

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

DATE: July 28, 2015

SUBJECT: AWARD A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$2,105,335.42 TO GHILOTTI BROTHERS, INC OF SAN RAFAEL; APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH PARK ENGINEERING, INC. OF ORINDA IN THE AMOUNT OF \$207,424 FOR CONSTRUCTION MANAGEMENT SERVICES; APPROVE RELATED BUDGET TRANSFERS; AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENTS FOR DETROIT AVENUE BICYCLE AND PEDESTRIAN IMPROVEMENTS - CLAYTON ROAD TO MONUMENT BLVD (PROJECT NO. 2276) (FUNDED BY: GENERAL FUND, MEASURE J, MEASURE Q, IT OPERATIONS, AND CMAQ/OBAG GRANT FUNDS)

Report in Brief

The Detroit Avenue Bicycle and Pedestrian Improvements (Project No. 2276) will provide Complete Streets improvements between Clayton Road and Monument Boulevard, including installation of buffered bike lanes, construction of sidewalk and access ramps, installation of additional street lighting, and pavement rehabilitation. The project also includes installation of underground conduits and boxes to accommodate future traffic management enhancements for the City and catch basin inserts to improve storm water quality. An additive bid alternate was included to highlight the bike lanes with green pavement markings as a pilot project.

Ghilotti Brothers, Inc. of San Rafael was the low bidder and submitted a responsive and responsible bid in the amount of \$2,105,335.42 for the Base Bid and the Additive Bid. Ghilotti Brothers has an appropriate and valid contractor's license and satisfactory work references. Additionally, staff has reviewed a proposal submitted by Park Engineering of Orinda to provide Construction Management (CM) services in the amount of \$207,424 for this project.

Staff recommends that the City Council award a Construction Contract in the amount of \$2,105,355.42 to Ghilotti Bros, Inc. of San Rafael; approve a Professional Services Agreement with Park Engineering of Orinda in the amount of \$207,424 for Construction Management services; approve a related budget transfer for \$237,325 from the IT Operations Funds and a budget transfer of \$150,000 from Measure Q Bond Proceeds; and authorize the City Manager to execute the agreements for Detroit Avenue Bicycle and Pedestrian Improvements – Clayton Road to Monument Blvd (Project No. 2276).

AWARD A CONSTRUCTION CONTRACT; APPROVE A PROFESSIONAL SERVICES AGREEMENT; APPROVE RELATED BUDGET TRANSFERS; AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENTS FOR DETROIT AVENUE BICYCLE AND PEDESTRIAN IMPROVEMENTS (PROJECT NO. 2276)

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Background

The City Council approved the Detroit Avenue Pedestrian and Bicycle Improvements – Clayton Road to Monument Blvd project (PJ2276) as part of the FY 2013-14 CIP Program (Attachment 1). The scope of this project consists of implementing the City's "Complete Streets" policy which considers the needs of the various roadway users, and includes the installation of bike lanes, construction of sidewalk and access ramps, installation of additional street lighting, and pavement rehabilitation. The project also includes the installation of underground conduits and pull-boxes to accommodate traffic management improvements for the City, as well as catch basin inserts for storm water quality. An additive bid alternate was included to highlight the bike lanes with green pavement markings to add further visibility to the bike lanes.

In April 2013, this project was awarded a Congestion Management Air Quality (CMAQ) grant from the Metropolitan Transportation Commission (MTC). Based on the heavy demand for non-automobile travel on Detroit Avenue (north of Monument Boulevard) related to the presence of an elementary school and medium- to high-density residential housing along the corridor, the City was awarded \$2.1M under the OneBayArea Grant (OBAG) program.

In order to engage the community early on in the process, City staff held public meetings during the initial design period which provided significant input that was incorporated into the project. For instance, originally, the project included the installation of new traffic signals at the Laguna/Detroit and Sunshine Drive/Detroit intersections. However, the community input was strongly in favor of deleting the costly traffic signals, maintaining the current 4-way stop sign control at the intersections, and reallocating the associated funding to provide roadway repair and install several new streetlights to improve visibility for bicyclists and pedestrians. City staff requested and received approval from MTC to make these changes in the project.

The use of Federal funds in this project requires that the City establish Disadvantaged Business Enterprise (DBE) goals for the project based on the anticipated work activities and availability of DBE contractors for such work. The DBE goal for construction of this project is 3% of contract costs and the goal for the professional services related to construction management and inspection of the project is 12% of contracted costs.

Discussion

Construction Contract

The bid opening for Project No. 2276 was held at 2:00 P.M. on Thursday, June 11, 2015. Two (2) bids were received, ranging from \$2,105,335.42 to \$2,121,495.71 for the Total Bid as shown on the Bid Results (Attachment 2). The Engineer's estimate for the Total bid was \$1,721,000. Ghilotti Brothers (Ghilotti) was the low bidder and submitted a responsible and responsive bid in the total amount of \$2,105,335.42 (\$1,977,080.42 base bid and \$114,380 additive bid) which was approximately 22% higher than the Engineer's Estimate. Due to current improved economic conditions and higher than expected construction activities in the Bay Area, both bids came in higher than the Engineer's Estimate.

AWARD A CONSTRUCTION CONTRACT; APPROVE A PROFESSIONAL SERVICES AGREEMENT; APPROVE RELATED BUDGET TRANSFERS; AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENTS FOR DETROIT AVENUE BICYCLE AND PEDESTRIAN IMPROVEMENTS (PROJECT NO. 2276)

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Staff contacted the low bidder to obtain confirmation of their bid amount. Ghilotti confirmed that they are comfortable with their bid and ready to perform the work as bid. Staff has completed its analysis of Ghilotti's bid, determining that Ghilotti: possesses an appropriate and valid contractor's license; is not on any debarred list; they, as well as all their subcontractors, are registered with the Department of Industrial Relations as required by SB 854; have satisfactory references and are experienced in the construction of similar projects. Additionally, as required by Caltrans procedures, Ghilotti's Disadvantaged Business Enterprise (DBE) subcontractor commitment of 3% meets the contract goal.

For the traffic management conduit and pull boxes, the low bid included a cost of \$237,325. This exceeds the Engineer's estimate of approximately \$100,000. This project requires an additional allocation of \$237,325 to fund these additions. The benefit of including the conduit and pull boxes is providing connection between Clayton Road and Monument Boulevard for future interconnection of traffic signals. The conduit and pull boxes will also allow for future broadband initiatives including reducing reliance on existing communication providers and their associated costs, improving regional communications, providing public safety enhancements at the Meadow Homes Park and improving economic development. Installing the conduit and pull boxes with this project also reduces impacts to the road's pavement in the future. . There are sufficient funds available in the IT Operations fund to cover the required budget transfer, which will bring the total required project construction budget to \$2,695,272.

The award of a construction contract for the Base Bid only would result in a contract award amount of \$1,990,955.42. This amount is considered reasonable and is within available funding limits. Unfortunately, there are insufficient funds in the current project budget to award the bid alternate to provide green pavement markings in the bike lanes. Approximately \$150,000 would be required to fund the construction, inspection, construction management and administration of the green pavement markings.

On July 13, 2015, staff sought direction from the Infrastructure and Franchise (I&F) Committee regarding installation of the green pavement marking as a pilot project and the associated funding needs. Staff answered the Committee's questions about the material, its maintenance capabilities, and discussed the options for funding. After hearing from numerous public speakers in support of implementing the pilot project and no speakers in opposition, the Committee approved the installation of the green pavement markings with the Detroit Avenue Bicycle and Pedestrian Improvements project. Additionally, the committee recommended appropriation of \$150,000 of Measure Q Bond Proceeds funds to cover the costs of implementing the pilot project and award the bid alternate, and directed staff to bring the recommendation to the full Council for approval. The Committee also directed staff to contact the owners of the affected single family residences to discuss the installation of green pavement markings proposed in front of their driveways. The markings would not be installed where the homeowners objected to its use. This accommodation can be made due to the limited conflicts with bicycles that single family driveways pose.

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Professional Services Agreement for Construction Management (CM)

Staff solicited a proposal from Park Engineering to provide construction management and inspection for the project. Park Engineering has extensive demonstrated experience with this type of project, and is a recipient of a FY15-17 Master Services Agreement (which pre-qualifies the firm for this type of work), awarded at the July 14, 2015 City Council meeting, for Project and Construction Management. Park Engineering's fee of \$207,424 is approximately 9.9% of the total construction cost of \$2,105,335.42 which falls within a reasonable range for this type of work.

Based on a consultation with Caltrans, using a pre-qualified consultant solicited via the City's Master Services Agreement process was acceptable for this project, provided that the process complies with the DBE rules. Park Engineering is a DBE firm and has exceeded the project's DBE goal of 12% with a commitment of 95%, as well as having provided the proper contractual and financial paperwork.

Staff has reviewed the Park Engineering proposal to evaluate their professional qualifications and experience, as well as the proposed fee for the intended services. Staff has also checked several references for similar projects that Park Engineering has performed recently. Based on this complete review, as well as a determination that their rates, allocation of hours, and total costs are reasonable for this project, staff has selected Park Engineering to issue a Professional Services Agreement to perform Construction Management for this project. The proposed Agreement has been reviewed by the City Attorney's office (Attachment 3).

The current project schedule estimates construction commencing in early August 2015. Staff will work with the contractor to provide advanced construction notice to all residents and businesses in the affected area. Additionally, staff is preparing a supplemental flyer that will provide additional information, including project scope, construction schedule and contact information, which will be sent along with the construction notification letter to all businesses and residents in the project area. This flyer will also direct recipients to the City's website where more information will be available during construction. Lastly, staff will erect strategically located barricades with periodic notices that will provide residents with additional information during construction and contact information for any questions.

This project qualifies for a Notice of Exemption, which was issued under the California Environmental Quality Act (CEQA) and filed with the County Clerk on January 23, 2015. As federal funds are being used in the project, National Environmental Policy Act (NEPA) clearance was also required. Caltrans issued a Categorical Exclusion under NEPA on January 22, 2015.

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Fiscal Impact

The total required construction budget for the project is \$2,695,272 including construction, inspection, construction management and administration. A budget transfer in the amount of \$237,325 from IT Operations funds (non-general fund 225 restricted for capital expenses) is required to fund the installation of the conduit and pull-boxes. These funds are available for this purpose. Additionally, based on the recommendation of the I&F Committee, a budget transfer in the amount of \$150,000 from Measure Q Bond Proceeds is required to fund the installation of the green pavement markings. These funds are available in the Pavement Management Holding Account (Project No. 2157). With these transfers, the project budget will be sufficient to fully fund the cost of this \$2,105,355.42 Construction Contract and \$207,424 Professional Services Agreement for Construction Management services.

Upon approval of the transfers, the construction budget will total \$2,695,272, and consist of General fund/CMAQ and OBAG grant funds/STP/Measure Q funds/Measure J funds, and IT Operations funds as listed in the table below.

<u>Funding Source</u>	<u>Amount</u>	<u>Use</u>
General Fund	\$50,000	Administration
CMAQ/OBAG (PY)	\$327,408	Contingency/Constr. Mgmt
Measure J	\$112,000	Administration
STP	\$849,503	Construction
CMAQ/OBAG (Current Alloc.)	\$954,036	Construction
IT Operations	\$237,325	Cable Boxes and Conduits
Measure Q (Capital)	\$15,000	Construction (Storm Drain Inserts)
Measure Q (Lease Financing)	\$150,000	Construction (Green Pvmt Mat'l)
TOTAL	\$2,695,272	

Public Contact

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

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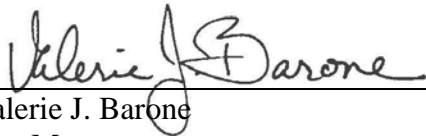
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Recommendation for Action

Staff recommends that the City Council award a Construction Contract in the amount of \$2,105,355.42 to Ghilotti Bros, Inc. of San Rafael; approve a Professional Services Agreement with Park Engineering of Orinda in the amount of \$207,424 for Construction Management services; approve a related budget transfer for \$237,325 from the IT Operations Funds and a budget transfer of \$150,000 from Measure Q Bond Proceeds; and authorize the City Manager to execute the agreements for Detroit Avenue Bicycle and Pedestrian Improvements – Clayton Road to Monument Blvd (Project No. 2276).

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

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



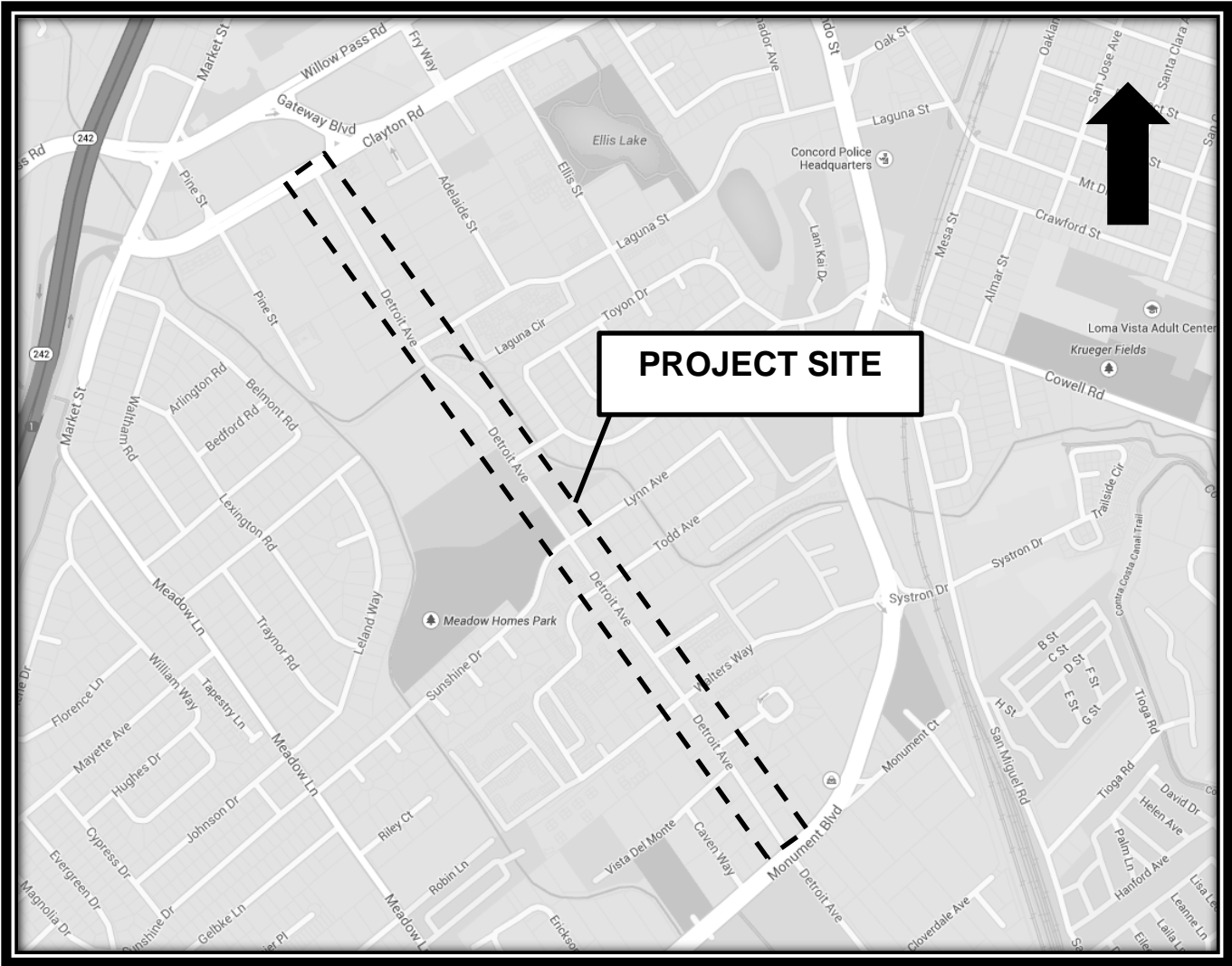
Valerie J. Barone
City Manager
valerie.barone@cityofconcord.org

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 (Park Engineering)



LOCATION MAP
PROJECT NO. 2276
DETROIT AVENUE PEDESTRIAN AND BICYCLE
IMPROVEMENTS – CLAYTON ROAD TO MONUMENT BLVD
NO SCALE

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**City of Concord
Bid Sheet (REVISED)**

**PROJECT #2276
Detroit Ave Bike and Pedestrian
Improvements**

**Bid Opening:
Thursday,
June 11, 2015
2:00 p.m.**

City Manager's Conference Room

Engineer's Estimate: \$TBD

To be awarded: TBD

COMPANY	TOTAL BID
Ghilotti Brothers, Inc. 525 Jacoby Street San Rafael, CA 94901	\$2,105,335.42
Bay Cities Paving & Grading, Inc. 1450 Civic Court, Bldg. B #400 Concord, CA 94520 925 687-6666	\$2,121,495.71

Contact: Mark Migliore x3422

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AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT (“Agreement”) is entered into on July 28, 2015 between the City of
2 Concord (“CITY”) and Park Engineering, 372 Village Square, Orinda, CA 94563
3 (“CONSULTANT”).

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

6 The CITY desires to contract with Park Engineering and Park Engineering to contract with the
7 CITY for provision by Park Engineering to the City for professional services with Project No. 2276
8 (Detroit Avenue Pedestrian and Bicycle Improvements Project) as further described in Section 2 of
9 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 July 28, 2015 and expire on June 30,
13 2016.

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

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

24 2. **SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by
25 the CITY's Authorized Representative, CONSULTANT shall provide construction management
26 services for Project No. 2276 (Detroit Avenue Pedestrian and Bicycle Improvements Project)
27 described in detail in Exhibit A, a proposal from Park Engineering dated June 11, 2015 is attached
28 hereto and made a part hereof. CITY retains all rights of approval and discretion with respect to the

1 projects and undertakings contemplated by this Agreement.

2 **3. PAYMENT.** The compensation to be paid to CONSULTANT including payment for
3 professional services and reimbursable expenses, shall be at the rate and schedules in detail in Exhibit
4 A. However, in no event shall the amount CITY pays CONSULTANT exceed two hundred seven
5 thousand, four hundred twenty-four and nine hundredths dollars (\$207,424.09) for the term of this
6 Agreement. Any Amendment to this Agreement that includes an increase to this compensation
7 amount shall be made in accordance with Section 5 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT 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 CONSULTANT 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 CONSULTANT of CONSULTANT’S obligation under this Agreement and the regulations relative to
19 nondiscrimination on the grounds of race, religion, color, sex, or national origin..

20 **16. CONFLICT OF INTEREST.**

21 A. CONSULTANT 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 CONSULTANT’S
24 performance of services under this Agreement. CONSULTANT further covenants that in the
25 performance of the 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 CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of
28

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

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

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.** CONSULTANT 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 of Concord, and permits for the conduct of its
12 business and 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 the Agreement, or any default in their performance of any obligations under the
20 Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other
21 term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default
22 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 the Agreement are held to be illegal or invalid by
25 a court of competent jurisdiction, CITY and CONSULTANT shall negotiate an equitable adjustment
26 in the provisions of the Agreement with a view toward affecting the purpose of the Agreement. The
27 illegality or invalidity of any of the provisions or portions of application of any of the provisions of
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1 the Agreement shall not affect the legality or enforceability of the remaining provisions or portions of
2 application of any of the provisions of the Agreement. This Agreement shall be interpreted as though
3 it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the
4 ground that said party was solely or primarily responsible for drafting the language to be interpreted.

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

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

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

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

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:

**Jaemin Park President
Park Engineering
372 Village Square
Orinda, CA 94563
Phone: (925) 257-2508**

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: Jaemin Park
Title: President
Address: 372 Village Square
Orinda, CA 94563
Telephone: (925) 257-2508

By: _____
Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive
Concord, CA 94519
Telephone: (925) 671-3470

1 APPROVED AS TO FORM:

ATTEST:

2

3 _____
City Attorney

City Clerk

4

5

6 FINANCE DIRECTOR'S CERTIFICATION:

7 Concord, California

8 Date: _____, 2015

9

10 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
11 DURING THE CURRENT FISCAL YEAR 2015/16 TO PAY THE ANTICIPATED
12 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.
13 THE SUM OF \$207,424.09.

14 Account Codes: 4029500C999/4022276211-74250 = \$165,895.00
4759500C999/4752276111-74250 = \$41,529.09

13

14 _____
15 Finance Director's Signature

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6/11/15

Exhibit A



City of Concord
Detroit Avenue Pedestrian and Bicycle Improvements Project
City Project No. 2276; Federal Project No. CML-5135(050)

OVERHEAD RATE = 110.00% FEE = 7.00%

Name/Classification	Rates		Hours			Total Regular Hours	Total Overtime Hours	Cost
	Regular Rate	Overtime Rate	Pre-Con	Construction	Close-out			
Indy Chadha, P.E. CM/Resident Engineer	\$ 157.29	\$ 157.29	40	500	40	580	0	\$ 91,228.20
Chris Kinser Construction Inspector	\$ 121.34	\$ 182.01	8	750	16	774	40	\$ 101,195.89
Kleinfelder Materials Testing and Inspection								
(Estimate - As Needed)								\$ 15,000.00
Total =								\$ 207,424.09

1. Rate includes vehicle, mobile phone, laptop and all equipment required to perform required duties.
2. Based on 125 working days as stated in Contract Documents plus hours for pre-construction and project close-out.
3. Construction Inspector is subject to prevailing wage requirements.

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