



TO THE HONORABLE MAYOR AND COUNCIL:

DATE: February 25, 2014

SUBJECT: AWARD A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$1,878,213.62 TO BAY PACIFIC PIPELINES, INC. OF NOVATO; APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH COLE MANAGEMENT & ENGINEERING OF CONCORD IN THE AMOUNT OF \$155,512 FOR CONSTRUCTION MANAGEMENT SERVICES; APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH HARRIS AND ASSOCIATES OF CONCORD IN THE AMOUNT OF \$31,380 FOR DESIGN RELATED SERVICES DURING CONSTRUCTION; APPROVE AN ASSOCIATED BUDGET TRANSFER IN THE AMOUNT OF \$700,000 FOR PROJECT NO. 2295 (DOWNTOWN SANITARY SEWER UPGRADE – PHASE II); AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENTS (FUNDED BY: SEWER ENTERPRISE FUNDS)

Report in Brief

Project No. 2295 (Downtown Sanitary Sewer Upgrade – Phase II), will replace sanitary sewer main lines in the downtown area that are undersized or failing in order to ensure adequate service and capacity within one of the City’s busiest districts. This project includes sewer improvements, ADA upgrades and pavement restoration for streets within the second phase of the downtown sewer upgrade area including Pacheco Street, Grant Street, Mt. Diablo Street, Galindo Street and some of the adjoining cross streets. (Attachment 1) The project is funded entirely with Sewer Enterprise funds.

At the bid opening on January 15, 2014, Bay Pacific Pipelines, Inc. (Bay Pacific) of Novato submitted the lowest responsive and responsible bid of \$1,878,213.62 (Base Bid) plus \$650,454.13 (Additive Bids 1 through 5) for a total bid of \$2,528,667.75. Because of limited funding, only the Base Bid is recommended for award. Bay Pacific has an appropriate, valid contractor’s license and satisfactory work references.

Additionally, staff is recommending Cole Management & Engineering (Cole) provide Construction Management (CM) services in the amount of \$155,512 and that Harris and Associates (Harris) provide Design Services during construction, in the amount of \$31,380, for this project.

Staff recommends that the City Council approve the following actions for Project No. 2295 (Downtown Sanitary Sewer Upgrade – Phase II):

1. Award a Construction Contract in the amount of \$1,878,213.62 (Base Bid) to Bay Pacific Pipelines, Inc. of Novato; and

**AWARD A CONSTRUCTION CONTRACT; APPROVE TWO
PROFESSIONAL SERVICES AGREEMENTS; APPROVE AN
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2. Approve a Professional Services Agreement with Cole Management & Engineering of Concord, in the amount of \$155,512 for Construction Management Services; and
3. Approve a Professional Services Agreement with Harris and Associates of Concord, in the amount of \$31,380 for Design Services During Construction; and
4. Approve an associated budget transfer in the amount of \$700,000 from Project No. 2209 (Sewer Capital Facility Replacement) (Fund 710) which acts as a CIP holding account for sewer-related projects, into the project budget for Project No. 2295 (Downtown Sanitary Sewer Upgrade – Phase II); and
5. Authorize the City Manager to execute the Professional Services Agreements.

Background

In June 2010, the City Council approved Project No. 2185 (Downtown Sanitary Sewer Upgrade) when it adopted the FY 2010-11 Capital Improvement Program Ten Year Plan (CIP). This project was programmed to replace clay sewer main lines in the downtown area that were undersized or failing within the oldest area of the City's sewer system (the approximately six by eight block downtown area).

In early 2011, a Sewer Condition Assessment Study was completed to provide design recommendations, phasing possibilities and cost estimates for the sewer main replacements required in the downtown area. The project scope was established to improve the infrastructure and reduce long term maintenance costs, including pavement upgrades, provide necessary ADA improvements; and support replacement of the lower sewer laterals (that portion of the sewer laterals that runs from the sewer mainline to the edge of the street right of way). The lower lateral replacements include the installation of sewer lateral cleanouts within the right of way at the property line to support long-term maintenance. In order to offset the construction impacts a project of this magnitude would have on the business community and the residents, the project was split into three (3) separate phases (Attachment 2).

The construction of Phase I is now complete. With the award of this construction contract, construction activities related to Phase II can begin.

On Monday November 4, 2013, staff held an Open House with invitations sent to all the affected property owners to discuss the upcoming project and hear concerns and comments. As a result, a bid alternative was included in the project to allow for the rehabilitation of the upper laterals (from street right of way through the private property to the business or residence) should property owners wish to pay the City to have the work done concurrent with the replacement of the lower sewer lateral. The project specifications state that the bid alternative is revocable if not needed.

Due to concerns regarding costs, the project documents split the Phase II area into a base bid consisting of: Grant Street (Bonifacio Street to Willow Pass Road), Galindo Street (Bonifacio Street to Pacheco Street), Pacheco Street (Concord Avenue to East Street), Mt. Diablo Street (Bonifacio Street to Salvio Street) and additive alternates

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that would allow for incremental award based on the bids received and funding availability. The bid alternates are outlined as follows: Bid Alternate #1 – Salvio Street (Concord Avenue to Mt Diablo Street), Bid Alternate #2 – Salvio Street (Mt Diablo Street to Grant Street), Bid Alternate #3 – Mt. Diablo Street (Salvio Street to Willow Pass Road), Bid Alternate #4 – Upper Lateral Replacement, and Bid Alternate #5 – Crosswalk Reconstruction. The project specifications state that the low bidder would be based on the Total Bid including Additive Bids Alternates #1 through #5, with the City reserving the right to award all, none or any combination of bid alternates.

Discussion

The bid opening for Project No. 2295 was held at 10:00 a.m. on Wednesday, January 15, 2014. Four (4) bids were received ranging from \$2,528,667.75 to \$3,252,547.80 for the Total Bid as shown on the Bid Results (Attachment 3). The Engineer’s Estimate for the base bid and all alternates was \$2,526,908.71. A summary of the three lowest bids and the Engineer’s Estimate is as follows:

Bidder	Base Bid	Total Bid (Base Bid + Alternates 1-5)
Bay Pacific Pipelines	\$1,878,213.62	\$2,528,667.75
Ranger Pipelines	\$2,367,476.40	\$2,939,871.30
Argonaut Constructors	\$2,194,953.70	\$3,091,021.90
Engineer’s Estimate	\$1,903,794.19	\$2,526,908.71

Based on bids received, funding is available to fully fund the base bid only in the amount of \$1,878,213.62.

Construction Contract

Bay Pacific’s Base Bid of \$1,878,213.62 is approximately 1.3% lower than the Engineer’s Estimate. Staff contacted the low bidder to obtain confirmation of their bid amount. Bay Pacific confirmed that they are comfortable with their bid and ready to perform the work as bid. Staff has completed its analysis of Bay Pacific’s bid, determining that Bay Pacific possesses an appropriate and valid contractor’s license, that it has satisfactory references and experience in the construction of similar projects.

Professional Services Agreements

Due to personnel reductions, staff availability, workload, and the need for an expedited construction schedule in order not to interfere with the upcoming activities at Todos Santos Plaza, staff determined it would be necessary for the construction inspection and management duties to be performed by an outside consultant.

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Cole has previously provided construction management and inspection services for the City of Concord on numerous projects and including Project No. 2188 (Concord Blvd. Pavement Rehabilitation – Sixth Street to Bailey Road); and provided design coordination, as well as construction management services for Project No. 2185 (Downtown Sanitary Sewer Upgrade-Phase I). Staff has reviewed Cole's proposal and has determined that their rates, allocation of hours and total costs are reasonable for this project. Cole's not-to-exceed total fee of \$155,512 is 8% of the base bid construction cost of \$1,878,213.62, which is within the standard fee range for construction inspection and management services. Additionally, Cole's experience in managing the construction of the recently completed Phase I sewer project will add value in the implementation of this project.

Harris and Associates was awarded a Professional Services Agreement (PSA) for design services on Project No. 2185 (Downtown Sanitary Sewer Upgrade - Phase I) which included a full design for the remaining phases, including Project No. 2295 (Phase II). Harris has provided Design Services During Construction (DSDC) for Project No. 2185 which was accepted by Council on February 11, 2014. The proposed PSA will cover necessary DSDC for the construction of Phase II.

The project schedule calls for commencing construction immediately after award, in March 2014, to take advantage of the spring/summer weather. It includes two (2) weeks of night work in some of the more highly traveled areas so that construction does not impede commute and day time travelers. Residents and those affected in nearby areas by this work will be given advance notice of this inconvenience. The construction schedule allows for 80 working days which will be substantially complete in Summer 2014.

The project qualifies for a Categorical Exemption from the requirement for preparation of an environmental document as provided for in Section 15302 of the California Environmental Quality Act. The Notice of Exemption was filed with the County Recorder's Office on December 9, 2013.

Fiscal Impact

This project requires a budget transfer in order to fully fund the work. Staff requests that \$700,000 from Project No. 2209 (Sewer Capital Facility Replacement) (Fund 710) which acts as a CIP holding account for sewer-related projects, be transferred into the project budget for Project No. 2295 (Downtown Sanitary Sewer Upgrade – Phase II). This transfer will fully fund the project budget with a total of \$2.4M.

Public Contact

A total of 874 letters were sent to affected property owners and residents within the project area to notify them of the up-coming sewer project and to invite them to an Open House regarding the project, which was held on November 4, 2013. A total of five (5) residents attended the meeting and voiced concerns about access to their driveways and garages during construction as well as asking questions about the upper sewer lateral replacement component of the project. Staff assured residents that a Construction Manager would be onsite during construction to ensure access to their residences.

The City Council Agenda was posted.

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Recommendation for Action

Staff recommends that the City Council approve the following actions for Project No. 2295 (Downtown Sanitary Sewer Upgrade – Phase II):

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2. Approve a Professional Services Agreement with Cole Management & Engineering of Concord, in the amount of \$155,512 for Construction Management Services; and
3. Approve a Professional Services Agreement with Harris and Associates of Concord, in the amount of \$31,380 for Design Services During Construction; and
4. Approve an associated budget transfer in the amount of \$700,000 from the sewer holding account, Project No. 2209 (Sewer Capital Facility Replacement) (Fund 710) into the project budget for Project No. 2295 (Downtown Sanitary Sewer Upgrade – Phase II); and
5. Authorize the City Manager to execute the Professional Services Agreements.

Prepared by: Mario Camorongan, PE
Capital Improvement Program Manager
mario.camorongan@cityofconcord.org

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



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

Reviewed by: Victoria Walker
Director of Community & Economic Development
victoria.walker@cityofconcord.org

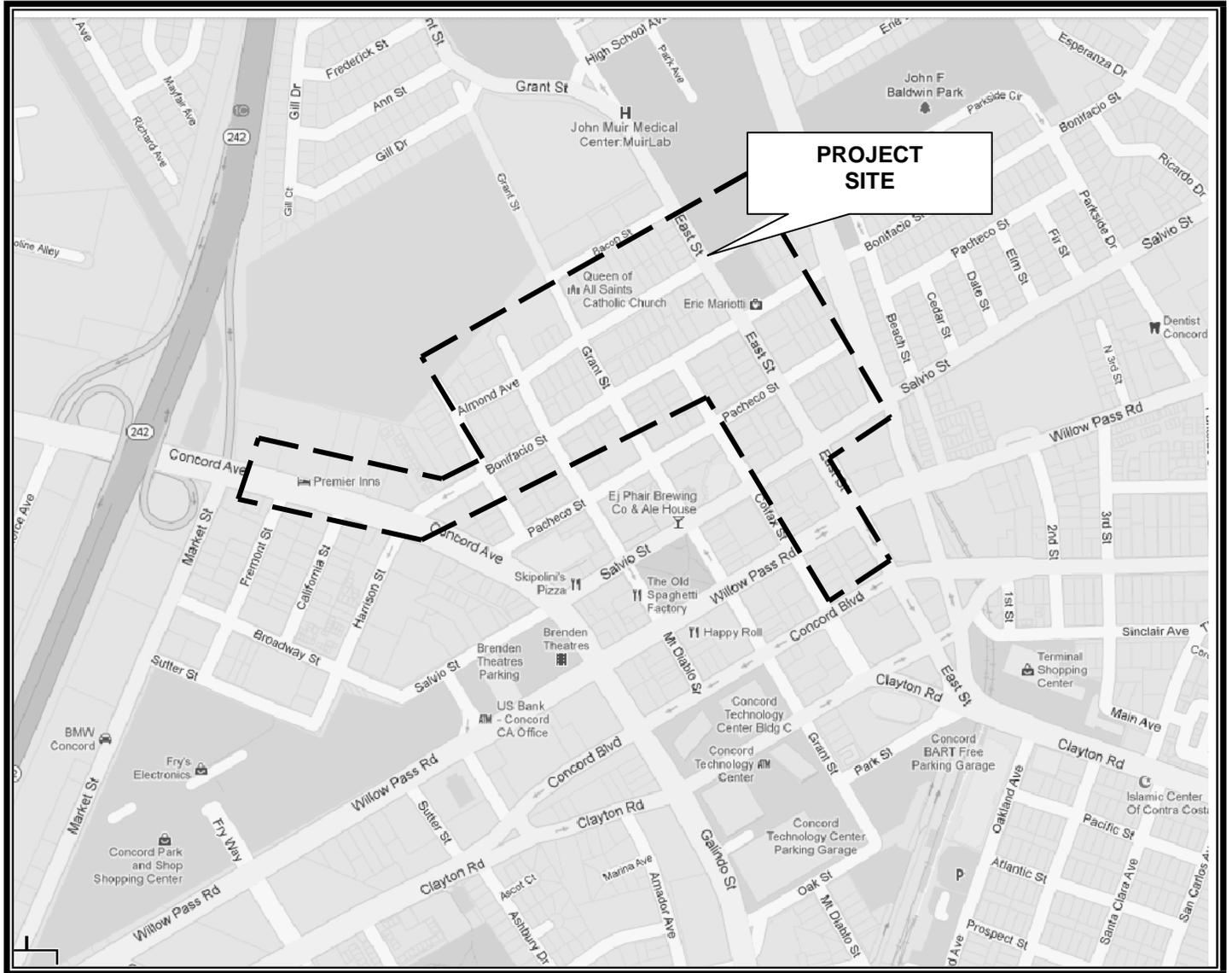
Attachment 1 – Location Map

Attachment 2 – Project Phasing Map

Attachment 3 – Bid Results

Attachment 4 – Professional Services Agreement (Cole)

Attachment 5 – Professional Services Agreement Amendment (Harris)



LOCATION MAP
PROJECT NO. 2295
(DOWNTOWN SANITARY SEWER UPGRADE – PHASE II)
NO SCALE

City of Concord

Downtown Area Sewer Evaluation

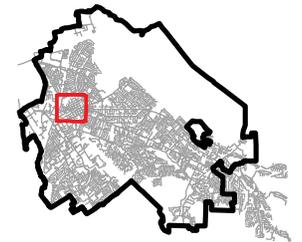
LEGEND

 Phase 1

 Phase 2

 Phase 3

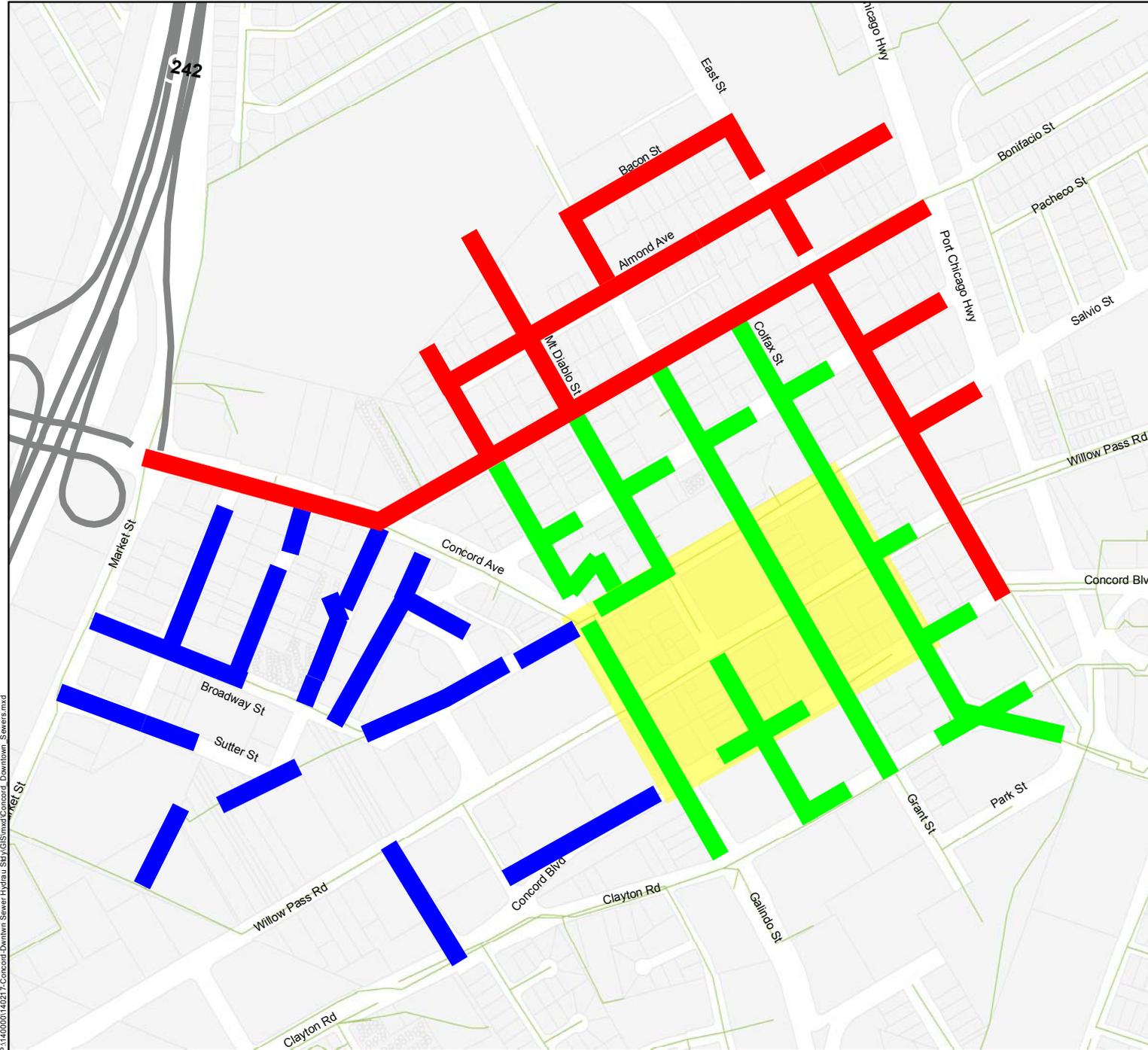
 Streetscape Improvements Area



Location Map



FIGURE 2-1.
Downtown Area Sewers



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PROJECT PHASING MAP

**City of Concord
Bid Sheet**

PROJECT #2295

Downtown Sewer Improvements Phase II

Bid Opening:

**Wednesday,
January 15, 2014
10:00 am**

City Manager's Conference Room

Engineer's Estimate: \$TBD

To be awarded: TBD

COMPANY	TOTAL BID
Bay Pacific Pipelines, Inc. P. O. Box 1162 Novato, CA 94948-1162	\$2,526,667.75*
Ranger Pipelines, Inc. P. O. Box 24109 San Francisco, CA 94124	\$2,939,871.30*
Argonaut Constructors P. O. Box 639 1236 Central Avenue Santa Rosa, CA 95402	\$3,091,021.90
Ghilotti Bros., Inc. 525 Jacoby Street San Rafael, CA 94901	\$3,252,547.80*

Contact: Mario Camorongan x3021

*** Totals updated from original Bid Results based on Bid Discrepancy Review**

AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT ("Agreement") is entered into on **February 25, 2014** between the City
2 of Concord (the "CITY") and **Cole Management and Engineering Inc.**, 2001 Salvio Street, Suite 8,
3 Concord, California 94520 (the "CONSULTANT").

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

6 The CITY desires to contract with **Cole Management and Engineering Inc.** and **Cole**
7 **Management and Engineering Inc.** to contract with the CITY for provision by **Cole Management**
8 **and Engineering Inc.** to the CITY for professional services in connection with **Project No. 2295**
9 **(Downtown Sanitary Sewer Improvements – Phase II)** as further described herein, upon the terms
10 and conditions hereinafter set forth.

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

- 13 **1. Effective Date.** The effective date of this Agreement is **February 25, 2014**.
- 14 **2. Services.** CONSULTANT shall provide Construction Management services for
15 Project No. 2295 (Downtown Sanitary Sewer Improvements – Phase II) described in detail in Exhibit
16 A, proposal from **Cole Management and Engineering Inc.** dated January 13, 2014 attached hereto
17 and made a part hereof.
- 18 **3. Amendment.** If authorized, CONSULTANT shall furnish additional services, which
19 are in addition to the basic services. If additional services are requested by CITY, this Agreement may
20 be amended, modified, or changed by the parties subject to mutual consent by execution of an
21 addendum by authorized representatives of both parties setting forth the additional scope of services to
22 be performed, the performance time schedule, and the compensation for such services.
- 23 **4. Authorized Representatives.** Authorized representatives shall represent CITY and
24 CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered by
25 CONSULTANT under this Agreement except where approval for the CITY is specifically required by
26 the City Council. All requirements of CITY pertaining to the services to be rendered under this
27 Agreement by CONSULTANT shall be submitted through these representatives and CITY shall
28 cooperate with CONSULTANT in all matters relating to this Agreement in such a manner as will

1 result in the performance of such work without delay.

2 CITY's authorized representative is authorized to execute on behalf of CITY, amendments to
3 the agreement, including amendments providing for additional compensation to CONSULTANT, not
4 to exceed \$40,000, throughout the remaining term of the agreement. The City Manager is authorized
5 to execute amendments to the agreement on behalf of CITY, including additional compensation to
6 CONSULTANT, in an amount not to exceed \$50,000, throughout the remaining term of the
7 agreement and term adjustments as provided for in Section 6. Any amendments providing for
8 additional compensation or extension of the term of this agreement beyond that authorized in Section
9 6 must be approved by the City Council.

10 The CITY authorized representative is Robert Ovadia, P.E., City Engineer of the Community
11 and Economic Development Department - Engineering Services. The CONSULTANT authorized
12 representative is Richard I. Cole, President.

13 **5. Compensation.** CONSULTANT shall be compensated on a time and materials basis
14 not to exceed **\$155,512** for basic services rendered under Section 2, as more particularly described in
15 Exhibit A, Compensation; and CONSULTANT shall be compensated for additional services rendered
16 under Section 3, as more particularly described in a fully approved and executed addendum to this
17 Agreement.

18 CONSULTANT may submit monthly statements for basic and additional services rendered. It
19 is intended that payment to CONSULTANT will be made by CITY within (30) days of receipt of
20 invoice.

21 Where the City is not the final authority over the work product, [or portion thereof], the City
22 reserves the right to withhold 10% of the compensation amount under the Agreement, until such time
23 as the final authority or agency provides comments regarding the work product [or portion thereof],
24 and these are satisfactorily incorporated into the work product, [or portion thereof]; OR approval is
25 granted for the work product [or portion thereof] by the final approving authority/agency.

26 **6. Term.** The term of this Agreement, subject to termination as set forth in Section 13,
27 shall be from the effective date through **June 30, 2015**.

28 The CITY's Authorized Representative or City Manager may extend the term of the agreement

1 for a period not to exceed 12 months if necessary for the CONSULTANT to complete the Scope of
2 Work or any additional Scope of Work previously authorized by the CITY. Such Extension of time
3 shall be in writing by a duly executed addendum or amendment to this agreement.

4 **7. Standard of Performance.** CONSULTANT represents to CITY that the services shall
5 be performed in an expeditious manner, and with the degree of skill and care that is required by
6 current, good, and sound procedures and practices. CONSULTANT further agrees that the services
7 shall be in conformance with generally accepted professional standards prevailing at the time work is
8 performed.

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

17 **9. Ownership and Maintenance of Documents.** All documents furnished by
18 CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's services in respect
19 to this project. They are not intended nor represented to be suitable for reuse by others on extensions
20 of this project or on any other project. Any reuse without specific written verification and adoption by
21 CONSULTANT for the specific purposes intended will be at user's sole risk and without liability or
22 legal exposure and expenses to CONSULTANT, including attorney's fees arising out of such
23 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 reserves
26 the right to specify the file format that electronic document deliverables are presented to the CITY. If
27 agreement is terminated per Section 13, deliverables shall be provided based on Section 13
28 requirements.

1 **10. Indemnification.** Consultant agrees to defend, indemnify, and hold harmless the City,
2 its officers, representatives, agents, employees and volunteers from and against any and all claims,
3 demands, actions, losses, damages, injuries and liability (including attorney fees and other expenses)
4 arising out of the negligent acts, errors, omissions, recklessness or willful misconduct of
5 CONSULTANT in the performance of this Agreement.

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

8 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain
9 commercial general liability insurance with limits of no less than one million dollars
10 (\$1,000,000) combined single limit per occurrence or two million dollars (\$2,000,000)
11 aggregate limit for bodily injury, personal injury, and property damage.

12 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
13 insurance covering all vehicles used in the performance of this Agreement providing a One
14 Million Dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal
15 injury, and property damage.

16 **C. Professional Liability Coverage.** CONSULTANT shall maintain professional
17 liability insurance with coverage for all negligent errors, acts or omissions committed by
18 CONSULTANT, its agents and employees in the performance of this Agreement. The amount
19 of this insurance shall be not less than five hundred thousand dollars (\$500,000) on a claims
20 made annual aggregate basis or a combined single limit per occurrence basis.

21 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT
22 covenants that it will insure itself against liability for Workers' Compensation pursuant to the
23 provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon
24 demand of the City Council and properly authorized agents, furnish proof that Workers'
25 Compensation Insurance is being maintained by it in force and effect in accordance with the
26 California Labor Code.

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

1 (1) CITY, its officers, agents, employees, and volunteers are to be covered
2 as additional insureds as respects: Liability arising out of activities performed by or on
3 behalf of CONSULTANT and operations of CONSULTANT, premises owned,
4 occupied, or used by CONSULTANT. The coverage shall contain no special
5 limitations on the scope or protection afforded to CITY, its officers, officials,
6 employees, or volunteers.

7 (2) CONSULTANT'S insurance coverage shall be primary insurance with
8 respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk
9 pooling arrangement, or self-insurance maintained by CITY, its officers, officials,
10 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall
11 not contribute with it.

12 (3) Any failure to comply with the reporting provisions of the policy shall
13 not affect the coverage provided to the CITY, its officers, officials, employees, or
14 volunteers.

15 (4) The aforementioned policies shall be issued by an insurance carrier
16 having a rating of Best A-7 or better which is satisfactory to the City Attorney and
17 shall be delivered to CITY at the time of the execution of this Agreement or as
18 provided below. In lieu of actual delivery of such policies, a Certificate issued by the
19 insurance carrier showing such policy to be in force for the period covered by the
20 Agreement may be delivered to CITY. Such policies and certificates shall be in a form
21 approved by the City Attorney. Except for worker's compensation and professional
22 liability insurance, the policies mentioned in this subsection shall name CITY as an
23 additional insured and provide for thirty (30) days notice of cancellation to CITY. Said
24 policies shall not be canceled earlier than, nor the amount of coverage reduced earlier
25 than, thirty (30) days after the CITY receives notices from the insured of the intent of
26 cancellation or reduction.

27 **12. Suspension of Work.** CITY may, at any time, by ten (10) days' written notice,
28 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for

1 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services
2 performed and reimbursable expenses incurred prior to the suspension date. During the period of
3 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
4 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

5 **13. Termination.** CITY may terminate this Agreement for any reason upon ten (10) days
6 written notice to the other party. CITY may terminate the Agreement upon five (5) days written notice
7 if CONSULTANT breaches this Agreement. In the event of termination, CONSULTANT shall
8 promptly deliver to the CITY any reports or other written, recorded, photographic, or visual materials
9 and other deliverables prepared for the CITY prior to the effective date of such termination. After
10 receipt of deliverables, CITY will pay CONSULTANT for the services performed as of the effective
11 date of the termination.

12 **14. Compliance with Civil Rights.** During the performance of this contract,
13 CONSULTANT agrees as follows:

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

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

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

1 **15. Independent Contractor.** In assuming and performing the services, CONSULTANT
2 is an independent contractor and shall not be eligible for any benefits, which the City may provide its
3 employees, except as expressly provided for in the Agreement. All persons, if any, hired by
4 CONSULTANT shall be employees or subcontractors of CONSULTANT and shall not be construed
5 as employees or agents of the City in any respect. CONSULTANT shall have responsibility for and
6 control over the means of providing services under this Agreement.

7 **16. Compliance with Laws.** CONSULTANT shall comply with all applicable Federal,
8 State of California, and local laws, rules, and regulations and shall obtain all applicable licenses and
9 permits for the conduct of its business and the performance of the services.

10 **17. Choice of Laws.** This Agreement shall be construed and interpreted in accordance
11 with the laws of the State of California, excluding any choice of law rules which may direct the
12 application of the laws of another jurisdiction.

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

18 **19. Enforceability.** In the event that any of the provisions or portions of application of
19 any of the provisions of the Agreement are held to be illegal or invalid by a court of competent
20 jurisdiction, CITY and CONSULTANT shall negotiate an equitable adjustment in the provisions of
21 the Agreement with a view toward effecting the purpose of the Agreement. The illegality or invalidity
22 of any of the provisions or portions of application of any of the provisions of the Agreement shall not
23 affect the legality or enforceability of the remaining provisions or portions of application of any of the
24 provisions of the Agreement.

25 **20. Integration.** The Agreement contains the entire agreement and understanding between
26 the parties as to the subject matter of this Agreement. It merges and supersedes all prior or
27 contemporaneous agreements, commitments, representation, writings, and discussions between
28 CONSULTANT and CITY, whether oral or written.

1 **21. Successors and Assigns.** CITY and CONSULTANT respectively, bind themselves,
2 their successors, assigns, and legal representatives. CONSULTANT shall not assign or transfer any
3 interest in the Agreement without the CITY's prior written consent, which consent shall be in the
4 CITY's sole discretion. Any attempted assignment or transfer in breach of this provision shall be void.

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

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

13 To CITY

Robert Ovadia, PE, City Engineer
CED - Engineering Services
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519-2578
Phone: (925) 671-3470
Fax: (925) 798-9692

17 To CONSULTANT

Richard I. Cole, President
Cole Management and Engineering, Inc.
2001 Salvio Street, Suite 8
Concord, CA 94520
Phone: (925) 609-8966

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

23 **CONSULTANT**

CITY OF CONCORD, a Municipal Corporation

25 By:_____

By:_____

26 Name: Richard I. Cole
27 Title: President
Address: 2001 Salvio Street, Suite 8
 Concord, CA 94520
28 Telephone: (925) 609-8966

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

1 APPROVED AS TO FORM:

ATTEST:

2

3

City Attorney

City Clerk

4

5 Date: _____, 2014

6

7 FINANCE DIRECTOR'S CERTIFICATION:

8 Concord, California

9 Date: _____, 2014

10

11 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
12 DURING THE CURRENT FISCAL YEAR 2013/14 TO PAY THE ANTICIPATED
13 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

14 The Sum of **\$155,512**

15 Account Code 7109500C999 7102295111 74250

16

17 _____
Finance Director's Signature

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AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT ("Agreement") is entered into on **February 25, 2014** between the City
2 of Concord (the "CITY") and **Harris & Associates, Inc.**, 1401 Willow Pass Road Suite 500, Concord,
3 California 94520 (the "CONSULTANT").

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

6 The CITY desires to contract with **Harris & Associates, Inc.** and **Harris & Associates, Inc.**
7 to contract with the CITY for provision by **Harris & Associates, Inc.** to the CITY for professional
8 services in connection with **Project No. 2295 (Downtown Sanitary Sewer Improvements – Phase**
9 **II)** as further described herein, 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. Effective Date.** The effective date of this Agreement is **February 25, 2014**.

13 **2. Services.** CONSULTANT shall provide Design Services During Construction for
14 Project No. 2295 (Downtown Sanitary Sewer Improvements – Phase II) described in detail in Exhibit
15 A, proposal from **Harris & Associates, Inc.** dated January 8, 2014 attached hereto and made a part
16 hereof.

17 **3. Amendment.** If authorized, CONSULTANT shall furnish additional services, which
18 are in addition to the basic services. If additional services are requested by CITY, this Agreement may
19 be amended, modified, or changed by the parties subject to mutual consent by execution of an
20 addendum by authorized representatives of both parties setting forth the additional scope of services to
21 be performed, the performance time schedule, and the compensation for such services.

22 **4. Authorized Representatives.** Authorized representatives shall represent CITY and
23 CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered by
24 CONSULTANT under this Agreement except where approval for the CITY is specifically required by
25 the City Council. All requirements of CITY pertaining to the services to be rendered under this
26 Agreement by CONSULTANT shall be submitted through these representatives and CITY shall
27 cooperate with CONSULTANT in all matters relating to this Agreement in such a manner as will
28 result in the performance of such work without delay.

1 CITY's authorized representative is authorized to execute on behalf of CITY, amendments to
2 the agreement, including amendments providing for additional compensation to CONSULTANT, not
3 to exceed \$40,000, throughout the remaining term of the agreement. The City Manager is authorized
4 to execute amendments to the agreement on behalf of CITY, including additional compensation to
5 CONSULTANT, in an amount not to exceed \$50,000, throughout the remaining term of the
6 agreement and term adjustments as provided for in Section 6. Any amendments providing for
7 additional compensation or extension of the term of this agreement beyond that authorized in Section
8 6 must be approved by the City Council.

9 The CITY authorized representative is Robert Ovadia, P.E., City Engineer of the Community
10 and Economic Development Department - Engineering Services. The CONSULTANT authorized
11 representative is Vern Phillips, Senior Vice President.

12 **5. Compensation.** CONSULTANT shall be compensated on a time and materials basis
13 not to exceed **\$31,380** for basic services rendered under Section 2, as more particularly described in
14 Exhibit A, Compensation; and CONSULTANT shall be compensated for additional services rendered
15 under Section 3, as more particularly described in a fully approved and executed addendum to this
16 Agreement.

17 CONSULTANT may submit monthly statements for basic and additional services rendered. It
18 is intended that payment to CONSULTANT will be made by CITY within (30) days of receipt of
19 invoice.

20 Where the City is not the final authority over the work product, [or portion thereof], the City
21 reserves the right to withhold 10% of the compensation amount under the Agreement, until such time
22 as the final authority or agency provides comments regarding the work product [or portion thereof],
23 and these are satisfactorily incorporated into the work product, [or portion thereof]; OR approval is
24 granted for the work product [or portion thereof] by the final approving authority/agency.

25 **6. Term.** The term of this Agreement, subject to termination as set forth in Section 13,
26 shall be from the effective date through **June 30, 2015**.

27 The CITY's Authorized Representative or City Manager may extend the term of the agreement
28 for a period not to exceed 12 months if necessary for the CONSULTANT to complete the Scope of

1 Work or any additional Scope of Work previously authorized by the CITY. Such Extension of time
2 shall be in writing by a duly executed addendum or amendment to this agreement.

3 **7. Standard of Performance.** CONSULTANT represents to CITY that the services shall
4 be performed in an expeditious manner, and with the degree of skill and care that is required by
5 current, good, and sound procedures and practices. CONSULTANT further agrees that the services
6 shall be in conformance with generally accepted professional standards prevailing at the time work is
7 performed.

8 **8. Performance by Consultant.** CONSULTANT shall not employ other consultants or
9 contractors without the prior written approval of the CITY. CONSULTANT hereby designates the
10 CONSULTANT'S representative as the person primarily responsible for the day-to-day performance
11 of CONSULTANT'S work under this Agreement. CONSULTANT shall not change the
12 CONSULTANT'S representative without the prior consent of the CITY. Unless otherwise expressly
13 agreed by the CITY, CONSULTANT'S representative shall remain responsible for the quality and
14 timeliness of performance of the services, notwithstanding any permitted or approved delegation
15 hereunder.

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

23 CONSULTANT's records, documents, calculations, and all other instruments of service
24 pertaining to actual project shall be given to CITY at the completion of the project. The CITY reserves
25 the right to specify the file format that electronic document deliverables are presented to the CITY. If
26 agreement is terminated per Section 13, deliverables shall be provided based on Section 13
27 requirements.

28 **10. Indemnification.** Consultant agrees to defend, indemnify, and hold harmless the City,

1 its officers, representatives, agents, employees and volunteers from and against any and all claims,
2 demands, actions, losses, damages, injuries and liability (including attorney fees and other expenses)
3 arising out of the negligent acts, errors, omissions, recklessness or willful misconduct of
4 CONSULTANT in the performance of this Agreement.

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

7 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain
8 commercial general liability insurance with limits of no less than one million dollars
9 (\$1,000,000) combined single limit per occurrence or two million dollars (\$2,000,000)
10 aggregate limit for bodily injury, personal injury, and property damage.

11 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
12 insurance covering all vehicles used in the performance of this Agreement providing a One
13 Million Dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal
14 injury, and property damage.

15 **C. Professional Liability Coverage.** CONSULTANT shall maintain professional
16 liability insurance with coverage for all negligent errors, acts or omissions committed by
17 CONSULTANT, its agents and employees in the performance of this Agreement. The amount
18 of this insurance shall be not less than five hundred thousand dollars (\$500,000) on a claims
19 made annual aggregate basis or a combined single limit per occurrence basis.

20 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT
21 covenants that it will insure itself against liability for Workers' Compensation pursuant to the
22 provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon
23 demand of the City Council and properly authorized agents, furnish proof that Workers'
24 Compensation Insurance is being maintained by it in force and effect in accordance with the
25 California Labor Code.

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

28 (1) CITY, its officers, agents, employees, and volunteers are to be covered

1 as additional insureds as respects: Liability arising out of activities performed by or on
2 behalf of CONSULTANT and operations of CONSULTANT, premises owned,
3 occupied, or used by CONSULTANT. The coverage shall contain no special
4 limitations on the scope or protection afforded to CITY, its officers, officials,
5 employees, or volunteers.

6 (2) CONSULTANT'S insurance coverage shall be primary insurance with
7 respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk
8 pooling arrangement, or self-insurance maintained by CITY, its officers, officials,
9 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall
10 not contribute with it.

11 (3) Any failure to comply with the reporting provisions of the policy shall
12 not affect the coverage provided to the CITY, its officers, officials, employees, or
13 volunteers.

14 (4) The aforementioned policies shall be issued by an insurance carrier
15 having a rating of Best A-7 or better which is satisfactory to the City Attorney and
16 shall be delivered to CITY at the time of the execution of this Agreement or as
17 provided below. In lieu of actual delivery of such policies, a Certificate issued by the
18 insurance carrier showing such policy to be in force for the period covered by the
19 Agreement may be delivered to CITY. Such policies and certificates shall be in a form
20 approved by the City Attorney. Except for worker's compensation and professional
21 liability insurance, the policies mentioned in this subsection shall name CITY as an
22 additional insured and provide for thirty (30) days notice of cancellation to CITY. Said
23 policies shall not be canceled earlier than, nor the amount of coverage reduced earlier
24 than, thirty (30) days after the CITY receives notices from the insured of the intent of
25 cancellation or reduction.

26 **12. Suspension of Work.** CITY may, at any time, by ten (10) days' written notice,
27 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for
28 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services

1 performed and reimbursable expenses incurred prior to the suspension date. During the period of
2 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
3 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

4 **13. Termination.** CITY may terminate this Agreement for any reason upon ten (10) days
5 written notice to the other party. CITY may terminate the Agreement upon five (5) days written notice
6 if CONSULTANT breaches this Agreement. In the event of termination, CONSULTANT shall
7 promptly deliver to the CITY any reports or other written, recorded, photographic, or visual materials
8 and other deliverables prepared for the CITY prior to the effective date of such termination. After
9 receipt of deliverables, CITY will pay CONSULTANT for the services performed as of the effective
10 date of the termination.

11 **14. Compliance with Civil Rights.** During the performance of this contract,
12 CONSULTANT agrees as follows:

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

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

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

28 **15. Independent Contractor.** In assuming and performing the services, CONSULTANT

1 is an independent contractor and shall not be eligible for any benefits, which the City may provide its
2 employees, except as expressly provided for in the Agreement. All persons, if any, hired by
3 CONSULTANT shall be employees or subcontractors of CONSULTANT and shall not be construed
4 as employees or agents of the City in any respect. CONSULTANT shall have responsibility for and
5 control over the means of providing services under this Agreement.

6 **16. Compliance with Laws.** CONSULTANT shall comply with all applicable Federal,
7 State of California, and local laws, rules, and regulations and shall obtain all applicable licenses and
8 permits for the conduct of its business and the performance of the services.

9 **17. Choice of Laws.** This Agreement shall be construed and interpreted in accordance
10 with the laws of the State of California, excluding any choice of law rules which may direct the
11 application of the laws of another jurisdiction.

12 **18. Non-Waiver.** The waiver by either party of any breach of any term, covenant, or
13 condition contained in the Agreement, or any default in their performance of any obligations under the
14 Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other
15 term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default
16 constitute a continuing waiver of same.

17 **19. Enforceability.** In the event that any of the provisions or portions of application of
18 any of the provisions of the Agreement are held to be illegal or invalid by a court of competent
19 jurisdiction, CITY and CONSULTANT shall negotiate an equitable adjustment in the provisions of
20 the Agreement with a view toward effecting the purpose of the Agreement. The illegality or invalidity
21 of any of the provisions or portions of application of any of the provisions of the Agreement shall not
22 affect the legality or enforceability of the remaining provisions or portions of application of any of the
23 provisions of the Agreement.

24 **20. Integration.** The Agreement contains the entire agreement and understanding between
25 the parties as to the subject matter of this Agreement. It merges and supersedes all prior or
26 contemporaneous agreements, commitments, representation, writings, and discussions between
27 CONSULTANT and CITY, whether oral or written.

28 **21. Successors and Assigns.** CITY and CONSULTANT respectively, bind themselves,

1 their successors, assigns, and legal representatives. CONSULTANT shall not assign or transfer any
2 interest in the Agreement without the CITY's prior written consent, which consent shall be in the
3 CITY's sole discretion. Any attempted assignment or transfer in breach of this provision shall be void.

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

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

12 To CITY

Robert Ovadia, PE, City Engineer
CED - Engineering Services
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519-2578
Phone: (925) 671-3470
Fax: (925) 798-9692

16 To CONSULTANT

Vern Phillips, Senior Vice President
Harris & Associates, Inc.
1401 Willow Pass Road, Suite 500
Concord, CA 94520
Phone: (925) 827-4900
Fax: (925) 827-4982

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

22 **CONSULTANT**

CITY OF CONCORD, a Municipal Corporation

24 By: _____

By: _____

25 Name: Vern Phillips
26 Title: Senior Vice President
27 Address: 1401 Willow Pass Road, Suite 500
Concord, CA 94520
28 Telephone: (925) 827-4900

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

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APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2014

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2014

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEAR 2013/14 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

The Sum of **\$31,380**

Account Code 7109500C999 7102295111 74500

Finance Director's Signature