authority, express or implied, to act on behalf of the CITY in any capacity whatsoever as
16 an agent, and shall have no authority, express or implied, to bind the CITY to any obligation
17 whatsoever, unless otherwise provided in this Agreement.

18 As an independent contractor, CONSULTANT shall not be eligible for any benefits, which the
19 City may provide to its employees and all persons, if any, hired by CONSULTANT shall be
20 employees or subcontractors of CONSULTANT and shall not be construed as employees or agents of
21 the CITY in any respect. CONSULTANT shall receive no premium or enhanced pay for work
22 normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work
23 performed during non-standard business hours, such as in the evenings or on weekends.
24 CONSULTANT shall not receive a premium or enhanced pay for work performed on a recognized
25 holiday. CONSULTANT shall not receive paid time off for days not worked, whether it be in the
26 form of sick leave, administrative leave, or for any other form of absence. CONSULTANT shall pay
27 all taxes, assessments and premiums under the federal Social Security Act, any applicable
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1 unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use
2 taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by
3 reason of or in connection with the services to be performed by CONSULTANT.

4 **7. STANDARD OF PERFORMANCE.** CONSULTANT represents and warrants to
5 CITY that CONSULTANT is skilled and able to provide such services described in the Scope of
6 Work and that such services shall be performed in an expeditious manner, and with the degree of skill
7 and care that is required by current, good, and sound procedures and practices. CONSULTANT
8 further agrees that the services shall be in conformance with generally accepted professional standards
9 prevailing at the time work is performed.

10 **8. PERFORMANCE BY CONSULTANT.** CONSULTANT shall not employ other
11 consultants, subconsultants, experts, or contractors without the prior written approval of the CITY.
12 Notwithstanding the foregoing, CITY shall not be obligated or liable for payment hereunder to any
13 party other than the CONSULTANT. CONSULTANT hereby designates the CONSULTANT'S
14 representative as the person primarily responsible for the day-to-day performance of
15 CONSULTANT'S work under this Agreement. CONSULTANT shall not change the
16 CONSULTANT'S representative without the prior written consent of the CITY. Unless otherwise
17 expressly agreed by the CITY, CONSULTANT'S representative shall remain responsible for the
18 quality and timeliness of performance of the services, notwithstanding any permitted or approved
19 delegation hereunder.

20 **9. OWNERSHIP AND MAINTENANCE OF DOCUMENTS.** All documents
21 furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's
22 services in respect to this project. They are not intended nor are represented to be suitable for reuse by
23 others except CITY on extensions of this project or on any other project. Any reuse without specific
24 written verification and adoption by CONSULTANT for the specific purposes intended will be at
25 user's sole risk and without liability or legal exposure and expenses to CONSULTANT, including
26 attorney's fees arising out of such unauthorized reuse.

27 CONSULTANT's records, documents, calculations, and all other instruments of service
28

1 pertaining to actual project shall be given to CITY at the completion of the project. The CITY
2 reserves the right to specify the file format that electronic document deliverables are presented to the
3 CITY. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions
4 and other final work products compiled by the CONSULTANT under the Agreement shall be vested
5 in the CITY, none of which shall be used in any manner whatsoever, by any person, firm, corporation,
6 or agency without the expressed written consent of the CITY. Basic survey notes and sketches,
7 charts, computations, and other data prepared or obtained under the Agreement shall be made
8 available, upon request, to the CITY without restriction or limitations on their use. CONSULTANT
9 may retain copies of the above-described information but agrees not to disclose or discuss any
10 information gathered, discussed or generated in any way through this Agreement without the written
11 permission of CITY during the term of this Agreement, unless required by law.

12 **10. INDEMNIFICATION.** CONSULTANT agrees to defend, indemnify and hold
13 harmless the CITY, its officers, officials, employees, agents and volunteers from and against any and
14 all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and
15 other litigation expenses) arising out of the CONSULTANT's performance under the terms of this
16 Agreement. This indemnification obligation on CONSULTANT'S part shall not apply to demands,
17 actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on
18 the part of CITY.

19 **11. INSURANCE.** CONSULTANT shall, at its own expense, procure and maintain in
20 full force at all times during the term of this Agreement the following insurance:

21 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000)
23 combined single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily
24 injury, personal injury, and property damage.

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile
26 liability insurance covering all vehicles used in the performance of this Agreement providing a one
27 million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury,
28

1 and property damage.

2 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT
3 shall maintain professional liability insurance with coverage for all negligent errors, acts or omissions
4 committed by CONSULTANT, its agents and employees in the performance of this Agreement. The
5 amount of this insurance shall be not less than one million dollars (\$1,000,000) on a claims made
6 annual aggregate basis or a combined single limit per occurrence basis.

7 **D. Compliance with State Workers' Compensation Requirements.**
8 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation
9 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all
10 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being
11 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall
12 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and
13 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision
14 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

15 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to
16 contain the following provisions:

17 **(1) Additional Insured.** CITY, its officers, agents, employees, and
18 volunteers are to be covered as an additional insured as respects: Liability arising out of activities
19 performed by or on behalf of CONSULTANT and operations of CONSULTANT, premises owned,
20 occupied, or used by CONSULTANT. The coverage shall contain no special limitations on the scope
21 or protection afforded to CITY, its officers, officials, employees, or volunteers.

22 Except for worker's compensation and professional liability insurance, the policies mentioned
23 in this subsection shall name CITY as an additional insured and provide for notice of cancellation to
24 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT
25 receives any notice of cancellation or nonrenewal from its insurer.

26 **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be
27 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any
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1 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,
2 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute
3 with it.

4 (3) **Reporting Provisions.** Any failure to comply with the reporting
5 provisions of the policy shall not affect the coverage provided to the CITY, its officers, officials,
6 employees, or volunteers.

7 (4) **Verification of Coverage.** CONSULTANT shall furnish CITY with
8 certificates of insurance and the original endorsements effecting coverage required by this Agreement.
9 The certificates and endorsements for each insurance policy are to be signed by a person authorized by
10 that insurer to bind coverage on its behalf. The aforementioned policies shall be issued by an
11 insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and
12 shall be delivered to CITY at the time of the execution of this Agreement or before work commences.
13 Such policies and certificates shall be in a form approved by the City Attorney. CITY reserves the
14 right to require complete certified copies of all required insurance policies at any time.

15 12. **TIME OF PERFORMANCE.** The time of performance of the services under this
16 Agreement is of the essence, and all time deadlines identified in this Agreement or Scope of Services
17 shall be strictly construed.

18 13. **SUSPENSION OF WORK.** CITY may, at any time, by ten (10) days' written notice,
19 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for
20 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services
21 performed and reimbursable expenses incurred prior to the suspension date. During the period of
22 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
23 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

24 14. **TERMINATION.** CITY may terminate this Agreement for any reason upon ten (10)
25 days written notice to the other party. CITY may terminate the Agreement upon five (5) days written
26 notice if CONSULTANT breaches this Agreement. In the event of any termination, CONSULTANT
27 shall promptly deliver to the CITY any and all finished and unfinished reports or other written,
28

1 recorded, photographic, or visual materials, documents, data, and other deliverables (“Work
2 Materials”) prepared for the CITY prior to the effective date of such termination, all of which shall
3 become CITY’s sole property. After receipt of the Work Materials, CITY will pay CONSULTANT
4 for the services performed as of the effective date of the termination.

5 **15. COMPLIANCE WITH CIVIL RIGHTS.** During the performance of this contract,
6 CONSULTANT agrees as follows:

7 **A. Equal Employment Opportunity.** In connection with the execution of this
8 Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment
9 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited
10 to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or
11 recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and
12 selection for training including apprenticeship.

13 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply
14 with all federal regulations relative to nondiscrimination in federally assisted programs.

15 **C. Solicitations for Subcontractors including Procurement of Materials and**
16 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by
17 CONSULTANT for work to be performed under a subcontract including procurement of materials or
18 leases of equipment, each potential subcontractor, supplier or lessor shall be notified by
19 CONSULTANT of CONSULTANT’S obligation under this Agreement and the regulations relative to
20 nondiscrimination on the grounds of race, religion, color, sex, or national origin..

21 **16. CONFLICT OF INTEREST.**

22 **A.** CONSULTANT covenants and represents that neither it, nor any officer or
23 principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in
24 any manner with the interests of CITY or which would in any way hinder CONSULTANT’S
25 performance of services under this Agreement. CONSULTANT further covenants that in the
26 performance of the Agreement, no person having any such interest shall be employed by it as an
27 officer, employee, agent or subcontractor without the express written consent of the CITY.

1 CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of
2 interest, with the interests of the CITY in the performance of this Agreement.

3 B. CONSULTANT is not a designated employee within the meaning of the
4 Political Reform Act because CONSULTANT:

5 (1) Will conduct research and arrive at conclusions with respect to its rendition
6 of information, advice, recommendation or counsel independent of the control and direction of the
7 CITY or of any CITY official, other than normal contract monitoring; and

8 (2) Possesses no authority with respect to any CITY decision beyond the
9 rendition of information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

10 **17. COMPLIANCE WITH LAWS.** CONSULTANT shall comply with all applicable
11 Federal, State of California, and local laws, rules, and regulations and shall obtain all applicable
12 licenses, including a business license with the City of Concord, and permits for the conduct of its
13 business and the performance of the services.

14 **18. CHOICE OF LAW.** This Agreement shall be construed and interpreted in accordance
15 with the laws of the State of California, excluding any choice of law rules which may direct the
16 application of the laws of another jurisdiction. In the event that suit shall be brought by either party
17 hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the
18 County of Contra Costa, California.

19 **19. NON-WAIVER.** The waiver by either party of any breach of any term, covenant, or
20 condition contained in the Agreement, or any default in their performance of any obligations under the
21 Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other
22 term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default
23 constitute a continuing waiver of same.

24 **20. ENFORCEABILITY; INTERPRETATION.** In the event that any of the provisions
25 or portions of application of any of the provisions of the Agreement are held to be illegal or invalid by
26 a court of competent jurisdiction, CITY and CONSULTANT shall negotiate an equitable adjustment
27 in the provisions of the Agreement with a view toward affecting the purpose of the Agreement. The
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1 illegality or invalidity of any of the provisions or portions of application of any of the provisions of
2 the Agreement shall not affect the legality or enforceability of the remaining provisions or portions of
3 application of any of the provisions of the Agreement. This Agreement shall be interpreted as though
4 it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the
5 ground that said party was solely or primarily responsible for drafting the language to be interpreted.

6 **21. INTEGRATION.** All exhibits identified in this Agreement are attached hereto and
7 incorporated herein by reference. The Agreement contains the entire agreement and understanding
8 between the parties as to the subject matter of this Agreement. It merges and supersedes all prior or
9 contemporaneous agreements, commitments, representation, writings, and discussions between
10 CONSULTANT and CITY, whether oral or written.

11 **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**
12 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,
13 assigns, and legal representatives to the terms and obligations of this Agreement. CONSULTANT
14 shall not assign or transfer any interest in the Agreement without the CITY's prior written consent,
15 which consent shall be in the CITY's sole discretion. Any attempted assignment or transfer in breach
16 of this provision shall be void. This Agreement is not intended and shall not be construed to create
17 any third party benefit. This Agreement is not intended and shall not be construed to create a joint
18 venture or partnership between the parties. CONSULTANT, its officers, employees and agents shall
19 not have any power to bind or commit the CITY to any decision.

20 **23. FINANCIAL RECORDS.** Records of CONSULTANT's direct labor costs, payroll
21 costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on
22 a generally recognized accounting basis and made available to CITY if and when required.

23 **24. NOTICES.** All notices required hereunder shall be in writing and mailed postage
24 prepaid by certified or registered mail, return receipt requested, or by personal delivery to the CITY's
25 address as shown below, or such other places as CITY or CONSULTANT may, from time to time,
26 respectively, designate in a written notice given to the other. Notice shall be deemed received three
27 (3) days after the date of the mailing thereof or upon personal delivery.

1 To CITY: **Robert Ovadia, City Engineer**
2 **Community & Economic Development Department**
3 **City of Concord**
4 **1950 Parkside Drive**
5 **Concord, CA 94519-2578**
6 **Phone: (925) 671-3470**
7 **Fax: (925) 798-9692**

8 To CONSULTANT: **John Collins**
9 **Vali Cooper & Associates, Inc.**
10 **2000 Powell Street, Suite 550**
11 **Emeryville, CA 94608**
12 **Phone: (510) 446-8301**

13 **25. NON-LIABILITY.** No member of the CITY and no other officer, employee or agent
14 of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or
15 breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in
16 interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

17 **26. EXECUTION.** Each individual or entity executing this Agreement on behalf of
18 CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver
19 this Agreement on behalf of CONSULTANT and that such execution is binding upon
20 CONSULTANT.

21 This Agreement may be executed in several counterparts, each of which shall constitute one
22 and the same instrument and shall become binding upon the parties when at least one copy hereof
23 shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary
24 to produce or account for more than one such counterpart.

25 **IN WITNESS WHEREOF,** the parties have executed this Agreement in one (1) or more
26 copies as of the date and year first written above.

27 **CONSULTANT**

28 **CITY OF CONCORD, a Municipal Corporation**

By: _____
Name: John Collins
Title: Chief Operating Officer
Address: 2000 Powell Street, Suite 550
Emeryville, CA 94608
Telephone: Phone: (510) 446-8301

By: _____
Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive
Concord, CA 94519
Telephone: (925) 671-3150

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APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEAR 2014/15 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT. THE SUM OF **\$194,040.**

Account Code: 4759500C999/4752144111-74250

Finance Director's Signature