



TO THE HONORABLE MAYOR AND COUNCIL:

DATE: October 13, 2015

SUBJECT: AWARD CONTRACT IN THE AMOUNT OF \$106,840 TO WATERPROOFING ASSOCIATES, INC. FOR THE WILLOW PASS RECREATION CENTER REROOF PROJECT (MEASURE Q FUND)

Report in Brief

Public Works identified several deferred maintenance projects and prioritized them for completion during Fiscal Year 2015/16. One of the highest priority projects identified is the reroofing of the Willow Pass Recreation Center. Staff recommends awarding a contract in the amount of \$106,840 to Waterproofing Associates, Inc. to carry out a project to reroof the Center.

Background

On January 28, 2014 staff presented a report to the City Council which identified costs associated with the City's infrastructure backlog. The total estimated cost of the backlog of facility maintenance projects was \$6.6 million at that time. Approximately \$3 million of these projects were high-need projects that had been placed on hold for lack of resources. The remaining \$3.6 million of projects are newly identified projects resulting from deferred maintenance.

During the two-year budget setting process that occurred earlier this fiscal year, staff programmed the completion of eleven priority deferred maintenance projects totaling \$455,000. The reroofing of the Willow Pass Recreation Center is the highest priority of these eleven projects. Council authorized the use of Measure Q funds for these eleven projects in the Fiscal Year 2015/17 budget.

Discussion

On August 19, 2015 the City issued a formal Request for Bids (RFB) to reroof the Willow Pass Recreation Center. Bids were due on September 1 and opened by the City Clerk. Seven qualifying bids were received with Waterproofing Associates, Inc. being the lowest responsive and responsible bidder at \$106,840.

Public Works has a successful working relationship with the low bidder – Waterproofing Associates, Inc. The Company recently completed the reroof of the Keller House. Staff is recommending that the City Council award a contract in the amount of \$106,840 to Waterproofing Associates, Inc. to carry out the project to reroof the Willow Pass Recreation Center.

**AWARD CONTRACT IN THE AMOUNT OF \$106,840 TO WATERPROOFING
ASSOCIATES, INC. FOR THE WILLOW PASS RECREATION CENTER REROOF
PROJECT**

October 13, 2015

Page 2

Expedited scheduling of this project was necessary due to the pending rainy season and the contractor's schedule. The Contractor was authorized to proceed with this work with a start date of October 5, 2015. Staff was comfortable proceeding with the work given Council authorization of funds for this project within the approved budget at the start of the Fiscal Year.

Fiscal Impact

Adequate funds exist within the Facilities Maintenance Budget for this project. Council authorized the use of Measure Q funds for this project in the 2015/17 budget.

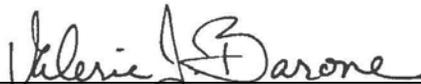
Public Contact

In addition to posting the agenda, a Notice to Bid was published on the City's website via Public Purchase System (which includes thousands of registered vendors), posted in the glass box outside of the Finance building, and sent to the Concord Chamber of Commerce.

Recommendation for Action

Staff recommends awarding a contract in the amount of \$106,840 to Waterproofing Associates, Inc. for the Willow Pass Recreation Center reroof project.

Prepared by: Robert Hardie
Facilities Maintenance Manager
Robert.Hardie@cityofconcord.org



Valerie J. Barone
City Manager

Valerie.Barone@cityofconcord.org

Prepared by: Justin Ezell
Director of Public Works
Justin.Ezell@cityofconcord.org

Attachment A – Maintenance Agreement for Waterproofing Associates, Inc.

Attachment B – Bid results – Project RFB #2334

MAINTENANCE SERVICES AGREEMENT

1 **THIS AGREEMENT** (“Agreement”) is entered into on October 6, 2015 between the City of
2 Concord, a California municipal corporation (“CITY”) and **Waterproofing Associates Inc.**, a C-
3 Corporation, 975 Terra Bella Avenue, Mountain View, CA 94043-1827 (“CONTRACTOR”).

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

6 The CITY desires to contract with CONTRACTOR to provide the services described in
7 Section 2 of this Agreement, upon the terms and conditions hereinafter set forth.

8 Pursuant to *Council Report on October 13, 2015* as a result of **Request for Bid (RFB) #2334**
9 **Willow Pass Recreation Center Reroof**, the City Council granted authority for the City Manager to
10 enter into this Agreement with CONTRACTOR.

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 October 6, 2015 and expire on June 30,
14 2016.

15 2. **SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by
16 the CITY’s authorized representative, CONTRACTOR shall perform the services described in detail
17 in **Exhibit A**, “**Scope of Services.**” CITY retains all rights of approval and discretion with respect to
18 the projects and undertakings contemplated by this Agreement.

19 3. **PAYMENT.**

20 A. **Compensation.** The compensation to be paid to CONTRACTOR including
21 payment for services and reimbursable expenses, shall be at the rate and schedules described in detail
22 in **Exhibit B**. However, shall in no event shall the amount CITY pays CONTRACTOR exceed One
23 Hundred Six Thousand Eight Hundred Forty dollars (\$106,840.00). Any increase to this
24 compensation amount must be mutually agreed to in writing pursuant to Section 5 below, and may
25 require City Council approval.

26 CONTRACTOR may submit monthly statements for services rendered; all statements shall
27 include adequate documentation demonstrating work performed during the billing period. It is
28

MAINTENANCE SERVICES AGREEMENT

1 intended that CITY review such statement and pay CONTRACTOR for services rendered within 30
2 days of receipt of a statement that meets all requirements of this Agreement. Payment by CITY shall
3 not be deemed a waiver of unsatisfactory work, even if such defects were known to the CITY at the
4 time of payment.

5 Where the CITY is not the final authority over the work product (or applicable portion
6 thereof), the CITY reserves the right to withhold 10% of the compensation amount under this
7 Agreement, until such time as: (i) the final authority or agency provides comments regarding the
8 work product (or applicable portion thereof), and these are satisfactorily incorporated into the work
9 product (or applicable portion thereof); OR (ii) approval is granted for the work product (or applicable
10 portion thereof) by the final approving authority/agency.

11 **B. Prevailing Wages.** The services to be provided hereunder are subject to prevailing
12 wage rate payment as set forth in California Labor Code Section 1771. Accordingly, CONTRACTOR
13 shall comply with all California Labor Code requirements pertaining to "public works," including the
14 payment of prevailing wages in connection with the services to be provided hereunder (collectively,
15 "Prevailing Wage Policies"). CONTRACTOR shall submit, upon request by the CITY, certified
16 copies of payroll records to CITY and shall maintain and make such records available to CITY for
17 inspection and copying during regular business hours at a location within the City of Concord.

18 CONTRACTOR shall defend, indemnify and hold harmless CITY and its officers, officials,
19 employees, volunteers, agents and representatives (collectively, "Indemnitees") from and against any
20 and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and
21 expenses (including attorneys' fees and costs) (collectively, "Claims"), arising out of or in any way
22 connected with CONTRACTOR's obligation to comply with all laws with respect to the work of
23 Improvements or Prevailing Wage Policies, including all Claims that may be made by contractors,
24 subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781, as
25 amended and added by Senate Bill 966.

26 CONTRACTOR hereby waives, releases and discharges forever the Indemnitees from any and
27 all present and future Claims arising out of or in any way connected with CONTRACTOR's obligation
28

MAINTENANCE SERVICES AGREEMENT

1 to comply with all laws with respect to the work of Improvements and Prevailing Wage Policies.

2 CONTRACTOR is aware of and familiar with the provisions of California Civil Code Section 1542

3 which provides as follows:

4 "A general release does not extend to claims which the creditor does not know or suspect to
5 exist in his favor at the time of executing the release, which if known by him must have materially
6 affected his settlement with the debtor."

7 As such relates to this Section 3.B, CONTRACTOR hereby waives and relinquishes all rights
8 and benefits which it may have under California Civil Code Section 1542. The obligations of
9 CONTRACTOR under this Section 3.B shall survive the termination of this Agreement.

10 **4. AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent
11 CITY and CONTRACTOR in all matters pertaining to the services to be ordered by CITY or rendered
12 by CONTRACTOR under this Agreement except where approval for the CITY is specifically required
13 by the CITY Council. The CITY's authorized representative is **Robert (Bob) Hardie, Facilities**
14 **Maintenance Manager of the Public Works Department.** The CONTRACTOR's authorized
15 representative is **Rob Wyllie, Project Manager, Waterproofing Associates.**

16 **5. AMENDMENT TO AGREEMENT.** This Agreement may be amended or modified
17 only by a writing duly executed by authorized representatives of both parties, and made and approved
18 in compliance with the CITY's Municipal Code.

19 **A. Amendment to Scope of Services.** If CITY requests services other than as
20 described in the Scope of Services, the amendment shall set forth the changes to the Scope of
21 Services, any change in the performance time schedule, and any change in the compensation described
22 in Section 3, above.

23 **B. Amendment for Additional Compensation.** CITY's authorized
24 representative is authorized to execute amendments to this Agreement on behalf of CITY, including
25 amendments providing for additional compensation to CONTRACTOR not to exceed \$50,000
26 (including the base contract amount) during any fiscal year. Any additional compensation to
27 CONTRACTOR that results in more than \$50,000 (including the base contract amount) for any fiscal
28

MAINTENANCE SERVICES AGREEMENT

1 year, must be approved by the City Council.

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

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

16 As an independent contractor, CONTRACTOR shall not be eligible for any benefits, which the
17 CITY may provide to its employees and all persons, if any, hired by CONTRACTOR shall be
18 employees or subcontractors of CONTRACTOR and shall not be construed as employees or agents of
19 the CITY in any respect. CONTRACTOR shall receive no premium or enhanced pay for work
20 normally understood as overtime, e.g., hours that exceed forty (40) hours per work week, or work
21 performed during non-standard business hours, such as in the evenings or on weekends.
22 CONTRACTOR shall not receive a premium or enhanced pay for work performed on a recognized
23 holiday. CONTRACTOR shall not receive paid time off for days not worked, whether it be in the
24 form of sick leave, administrative leave, or for any other form of absence. CONTRACTOR shall pay
25 all taxes, assessments and premiums under the federal Social Security Act, any applicable
26 unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use
27 taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by
28

MAINTENANCE SERVICES AGREEMENT

1 reason of or in connection with the services to be performed by CONTRACTOR.

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

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

18 **9. OWNERSHIP AND MAINTENANCE OF DOCUMENTS.** "Work Materials" means any
19 and all finished and unfinished plans, specifications, maps, estimates, manuscripts, drawings,
20 descriptions, reports, other written, recorded, photographic, visual materials, documents, data,
21 deliverables, and other work products prepared or furnished by or for CONTRACTOR pursuant to
22 this Agreement. CONTRACTOR shall deliver copies of all Work Materials to CITY upon project
23 completion or other termination of this Agreement (see Section 16 below). The CITY reserves the
24 right to specify the file format that electronic Work Materials are presented to the CITY. CITY shall
25 not have access to, control of, or actual or constructive possession of, the Work Materials prior to
26 project completion or Agreement expiration or termination.

27 Work Materials are instruments of CONTRACTOR's services in respect to this project, and
28

MAINTENANCE SERVICES AGREEMENT

1 are not intended nor are represented to be suitable for reuse by others except CITY on extensions of
2 this project or on any other project. Any reuse without specific written verification and adoption by
3 CONTRACTOR for the specific purposes intended will be at user's sole risk and without liability or
4 legal exposure and expenses to CONTRACTOR, including attorney's fees arising out of such
5 unauthorized reuse. Upon project completion or Agreement termination, title to all Work Materials
6 shall be vested in the CITY, none of which shall be used in any manner whatsoever, by any person,
7 firm, corporation, or agency without the expressed written consent of the CITY. Notwithstanding the
8 foregoing, basic survey notes and sketches, charts, computations, and other data prepared or obtained
9 under this Agreement shall have no restriction or limitations on their use.

10 CONTRACTOR shall not disclose or discuss any Work Materials or other information
11 gathered, discussed or generated in any way through this Agreement without the written permission of
12 CITY, unless required by law.

13 **10. INDEMNIFICATION.** The following obligations are in addition to those imposed by
14 applicable provisions of the Concord Municipal Code. CONTRACTOR agrees to and shall defend
15 (with independent counsel approved by the CITY), indemnify and hold harmless the CITY, its
16 officers, officials, employees, agents and volunteers from and against any and all claims, demands,
17 actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation
18 expenses) arising out of or connected in any way with CONTRACTOR's performance, non-
19 performance, breach, or default, or any subconsultant's, expert's, contractor's, or subcontractor's
20 performance, non-performance, breach, or default, under the terms of this Agreement. This
21 indemnification obligation on CONTRACTOR'S part shall not apply to demands, actions, losses,
22 damages, injuries, and liability arising out of sole negligence or willful misconduct on the part of
23 CITY. This Section 10 shall survive expiration or other termination of this Agreement.

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

26 **A. Commercial General Liability Coverage.** CONTRACTOR shall maintain
27 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000)
28

MAINTENANCE SERVICES AGREEMENT

1 combined single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily
2 injury, personal injury, and property damage.

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

7 **C. Compliance with State Workers' Compensation Requirements.**
8 CONTRACTOR covenants that it will insure itself against liability for Workers' Compensation
9 pursuant to the provisions of California Labor Code §3700, et seq. CONTRACTOR 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 CONTRACTOR for CITY. This provision shall
14 not apply upon written verification by CONTRACTOR that CONTRACTOR has no employees.

15 **D. 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 CONTRACTOR and operations of CONTRACTOR, premises owned,
20 occupied, or used by CONTRACTOR. The coverage shall contain no special limitations on the scope
21 or protection afforded to CITY, its officers, officials, employees, or volunteers. Except for worker's
22 compensation insurance, the policies mentioned in this subsection shall name CITY as an additional
23 insured and provide for notice of cancellation to CITY. CONTRACTOR shall also provide timely
24 and prompt notice to CITY if CONTRACTOR receives any notice of cancellation or nonrenewal from
25 its insurer.

26 **(2) Primary Coverage.** CONTRACTOR's insurance coverage shall be
27 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any
28

MAINTENANCE SERVICES AGREEMENT

1 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,
2 employees, or volunteers shall be in excess of CONTRACTOR'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.** CONTRACTOR 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 CONTRACTOR. All suspensions shall extend the time schedule for
20 performance in a mutually satisfactory manner, and CONTRACTOR shall be paid for services
21 performed and reimbursable expenses incurred prior to the suspension date. During the period of
22 suspension, CONTRACTOR shall not receive any payment for services, or expenses, except for
23 reasonable administration expenses, incurred by CONTRACTOR 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 this Agreement upon five (5) days written
26 notice if CONTRACTOR breaches this Agreement. In the event of any termination, CONTRACTOR
27 shall promptly deliver to the CITY any and all Work Materials prepared for the CITY prior to the
28

MAINTENANCE SERVICES AGREEMENT

1 effective date of such termination, all of which shall become CITY's sole property. After receipt of
2 the Work Materials, CITY will pay CONTRACTOR for the services which the CITY determines were
3 satisfactorily performed as of the effective date of the termination.

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

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

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

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

20 **16. CONFLICT OF INTEREST.**

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

27 CONTRACTOR agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of
28

MAINTENANCE SERVICES AGREEMENT

1 interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

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

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

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

23 **20. ENFORCEABILITY; INTERPRETATION.** In the event that any of the provisions
24 or portions of application of any of the provisions of this Agreement are held to be illegal or invalid
25 by a court of competent jurisdiction, CITY and CONTRACTOR shall negotiate an equitable
26 adjustment in the provisions of this Agreement with a view toward affecting the purpose of this
27 Agreement. The illegality or invalidity of any of the provisions or portions of application of any of
28

MAINTENANCE SERVICES AGREEMENT

1 the provisions of this Agreement shall not affect the legality or enforceability of the remaining
2 provisions or portions of application of any of the provisions of this Agreement. This Agreement
3 shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be
4 interpreted against a party on the ground that said party was solely or primarily responsible for
5 drafting the language to be interpreted. The words “include” and “including” shall be interpreted as
6 though followed by the words “without limitation.”

7 **21. INTEGRATION.** The recitals and any exhibits attached to this Agreement are
8 incorporated by reference as though fully restated herein. This Agreement contains the entire
9 agreement and understanding between the parties as to the subject matter of this Agreement. It
10 merges and supersedes all prior or contemporaneous agreements, commitments, representation,
11 writings, and discussions between CONTRACTOR and CITY, whether oral or written. In the event
12 of any conflict or other inconsistency between the provisions of this Agreement (disregarding any
13 exhibits) on the one hand, and any exhibits hereto (including any Request for Bids, Request for
14 Proposal, or similar documents, responses to the same, terms and conditions, sample agreements,
15 sample purchase orders, or other attachments thereto) or any purchase order issued in connection with
16 this Agreement, on the other hand, the provisions of this Agreement (disregarding any exhibits) shall
17 control.

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

27 **23. FINANCIAL RECORDS.** Records of CONTRACTOR’s direct labor costs, payroll
28

MAINTENANCE SERVICES AGREEMENT

1 costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on
2 a generally recognized accounting basis and made available to CITY if and when required.

3 **24. NOTICES.** All notices required hereunder shall be in writing and mailed postage
4 prepaid by certified or registered first class United States mail, postage prepaid, return receipt
5 requested, or by personal delivery to the CITY's address as shown below, or such other places as
6 CITY or CONTRACTOR may, from time to time, respectively, designate in a written notice given to
7 the other. Notices shall be deemed effectively served upon deposit in the United States Mail, or upon
8 personal delivery.

9 To CITY:

Robert (Bob) Hardie
Facilities Maintenance Manager
Public Works Department
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578
Telephone: (925) 671-3025
Email: Robert.hardie@cityofconcord.org

14 To CONTRACTOR:

Rob Wyllie, Project Manager
Waterproofing Associates
975 Terra Bella Avenue
Mountain View, CA 94043
Telephone: (650)937-1299
Email: rob@roofwa.com

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

22 **26. EXECUTION; COUNTERPARTS.** Each individual or entity executing this
23 Agreement on behalf of CONTRACTOR represents and warrants that he or she or it is duly
24 authorized to execute and deliver this Agreement on behalf of CONTRACTOR and that such
25 execution is binding upon CONTRACTOR. This Agreement may be executed in several
26 counterparts, each of which shall constitute one and the same instrument and shall become binding
27
28

MAINTENANCE SERVICES AGREEMENT

1 upon the parties when at least one copy hereof shall have been signed by both parties hereto. In
2 approving this Agreement, it shall not be necessary to produce or account for more than one such
3 counterpart.

4 *[signatures follow on next page]*
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MAINTENANCE SERVICES AGREEMENT

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

CONTRACTOR:

CITY:

a _____

City of Concord,
a California municipal corporation

By: _____

By: _____

Name: Rob Wyllie
Title: Project Manager
Address: 975 Terra Bella Avenue
Mountain View, CA 94043
Telephone: (650)937-1299

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

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 2015/16 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT. THE SUM OF **\$106,840**. Account Code 125-5730-1Z01-79800.

Finance Director's Signature

MAINTENANCE SERVICES AGREEMENT

Maintenance Agreement – Waterproofing Associates

EXHIBIT A

Scope of Services

**(Extracted from RFB#2334-
Willow Pass Recreation Center Reroof)**

MAINTENANCE SERVICES AGREEMENT

Maintenance Agreement – Waterproofing Associates

EXHIBIT B

Bid Submittal by Waterproofing Associates

(including Bid Form and other required documents)

(RFB#2334- Willow Pass Recreation Center Reroof)

**City of Concord
Bid Sheet**

PROJECT RFB #2334
Willow Pass Recreation Center Reroof

**Bid Opening:
Tuesday, Sept. 1,
2015
10:00 a.m.**

City Manager's Conference Room

Engineer's Estimate: \$100,000

To be awarded:

COMPANY	TOTAL BID
Waterproofing Associates, Inc. 975 Terra Bella Ave. Mountain View, CA 94043-1827	\$106,840
Solano County Roofing, Inc. 4349 Cordelia Road Fairfield, CA 94534	\$139,707
Best Contracting Services, Inc. 19027 S. Hamilton Avenue Gardena, CA 90248	\$142,666
Pioneer Contractors Inc. 1485 Armstrong Avenue San Francisco, CA 94124	\$152,580
Stronger Building Services 580 Harlon St. San Leandro, CA 94577	\$157,000
Joseph Murphy Construction 7610 National Drive Livermore, CA 94550	\$159,950
Western Roofing Service 15002 Wicks Blvd. San Leandro, CA 94577	\$164,218

Contact: Bob Hardie x3025