

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

DATE: November 17, 2008

**SUBJECT: AGREEMENT WITH PARIKH CONSULTANTS, INC. FOR PROJECT NO. 1283,
GALINDO CREEK TRAIL GAP CLOSURE****Report in Brief**

Parikh Consultants, Inc. (**Parikh**) conducted the geotechnical study and provided the geotechnical recommendations for the design of Project No. 1283, Galindo Creek Trail Gap Closure. The proposed agreement mainly covers geotechnical support services during construction.

Staff recommends that the Council approve a Professional Services Agreement with Parikh Consultants, Inc. in the amount of \$21,536.50; for Project No. 1283, Galindo Creek Trail Gap Closure; and authorize the City Manager to execute the Agreement.

Background

Project No. 1283 closes the final 600-foot gap in the 20-mile long historical California Riding and Hiking Trail extending from Martinez to Lime Ridge Open Space in Concord. The project will construct a 528-foot long decomposed granite (**DG**) trail and a 74-foot long pedestrian bridge. The popular trail, which dates back to the 1940's, starts from the Nejedly Staging Area at Carquinez Strait Regional Shoreline, passes over the Franklin Hills in Martinez, continues past numerous city parks in Martinez, Pleasant Hill, Walnut Creek, and Concord, and ends at Lime Ridge. The project includes \$620,000 in grant funding from a number of sources.

On October 27, 2008, the Council awarded construction contract for the Galindo Creek Trail Closure and Ygnacio Valley Road Landslide Repair to HSR General Engineering. The Council awarded the construction contract based on the option with the alternate bid item, which calls for the start of the construction in April 2009, after the rainy season. This option is \$50,000 lower than the base bid option. It also avoids the potential for construction contract change orders due to unforeseen conditions inherent in performing the work during the rainy season.

Discussion

Parikh Consultants, Inc. (**Parikh**) conducted the geotechnical study and provided the geotechnical recommendations for the design of the project. The proposed agreement provides for a not to exceed cost of \$21,536.50. This amount covers the costs related to geotechnical support during construction, and for additional

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FOR PROJECT NO. 1283, GALINDO
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geotechnical services required at the latter part of the design of the project. Staff initially engaged the services of Parikh for the project design phase within staff's authorized limit of \$20,000. However, due to additional design work related to value engineering, Parikh has exceeded staff's authorized limit. To meet grant deadline requirements, staff authorized Parikh to proceed with providing geotechnical services.

Fiscal Impact

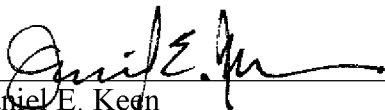
The project budget has adequate funds to pay for all of the services authorized under the proposed agreement.

Recommendation for Action

Staff recommends the Council approve a Professional Services Agreement with Parikh Consultants, Inc. in the amount of \$21,536.50 for Project No. 1283, Galindo Creek Trail Gap Closure; and authorize the City Manager to execute the agreement.

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Building, Engineering &
Neighborhood Services
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Daniel E. Keen
City Manager

Attachment 1 – Agreement with Parikh Consultants, Inc.

1 the City Council. All requirements of CITY pertaining to the services to be rendered under this
2 Agreement by CONSULTANT shall be submitted through these representatives and CITY shall
3 cooperate with CONSULTANT in all matters relating to this Agreement in such a manner as will
4 result in the performance of such work without delay.

5 CITY's authorized representative is authorized to execute on behalf of CITY, amendments to
6 the agreement, including amendments providing for additional compensation to CONSULTANT, not
7 to exceed **\$20,000** throughout the remaining term of the agreement. The City Manager is authorized to
8 approve amendments providing for additional compensation to CONSULTANT, not to exceed
9 **\$40,000**, throughout the remaining term of the agreement.

10 The CITY authorized representative is Alex Pascual, Director of Building, Engineering and
11 Neighborhood Services. The CONSULTANT authorized representative is Gary Parikh, President.

12 **5. Compensation.** CONSULTANT shall be compensated on a time and materials basis
13 not to exceed **\$21,536.50** 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, 2009**.

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

1 additional Scope of Work previously authorized by the CITY. Such Extension of time shall be in
2 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

1 City, its officers, agents, employees and volunteers from and against any and all claims, demands,
2 actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation
3 expenses) arising out of the negligent acts, errors or 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. Attorney's Fees.** If either party to this Agreement commences any legal action against
5 the other party arising out of this Agreement, the prevailing party shall be entitled to recover its
6 reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and
7 attorney's fees.

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

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

16 To CITY

Alex Pascual, P.E.
Director of Building, Engineering and
Neighborhood Services
City of Concord
1950 Parkside Drive, MS40
Concord, CA 94519-2578
Phone: (925) 671-3470
Fax: (925) 798-9692

20 To CONSULTANT

Gary Parikh, President
Parikh Consultants, Inc.
356 S. Milpitas Blvd.
Milpitas, CA 95035
Phone: (408) 945-1011
Fax: (408) 945-1012

PARIKH CONSULTANTS, INC.

072408

Construction Observation Services

Job No: 205144.CON

Client: City of Concord

Task: Construction observation services- Piles and tie backs

Project: Retaining walls along Galindo creek trail

Location: Galindo Creek, Concord

Field coordination
& communication

Field
Observation

Engineering
Consultation

Memo
Report

PERSONNEL	UNIT RATE	HOURS UNIT	SUB-TOTALS	Task 1.1		Task 1.2		Task 1.3		Task 1.4	
				HR	COST	HR	COST	HR	COST	HR	COST
1. Project Manager	200.00	12.0	2400.00	0	0.00	4	800.00	6	1200.00	2	400.00
2. Proj. Soils Engineer	145.00	20.0	2900.00	0	0.00	9	1305.00	9	1305.00	2	290.00
3. Staff Engineer	90.00	2.0	180.00	2	180.00		0.00	0	0.00	0	0.00
4. Field Engineer	90.00	166.0	14940.00	4	360.00	162	14580.00	0	0.00		0.00
5. Lab & Field Coordinator	90.00	6.0	540.00	6	540.00		0.00	0	0.00		
6. Draftsperson	70.00	0.0	0.00							0	0.00
DIRECT LABOR		206.0	20,960.00	12	1080.00	175	16685.00	15	2505.00	4	690.00

Total Labor Costs \$ 20,960.00

OTHER DIRECT COSTS

1. Travel Mileage	\$0.585	900.0	526.50	0	0.00	900	526.50				
2. Reproduction	50.00	1	50.00	0						1	50.00
3. Handling charge 10%			0.00		0.00		0.00		0.00		0.00

MILESTONE SUBTOTALS

\$1,080.00 \$17,211.50 \$2,505.00 \$740.00

Total Direct costs \$576.50

TOTAL TRAIL WALL REPORT \$21,536.50

Trail retaining walls (68) include 52 piles for RW#1 and 16 piles for RW#2. All piles are 18" dia and 8 feet deep. Assume 6 per day = 11 days approx.

Tie back wall includes 21 piles, 24" dia and about 20' deep. Assume 3 per day = 7 days.

Tie back installation is a design-build program and no observations are included.

Prevailing wage project. (18 days of field work at 9 hours per day including 1/2 hr travel each way).

Project Engineer and Project Manager's time is only an estimate as a percentage of the total project time.

Actual costs will depend on the contractor's schedule.

EXHIBIT A