



REPORT TO MAYOR AND CITY COUNCIL

TO THE HONORABLE MAYOR AND CITY COUNCIL:

DATE: October 14, 2014

SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH RBF CONSULTING OF WALNUT CREEK IN THE NOT-TO-EXCEED AMOUNT OF \$204,722.43 TO PROVIDE CIVIL ENGINEERING DESIGN, ENVIRONMENTAL REVIEW, AND RIGHT-OF-WAY SERVICES FOR PROJECT NO. 2276 (DETROIT AVENUE PEDESTRIAN AND BICYCLE IMPROVEMENTS – CLAYTON ROAD TO MONUMENT BLVD) (FUNDED BY: MEASURE J & CMAQ/OBAG GRANT FUNDS)

Report in Brief

Staff recommends that the City Council approve a Professional Services Agreement with RBF Consulting in the not-to-exceed amount of \$204,722.43 to provide Civil Engineering Design, Environmental Review and Right-of-Way Services for Project No. 2276 (Detroit Avenue Pedestrian and Bicycle Improvements – Clayton Road to Monument Blvd); and authorize the City Manager to execute the Agreement.

Background

The City Council approved Project No. 2276 (Detroit Avenue Pedestrian and Bicycle Improvements – Clayton Road to Monument Blvd) as part of its FY 2013-2014 CIP Program. The scope of this project assists in implementing the City's Complete Streets policy which considers the needs of the various roadway users, and includes: the installation of bike lanes, sidewalk construction and repair, installation of curb ramps and the installation of two traffic signals on Detroit Avenue (at Laguna Street and Sunshine Dr/Lynn Dr).

Due to 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 a Congestion Management Air Quality (CMAQ) grant in April, 2013, in the amount of \$2.1M, through the One Bay Area Grant (OBAG) program to implement this project.

**APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH RBF
CONSULTING IN THE NOT-TO-EXCEED AMOUNT OF \$204,722.43 FOR
PROJECT NO. 2276 (DETROIT AVENUE PEDESTRIAN AND BICYCLE
IMPROVEMENTS – CLAYTON ROAD TO MONUMENT BLVD)**

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Discussion

The use of Federal CMAQ funds requires that the City issue a Request for Proposals (RFP), in accordance with approved Caltrans procedures, to select a design consultant. The City issued an RFP for civil engineering design, environmental and right-of-way services for Project No. 2276 in July 2014. Six firms submitted Proposals for consideration. A selection committee comprised of three registered civil engineers, two from City staff and one from Walnut Creek reviewed all six Proposals. Based on each firms' responsiveness to the Request for Proposal, including their qualifications, professional experience, design strategy, and discussion of potential maintenance and right-of-way issues, the committee recommended that five firms should be invited to participate in panel interviews.

Based on the panel interviews held in September 2014, the committee rated RBF Consulting, Inc. (RBF) as the most qualified firm to provide Civil Engineering Design services for this project. RBF has successfully designed numerous Federally-funded projects for the City in the past, including Project No. 869 (Iron Horse Trail Gap Closure), completed in 2001; as well as other current City projects, including: Project No. 2144 (Clayton-Treat Intersection Improvements); and Project No. 2251 (Farm Bureau Road Safe Routes to School – Wren Avenue to Willow Pass Road).

RBF has submitted a proposal in the not-to-exceed amount of \$204,722.43 for the civil engineering design, environmental and right-of-way services. Staff has reviewed the proposal and determined that RBF's assumption of time necessary to complete the project, as well as their rates, allocation of hours and total costs are reasonable. Caltrans' procedures require establishment of a Disadvantage Business Enterprise (DBE) goal based on the tasks involved and availability of registered DBE firms in the area. A DBE goal of 9% was established for the design portion of this project and RBF's proposal included a DBE participation rate of 9.91%, exceeding the goal. RBF and their project team have verified that they have the staff available and are ready to begin work on this project immediately.

Fiscal Impact

The project budget is sufficient to fully fund the cost of this work and the project is predominantly funded by the Federal CMAQ grant. The City's local match for this phase of work is \$25,653, funded with Measure J funds.

Public Contact

The Notice to Consultants describing the Request for Proposal and the project was published in the Contra Costa Times on July 28, August 4, and August 11, 2014. The City Council Agenda was posted.

Recommendation for Action

Staff recommends that the City Council approve a Professional Services Agreement with RBF Consulting in the not-to-exceed amount of \$204,722.43 to provide Civil Engineering Design, Environmental

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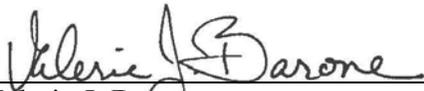
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Review and Right-of-Way Services for Project No. 2276 (Detroit Avenue Pedestrian and Bicycle Improvements – Clayton Road to Monument Blvd); and authorize the City Manager to execute the Agreement.

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

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

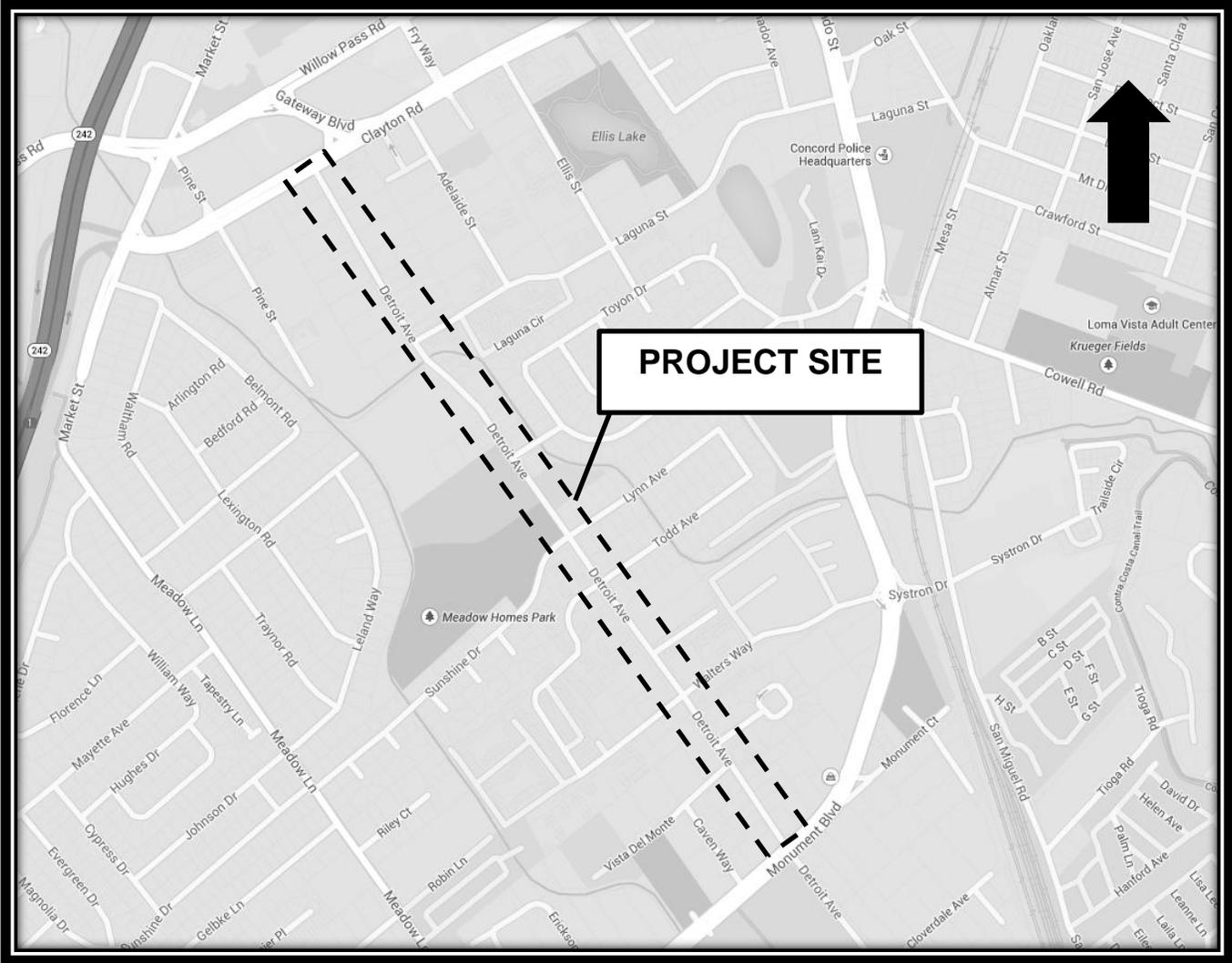


Valerie J. Barone
City Manager

valerie.barone@cityofconcord.org

Attachment 1: Project Location Map

Attachment 2: Professional Services Agreement



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

AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT ("Agreement") is entered into on **October 14, 2014** between the City of
2 Concord (the "CITY") and **RBF Consulting**, 500 Ygnacio Valley Road, Suite 300, Walnut Creek,
3 California 94596 (the "CONSULTANT").

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

6 The CITY desires to contract with **RBF Consulting** and **RBF Consulting** to contract with the
7 CITY for provision by **RBF Consulting** to the CITY for professional services in connection with
8 **Project No. 2276 (Detroit Avenue Pedestrian and Bicycle Improvements – Clayton Road to**
9 **Monument Blvd)** 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 **October 14, 2014**.

13 **2. Services.** CONSULTANT shall provide Civil Engineering Design, Environmental
14 Review and Right-of-Way Services for Project No. 2276 (Detroit Avenue Pedestrian and Bicycle
15 Improvements – Clayton Road to Monument Blvd) described in detail in Exhibit A, proposal from
16 **RBF Consulting** dated September 26, 2014 attached hereto and made a part 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 Jennifer Harmon, Project Manager, or Kevin Gustorf, Vice-President.

12 **5. Compensation.** CONSULTANT shall be compensated on a time and materials basis
13 not to exceed **\$204,722.43** for basic services rendered under Section 2, as more particularly described
14 in Exhibit A, Compensation; and CONSULTANT shall be compensated for additional services
15 rendered under Section 3, as more particularly described in a fully approved and executed addendum
16 to this 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, 2016.**

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

Kevin Gustorf, Vice President
RBF Consulting
500 Ygnacio Valley Road, Suite 300
Walnut Creek, CA 94596
Phone: (925) 906-1460
Fax: (925) 906-1465

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: _____

26 Name: Kevin Gustorf
27 Title: Vice President
Address: 500 Ygnacio Valley Road, Suite 300
Walnut Creek, CA 94596
28 Telephone: (925) 906-1460

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 2014/15 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

The Sum of **\$204,722.43**

Account Code 4029500C999/4022276111-74500

Finance Director's Signature