



REPORT TO MAYOR AND CITY COUNCIL

TO THE HONORABLE MAYOR AND CITY COUNCIL:

DATE: June 9, 2015

SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH HARRISON ENGINEERING, INC. OF PLEASANT HILL IN THE NOT-TO-EXCEED AMOUNT OF \$100,000 TO PROVIDE CIVIL ENGINEERING DESIGN, ENVIRONMENTAL REVIEW, RIGHT-OF-WAY CERTIFICATION AND DESIGN SERVICES DURING CONSTRUCTION; APPROVE AN ASSOCIATED BUDGET TRANSFER IN THE AMOUNT OF \$15,000 FOR CONCORD VARIOUS STREETS PPRESERVATION (PROJECT NO. 2292) (FUNDED BY: MEASURE J, GAS TAX, AND STP/CMAQ THROUGH OBAG GRANT FUNDS)

Report in Brief

Staff recommends that the City Council approve a Professional Services Agreement with Harrison Engineering, Inc. in the not-to-exceed amount of \$100,000 to provide Civil Engineering Design, Environmental Review, Right-of-Way Certification and Design Services during Construction; and approve a related budget transfer in the amount of \$15,000 from unencumbered Gas Tax fund balance the Concord Various Streets Preservation (Project No. 2292) and authorize the City Manager to execute the Agreement. The project includes the rehabilitation of Concord Boulevard from Sixth Street to Port Chicago Highway and Arnold Industrial Way from Port Chicago Highway to Pike Lane.

Background

Project No. 2292, Concord Various Streets Preservation (also known as City of Concord Pavement Rehabilitation) will rehabilitate asphalt pavement by grinding and replacing the top 2.5 inches of asphalt concrete from gutter lip to gutter lip. The project will also perform dig-outs of failed areas to a depth of between 5 inches and 7 inches. The project will replace the standard asphalt concrete with a rubberized hot mix asphalt to provide additional structural support and address the pavement distress. The above work will occur on two main Concord arterial streets: Concord Boulevard (from Sixth Street to Port Chicago Highway); and Arnold Industrial Way (from Port Chicago Highway to Pike Lane).

**APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH
HARRISON ENGINEERING, INC. IN THE NOT-TO-EXCEED AMOUNT
OF \$100,000; APPROVE A RELATED BUDGET TRANSFER FOR
PROJECT NO. 2292 (CONCORD VARIOUS STREETS PRESERVATION)**

June 9, 2015

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Project No. 2292 was approved as part of the FY 2013/2014 Capital Improvement Ten Year Plan with a total budget of \$1,104,000. The Project is mainly funded by \$757,000 of Federal Surface Transportation Program (STP) funds with a \$347,000 local match from Measure J funds. On July 9, 2013, the City Council adopted Resolution No. 13-53, authorizing the application for federal funding through the One Bay Area Grant (OBAG) Program, and committing the necessary local funding to match, as required by local administrator, the Metropolitan Transportation Commission (MTC).

These road improvements will bring immediate and dramatic improvements to these two key Concord thoroughfares which are high on the priority list for pavement repairs with cumulative PCI's of less than 60. These improvements will assist in revitalizing these heavily traveled roads that serve to provide both commute and freight options, connecting businesses and residents with employment, retail, and alternate transportation opportunities.

Discussion

The use of Federal STP funds requires that the City issue a Request for Proposals (RFP), in accordance with approved Caltrans procedures, to select a design consultant. The City issued an RFP for civil engineering design, environmental and right-of-way certification for Project No. 2292 in March 2015. Five firms submitted Proposals for consideration. A selection committee comprised of three registered civil engineers, two from City staff and one staff from City of Walnut Creek reviewed all five Proposals. Based on each firms' responsiveness to the criteria established by the Request for Proposal, including their individual qualifications, professional and team experience, design strategy, and discussion of potential maintenance issues, the committee recommended that four firms should be invited to participate in panel interviews.

Based on the panel interviews held on May 1, 2015, the committee rated Harrison Engineering, Inc. (HEI) as the most qualified firm to provide Civil Engineering Design services for this project. HEI has successfully designed numerous Federally-funded projects for the City in the past, including Project No. 2015 (Treat Blvd/Oak Grove Plaza Signal Improvements), accepted in 2008 and Project No 2052, Concord Blvd Gap Closure – Phase II, accepted in 2012; as well as other current City projects, including: Project No. 2324 (Citywide Curb Ramp Improvements); and Project No. 2314 (Cowell Road Safety Enhancements).

HEI has submitted a proposal in the not-to-exceed amount of \$100,000 for the civil engineering design, environmental and right-of-way certification. Staff has reviewed the proposal and determined that the HEI's assumption of time necessary to complete the project, as well as their rates, allocation of hours and total costs are reasonable when compared to the independently prepared fee estimate of \$120,000. Caltrans' procedures typically require establishment of a Disadvantage Business Enterprise (DBE) goal for design agreements. However, since the design will be paid for with local funding, Caltrans procedures allows for the DBE requirement to be waived. Note that a DBE goal will be required for the construction contract since that will be paid for with federal funding. HEI and their project team have verified that they have the staff available and are ready to begin work on this project immediately after award of contract.

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Fiscal Impact

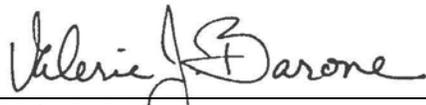
The project budget is sufficient to fully fund the cost of this work and the project is predominantly funded by the Federal STP grant. However, to fund this Agreement requires a budget transfer of \$15,000 to cover the total cost of the Agreement, plus staff administrative and overhead costs. Staff requests that \$15,000 of unencumbered Gas Tax be transferred into project budget to cover the shortfall. The City's local match for this project is \$347,000 as mentioned above; funded with Measure J funds.

Public Contact

The Notice to Consultants describing the Request for Proposal and the project was published in the Contra Costa Times on March 20, March 24, and April 1, 2015. The City Council Agenda was posted.

Recommendation for Action

Staff recommends that the City Council approve a Professional Services Agreement with HEI in the not-to-exceed amount of \$100,000 to provide Civil Engineering Design, Environmental Review, Right-of-Way Certification and Design Services during Construction; approve a related budget transfer in the amount of \$15,000 from unencumbered Gas Tax fund balance into the project budget for Project No. 2292 (Concord Various Streets Preservation); and authorize the City Manager to execute the Agreement.



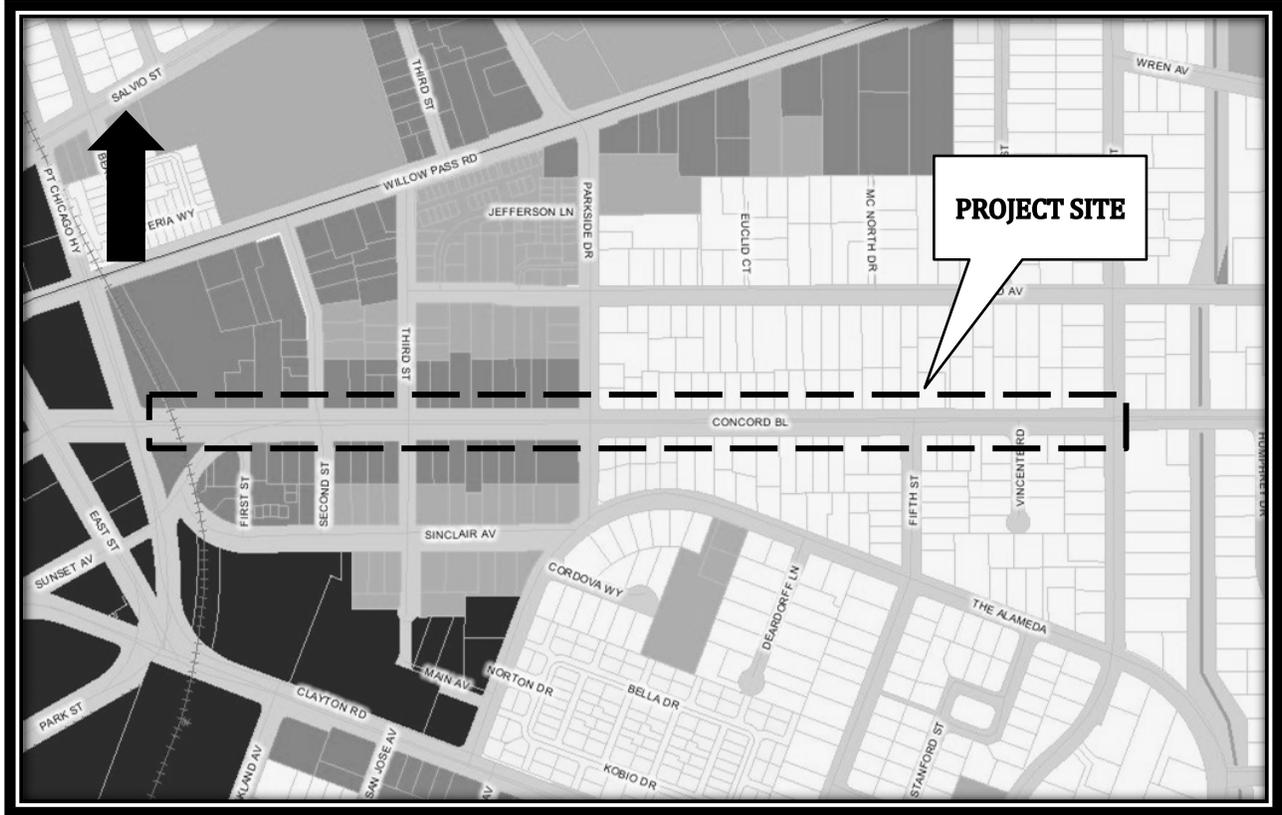
Valerie J. Barone
City Manager
valerie.barone@cityofconcord.org

Prepared by: Mark Migliore, PE
Associate Civil Engineer
mark.migliore@cityofconcord.org

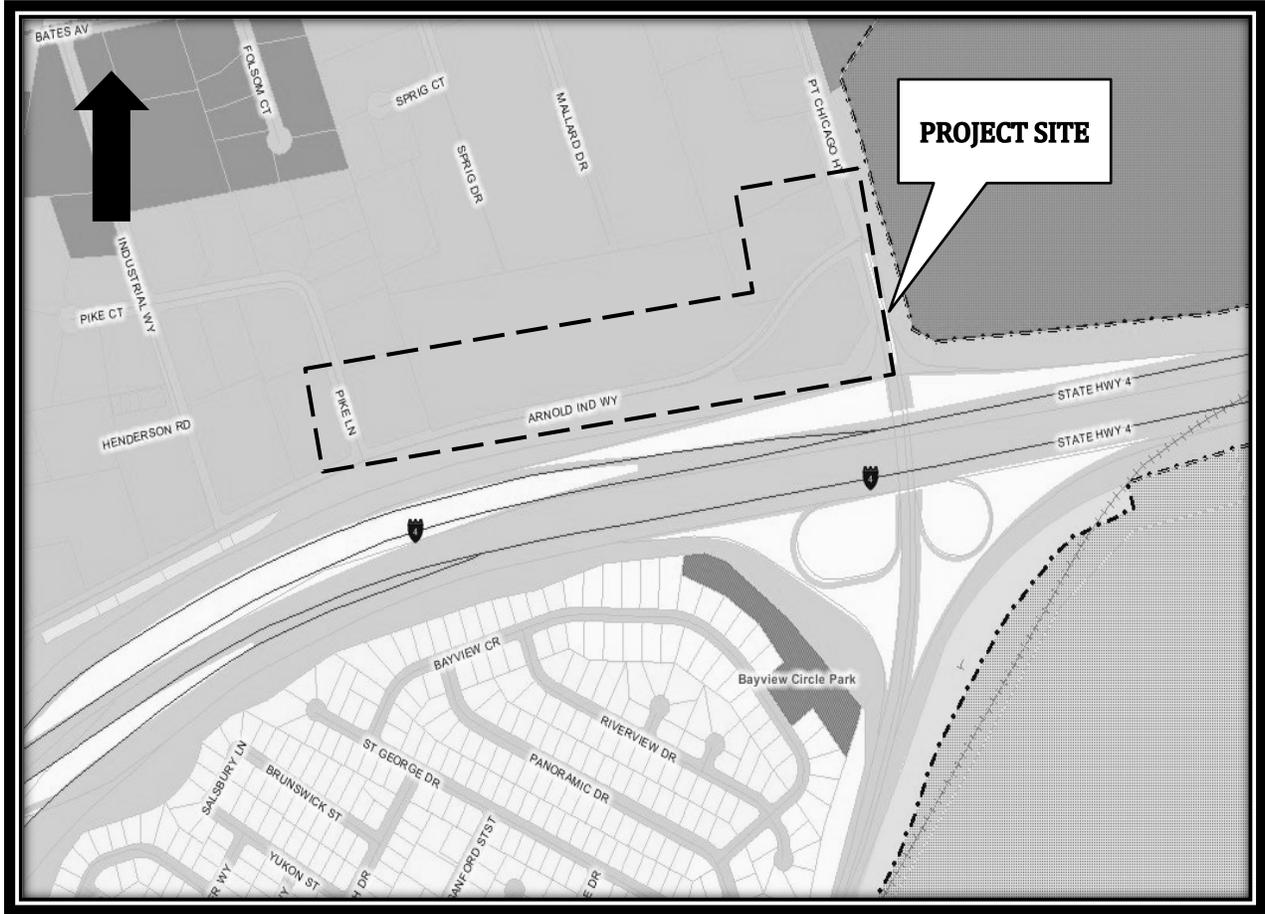
Reviewed by: Robert Ovadia, PE
City Engineer
robert.ovadia@cityofconcord.org

Reviewed by: Robert Woods, Acting Director for
Victoria Walker,
Dir. of Comm. & Econ. Dev.
victoria.walker@cityofconcord.org

Attachment 1: Project Location Map – Concord Blvd.
Attachment 2: Project Location Map – Arnold Industrial Way
Attachment 3: Professional Services Agreement



LOCATION MAP
PROJECT NO. 2292
CONCORD VARIOUS STREETS PRESERVATION
CONCORD BOULEVARD
FROM 6TH STREET TO PORT CHICAGO HIGHWAY
NO SCALE



LOCATION MAP

PROJECT NO. 2292
CONCORD VARIOUS STREETS PRESERVATION
ARNOLD INDUSTRIAL HIGHWAY
FROM PORT CHICAGO HIGHWAY TO PIKE LANE
NO SCALE

AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT ("Agreement") is entered into on June 9, 2015 between the City of
2 Concord ("CITY") and Harrison Engineering Inc., 399 Taylor Boulevard, Suite 100, Pleasant Hill CA
3 94523 ("CONSULTANT").

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

6 The CITY desires to contract with Harrison Engineering Inc. and Harrison Engineering Inc. to
7 contract with the CITY for provision by Harrison Engineering Inc. to the City for professional
8 services with Project No. 2292 (Concord Various Streets Preservation) as further described in Section
9 2 of this Agreement, upon the terms and conditions hereinafter set forth.

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

12 1. **TERM.** This Agreement shall commence on June 9, 2015 and expire on June 2, 2016.

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

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

23 2. **SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by
24 the CITY's Authorized Representative, CONSULTANT shall provide design, environmental, and
25 right of way services for Project No. 2292 (Concord Various Streets Preservation) described in detail
26 in Exhibit A, a proposal from Harrison Engineering Inc. dated May 8, 2015 is attached hereto and
27 made a part hereof. CITY retains all rights of approval and discretion with respect to the projects and
28 undertakings contemplated by this Agreement.

1 **3. PAYMENT.** The compensation to be paid to CONSULTANT including payment for
2 professional services and reimbursable expenses, shall be at the rate and schedules in detail in Exhibit
3 A. However, in no event shall the amount CITY pays CONSULTANT exceed one hundred thousand
4 dollars (\$100,000) for the term of this Agreement. Any Amendment to this Agreement that includes
5 an increase to this compensation amount shall be made in accordance with Section 5 below.

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

12 **4. AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent
13 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered
14 by CONSULTANT under this Agreement except where approval for the CITY is specifically required
15 by the City Council. The CITY's authorized representative is Robert Ovadia, City Engineer of the
16 Community & Economic Development Department. The CONSULTANT's authorized representative
17 is Randell Harrison, President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **D. Compliance with State Workers' Compensation Requirements.**

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

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

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

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

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

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

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

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

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

21 14. **TERMINATION.** CITY may terminate this Agreement for any reason upon ten (10)
22 days written notice to the other party. CITY may terminate the Agreement upon five (5) days written
23 notice if CONSULTANT breaches this Agreement. In the event of any termination, CONSULTANT
24 shall promptly deliver to the CITY any and all finished and unfinished reports or other written,
25 recorded, photographic, or visual materials, documents, data, and other deliverables ("Work
26 Materials") prepared for the CITY prior to the effective date of such termination, all of which shall
27 become CITY's sole property. After receipt of the Work Materials, CITY will pay CONSULTANT
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1 for the services performed as of the effective date of the termination.

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

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

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

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

18 **16. CONFLICT OF INTEREST.**

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

27 **B.** CONSULTANT is not a designated employee within the meaning of the
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1 Political Reform Act because CONSULTANT:

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

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

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

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

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

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

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

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

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

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

25 To CITY:

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord
1950 Parkside Drive

Concord, CA 94519-2578
Phone: (925) 671-3470
Fax: (925) 798-9692

To CONSULTANT:

**Randell Harrison, President
Harrison Engineering Inc.
399 Taylor Boulevard, Suite 100
Pleasant Hill, CA 94523
Phone: (925) 691-0450**

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

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

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.

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

CONSULTANT

CITY OF CONCORD, a Municipal Corporation

By: 

Name: Randell Harrison
Title: President
Address: 399 Taylor Boulevard, Suite 100
Pleasant Hill, CA 94523
Telephone: (925) 691-0450

By: _____

Name: Robert Ovadia
Title: City Engineer
Address: 1950 Parkside Drive
Concord, CA 94519
Telephone: (925) 671-3470

APPROVED AS TO FORM:

ATTEST:

1 _____
City Attorney

_____ City Clerk

2
3
4 FINANCE DIRECTOR'S CERTIFICATION:

5 Concord, California

6 Date: _____, 2015

7
8 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
9 DURING THE CURRENT FISCAL YEAR 2014/15 TO PAY THE ANTICIPATED
10 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.
11 THE SUM OF **\$100,000.**

12 Account Code: 4759500C999/4752292111-74500
13 2609500C999/2602292111-74500

14 _____
15 Finance Director's Signature
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