



TO: Mayor and Councilmembers

FROM: Charles W. Ebeling, Public Works Director

CONTACT: Teresa Lopes, Senior Project Engineer

SUBJECT: Amendment No. 1 to Professional Services Agreement 2023-036 with On Track Solutions, LLC

RECOMMENDATION:

Authorize the City Manager to execute Amendment No. 1 to Professional Services Agreement No. 2023-036 with On Track Solutions, LLC, for San Jose Creek Multipurpose Path Northern and Southern Segments (CIP 9006), increasing the contract amount by \$42,580, for a new total not-to-exceed amount of \$87,130.

BACKGROUND:

The San Jose Creek Bike Path - Northern and Southern Segments Project (Project) (Capital Improvement Program Project No. 9006), an Active Transportation Program (ATP) project, will construct a multipurpose path adjacent to San Jose Creek connecting areas north of U.S. Route (US) 101 with the Class I Atascadero Creek Bikeway (Obern Trail) east of State Route (SR) 217. The purpose of the Project is to close the multipurpose path gap in the regional active transportation network. The Project will provide a direct and continuous route for bicyclists and pedestrians from north of Calle Real to commercial and residential areas within Goleta Old Town and to the existing Class I Atascadero Creek Bikeway providing access to Goleta Beach Park, the University of California Santa Barbara (UCSB) and to the City of Santa Barbara.

The City of Goleta (City) was awarded approximately \$18 million in ATP grant funding at the California Transportation Commission meeting on January 30, 2019.

DISCUSSION:

The Project crosses Union Pacific Railroad (UPRR) right-of-way. As a result, UPRR approval is required for the crossing design and a construction and maintenance agreement between the City and UPRR is necessary for the project.

The San Jose Creek Multipurpose path project has a very tight deadline and needs to achieve right-of-way certification by mid-November 2023. UPRR approval and execution

of the construction and maintenance agreement is necessary for the right-of-way certification. Due to the very tight schedule for the project, the City sought help with coordination with UPRR. On Track Solutions (On Track) specializes in UPRR coordination.

The City Manager executed Agreement No. 2023-036 with On Track on May 15, 2023. Daniel Moreno, Managing Partner of On Track, is a former employee of UPRR and knows the UPRR system for project approval and has many close contacts with UPRR, as well as their consultants. With his experience and contacts Mr. Moreno has helped expediate the approval process with UPRR so that the City can meet its project deadlines. Mr. Moreno has worked with Santa Barbara County Association of Governments and Santa Barbara County and has helped these agencies get through the UPRR process to deliver projects in a timely manner.

Additional tasks are now required to complete the UPRR process, therefore Public Works staff recommends authorizing the City Manager to execute Amendment No. 1 to Professional Services Agreement No. 2023-036 (Attachment 1) to increase the contract authority by \$42,580 for a new total not-to-exceed amount of \$87,130, revise the scope of work, and revise the schedule of fees.

FISCAL IMPACTS:

Based on updated project cost estimates, there is currently an estimated unfunded amount of \$8.7 million for construction costs. At the time of Fiscal Year (FY) 22/23 Mid-Cycle budget adoption on June 21, 2022, the unfunded amount was estimated at \$4 million. Due to rising construction costs and changes to the project scope this estimated unfunded amount for construction has nearly doubled. Public Works staff is working with Finance staff to explore additional options to close the \$8.8 million gap prior to the construction bid award currently scheduled for late 2024. Table 1 below outlines the estimated costs for the Project.

Table 1: Estimated Project Costs

Project Components	Estimated Costs	Funding Source	Funding Amounts
Conceptual Design	\$1,837,267	TDA (202)	\$27,135
Environmental	\$698,750	DIF (Transportation 220)	\$4,729,665
Final Design	\$3,540,983	RSTP (305) (grant)	\$30,689
Land Acquisition/Right-of-Way	\$2,220,000	Measure A (205)	\$1,245,000
Construction	\$21,235,589	Measure A (206)	\$438,378

Construction Management and Inspection (CMT)	\$3,469,911	ATP Grant (318)	\$17,960,000
Construction Oversight Staff and Consultant Time	\$315,446	TCSP – Federal (407)	\$76,510
		Redevelopment Project Fund (601)	\$24,829
		TBD/Unfunded	\$8,785,740
Total:	\$33,317,946	Total:	\$33,317,946

Table 2 below summarizes the project budget amounts, including carryovers, and funding sources. There are sufficient funds in the adopted FY 23/24 budget to cover the cost of the professional services associated with this amendment.

Table 2: Project Funding

Fund Type	Account	FY 22/23 Projected Carryover	FY 23/24 Budget	FY 24/25 Budget	Total Available Budget
TDA	202-90-9006-57070 (Design)	\$27,135	\$0	\$0	\$27,135
Measure A	205-90-9006-57070 (Design)	\$243,992	\$0	\$0	\$243,992
Measure A	205-90-9006-57071 (Construction)	\$250,000	\$500,000	\$250,000	\$1,000,000
Measure A - Grant	206-90-9006-57071 (Construction)	\$0	\$438,378	\$0	\$438,378
Transportation DIF	220-90-9006-57050 (Land Acquisition)	\$1,350,000	\$0	\$0	\$1,350,000
Transportation DIF	220-90-9006-57070 (Design)	\$224,495	\$504,571	\$0	\$729,066
RSTP	305-90-9006-57070 (Design)	\$10,150	\$0	\$0	\$10,150
ATP Grant	318-90-9006-57050 (Land Acquisition)	\$669,000	\$0	\$0	\$669,000
ATP Grant	318-90-9006-57070 (Design)	\$2,000,000	\$0	\$0	\$2,000,000
ATP Grant	318-90-9006-57071 (Construction)	\$650,000	\$0	\$14,641,000	\$15,291,000
TBD - Other	995-90-57071	\$0	\$4,000,000	\$734,933	\$4,734,933

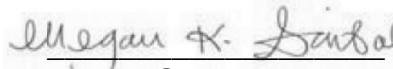
Unfunded	999-90-57071	\$0	\$0	\$4,050,807	\$4,050,807
Total		\$5,424,772	\$5,442,949	\$19,676,740	\$30,544,461

ALTERNATIVES:

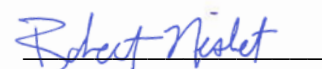
The City may elect not to authorize the City Manager to execute the amendment. However, this would significantly delay UPRR approval and execution of the construction and maintenance agreement, resulting in the Project missing the November 15, 2023, deadline for right-of-way certification. If the City is unable to finalize negotiations by this deadline, the Project would not meet the ATP grant deadlines and ATP grant funding will be forfeited.

Reviewed By:


Kristine Schmidt
Assistant City Manager

Legal Review By:


Megan Garibaldi
City Attorney

Approved By:


Robert Nisbet
City Manager

ATTACHMENTS:

1. Amendment 1 to Professional Services Agreement 2023-036 with On Track Solutions, LLC
2. Professional Services Agreement 2023-036 with On Track Solutions, LLC

ATTACHMENT 1

Amendment 1 to Professional Services Agreement 2023-036 with On Track
Solutions, LLC

**AMENDMENT NO. 1
TO A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
ON TRACK SOLUTIONS, LLC**

This **Amendment No. 1** to the Professional Services Agreement by and between the **City of Goleta**, a municipal corporation ("City") and **On Track Solutions, LLC** ("Consultant") dated May 15, 2023 ("Agreement," Agreement No. 2023-036) is made on this ____ day of ____, 2023.

SECTION A. RECITALS

1. This Agreement is for professional services for providing railroad coordination for the San Jose Creek Multipurpose Path Northern and Southern Segments Project; and
2. The Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed forty-four thousand five hundred and fifty dollars (\$44,550); and
3. The parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$42,580 for additional tasks; and
4. The Agreement currently provides in Exhibit A entitled "Scope of Work" the complete and particular description of services; and
5. The parties desire to amend Exhibit A by adding additional services as more completely and particularly set forth in the Scope of Work, attached as Exhibit "A-1"; and
6. The Agreement currently provides in Exhibit B entitled "Schedule of Fees" the hourly rates; and
7. The parties desire to amend Exhibit B of the Agreement to identify the new hourly rates, attached as "Exhibit B-1"; and
8. The City Council approved this Amendment No. 1, on this ____ day of ____, 2023.

SECTION B. AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

City of Goleta
Amendment No. 1 to Agreement No. 2023-036
Page 1 of 6

1. **Subsection (a) of Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$42,580 and to read in its entirety:

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of eighty-seven thousand one hundred and thirty dollars (\$87,130) (herein "not-to-exceed amount") and shall be earned as the work progresses.

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B-1," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2025 after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

2. This Agreement is amended to delete and replace in its entirety:

Exhibit A "Scope of Work" with **Exhibit A-1 "Scope of Work"** attached hereto and incorporated herein.

3. This Agreement is amended to delete and replace in its entirety:

Exhibit B "Schedule of Fees" with **Exhibit B-1 "Schedule of Fees"** attached hereto and incorporated herein.

4. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

In concurrence and witness whereof, this Amendment No. 1 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

CONSULTANT

Robert Nisbet, City Manager

Daniel, Z. Moreno, Managing Partner

ATTEST:

Deborah Lopez, City Clerk

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:


Scott Sharpes, Deputy City Attorney

EXHIBIT A-1 SCOPE OF WORK

Task 1: *PRINCIPAL RAILROAD COORDINATOR WITH CPUC*

Scope of Services

CPUC Railroad Coordination

- 1) The Consultant shall perform coordination with The California Public Utilities Commission Railroad Crossing and Engineering Branch (RCEB) including the City of Goleta consultants as necessary for the San Jose Creek Multipurpose Path Northern and Southern Extent Project. Including the following:
 - a) The Consultant shall assist the City with interaction with CPUC for acquiring necessary information to develop the request for authority to construct new at grade undercrossing with FILING AN APPLICATION TO THE CPUC COMMISSION to construct the San Jose Creek Multipurpose Path.
 - b) The Consultant shall assist the City with design submittals (35%, 65%, 100% and Final), and coordinate with UPRR in obtaining approvals necessary to build the formal Application from the City of Goleta for the CPUC's Commission approval.
 - c) The Consultant will schedule in coordination with the City of Goleta the on-site Field Diagnostic Meeting with the CPUC, UPRR, and Caltrans.
 - d) The Consultant shall assist the City of Goleta to compile the Field Diagnostic Meeting Minutes and get them accepted by the Diagnostic Team as the official Meeting Transcripts.
 - e) The Consultant shall build the formal Application requesting authority from the California Public Utilities Commission to construct the new public at grade under the existing track of the UPRR Railway, Santa Barbara Sub in the City of Goleta
- 2) The Consultant shall coordinate meetings with UPRR, CPUC, or their consultants, on-site, via Microsoft Teams, Zoom or other applicable online applications used by agencies involved or in-person meetings.
 - a) The Consultant shall assist the City of Goleta in the meeting necessary to move the Applicant through the Formal Request with the CPUC Commission
 - b) The Consultant shall assist the City of Goleta in the interpretation of the requests sent by the CPUC for clarification or additional information needed to move forward with the approval of the formal Application process/protocol.

Services to Be Performed by Others

The Consultant understands that the City will provide the following services:

1. Design and development of Plans, Specifications and Estimates for the project.
2. All right of way services including appraisals, development of plats and legals, right to enter and encroachment permits.
3. Copies of design files, mapping, right of way information, plans and specifications for submittals as required.
4. The City of Goleta will send out the Field Diagnostic Meeting Minutes and get them accepted by the Diagnostic Team as the official Meeting Transcripts.
5. Copies of design files, mapping, right of way information, plans and specifications for submittals as required to build and deliver the formal application for authority from the CPUC Commission for the San Jose Creek Project
6. City and their Consultants will support On Track Solutions in the forward progress and negotiations with CPUC and UPRR to get CPUC Commission authorization to build for the San Jose Creek Project
7. City and their Consultants will send the Application to the CPUC Commission via email as the official request for the San Jose Creek Project.

Deliverables

- A. Facilitate and schedule the on-site Field Diagnostic Meeting with the CPUC, UPRR, City of Goleta, and Caltrans.
- B. Administrative support will assist the City of Goleta to structure the Field Diagnostic Meeting Minutes and accepted by the Diagnostic Team as the official Meeting Transcripts
- C. Build the formal Application requesting authority from the California Public Utilities Commission to construct the new public at grade under the existing track of the UPRR Railway, Santa Barbara Sub in the City of Goleta
- D. Work with CPUC Rail Safety to get Commission approval for project
- E. Work as direct Liaison with CPUC

**EXHIBIT B-1
SCHEDULE OF FEES**

Staff/Project Role	Rates
DANIEL Z. MORENO PRINCIPAL RAILROAD COORDINATOR	\$310.00

Monica Klien Office Administrator	\$135
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*No annual escalation will be allowed.
Reimbursables + 10% markup
No mileage will be reimbursed*

ATTACHMENT 2

Professional Services Agreement 2023-036 with On Track Solutions, LLC

**Project Name: San Jose Creek Multipurpose Path A
Northern and Southern Segments (CIP 9006)**

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF GOLETA
AND
ON TRACK SOLUTIONS, LLC**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 15th day of May, 2023, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and ON TRACK SOLUTIONS, LLC., a California Limited Liability Company (herein referred to as "CONSULTANT").

SECTION A. RECITALS

1. The CITY has a need for professional services for providing railroad coordination for the San Jose Creek Multipurpose Path Northern and Southern Segments Project; and

2. The CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and

3. The CITY procured these services in compliance with Goleta Municipal Code Section 3.05.260.

4. The City Manager approved this AGREEMENT pursuant to Goleta Municipal Code section 3.05.070.

SECTION B. TERMS

1. RETENTION AS CONSULTANT

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by CONSULTANT are as follows:

Professional Services in conjunction with the San Jose Creek Multipurpose Path Northern and Southern Segments Project.

Services shall generally include coordination support in dealing with Union Pacific Railroad, as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

CONSULTANT shall deliver to CITY the deliverables defined in Exhibit "A."

3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$44,550 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2025, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) **Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager, as described in Section 5. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

4. EXTRA SERVICES

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to writing in advance of the incurrence of extra services by CONSULTANT. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in Exhibit B, if one is included as part of this agreement. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

5. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Teresa Lopes. Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

6. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to June 30, 2025, unless term of this AGREEMENT is extended, or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager.

7. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This AGREEMENT is for professional services which are personal to CITY. Daniel Moreno is deemed to be specially experienced and is a key member of CONSULTANT's firm, and shall be directly involved in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT may not be assigned or subcontracted without the City Manager's prior written consent.

9. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for CONSULTANT's Damages. CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or occur while CONSULTANT is on CITY property, or which are connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.

(b) Defense and Indemnity of Third Party Claims/Liability. CONSULTANT shall investigate, defend, and indemnify CITY, its elected officials, officers, agents, and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, or the willful misconduct of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions concerning any activity, product or work required under this AGREEMENT, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

(c) No Waiver. CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

10. INSURANCE

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage “occurrence” form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate.
- b) Insurance Services Office form number CA 00 01 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider’s commercial general liability policy.
- c) Workers’ Compensation insurance complying with California worker’s compensation laws, including statutory limits for workers’ compensation and an Employer’s Liability limit of \$1,000,000 per accident or disease.
- d) Professional liability insurance that covers the services to be performed in connection with this agreement, in the minimum amount of \$1,000,000 per claim.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) Except for professional liability insurance, CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.
- b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability. Coverage will not be limited to CITY’s vicarious liability.
- c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

- d) Except for professional liability insurance, liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.
- i) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

11. RELATIONSHIP OF CONSULTANT TO CITY

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes,

unemployment insurance, and any other employer obligations associated with the described work.

12. CORRECTIONS

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

13. TERMINATION BY CITY

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTS for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

15. AUDIT OF RECORDS

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such

records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

16. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

17. CONFLICT OF INTEREST

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

18. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

19. MITIGATION OF DAMAGES

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

20. GOVERNING LAW

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

21. NONDISCRIMINATION

CONSULTANT shall not discriminate on the basis of race, color, gender, gender identity/expression, pregnancy, sexual orientation, disability, marital status, or any other characteristic protected under applicable federal or state law.

22. TAXPAYER IDENTIFICATION NUMBER

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. October 2018), as issued by the Internal Revenue Service.

23. NON-APPROPRIATION OF FUNDS

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

24. MODIFICATION OF AGREEMENT

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

25. USE OF THE TERM "CITY"

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

26. PERMITS AND LICENSES

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this AGREEMENT.

27. CAPTIONS

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

28. AUTHORIZATION

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

29. ENTIRE AGREEMENT BETWEEN PARTIES

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

30. PARTIAL INVALIDITY

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

31. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Attention: Robert Nisbet, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO CONSULTANT: Attention: Daniel Z. Moreno, Managing Partner
On Track Solutions, LLC
30597 Arrow Leaf Lane
Murrieta, CA 92563

32. COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES

This Agreement may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

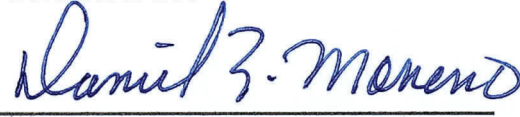
In concurrence and witness whereof, this AGREEMENT has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA


DocuSigned by:

1AEBACAD159E4D7...
Robert Nisbet, City Manager

CONSULTANT


Daniel Z. Moreno, Managing Partner

ATTEST

DocuSigned by:

A3E09F3473CA47E...
Deborah Lopez, City Clerk

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:

A1BF8F896161498...
Winnie Cai, Assistant City Attorney

EXHIBIT A SCOPE OF WORK

Scope of Services

Railroad Coordination

1. The Consultant shall perform coordination with Union Pacific Railroad (UPRR) including their consultants (Project Team/RailPros) as necessary for the San Jose Creek Multipurpose Path Northern and Southern Extent Project. Including the following:
 - a. The Consultant shall assist the City with interaction with UPRR, Project Team/RailPros for acquiring necessary information to develop the Construction and Maintenance Agreement (C&M Agreement) to construct the San Jose Creek Multipurpose Path.
 - b. The Consultant shall assist the City with design submittals (35%, 65%, 100% and Final), and coordinate with UPRR and Project Team/RailPros in obtaining approvals.
 - c. Consultant shall facilitate obtaining the Construction and Maintenance Agreement (C&M Agreement) with UPRR.
2. The Consultant shall coordinate meetings with UPRR, CPUC, or their consultants, on-site, via MicroSoft Teams, Zoom or other applicable online applications used by agencies involved or in-person meetings.

Services to Be Performed by Others

The Consultant understands that the City shall provide the following services:

1. Design and development of Plans, Specifications and Estimates for the project.
2. All right of way services including appraisals, development of plats and legals, right to enter and encroachment permits.
3. Copies of design files, mapping, right of way information, plans and specifications for submittals as required.

EXHIBIT B
SCHEDULE OF FEES

<u>PROFESSIONAL SERVICES</u>	<u>HOURLY RATE</u>
Principal Railroad Coordinator	\$310.00

Reimbursable Expense

Other Direct Costs:

Outside reproductions, services, and consultants will be charged at cost.

Postage/Delivery:

Overnight Delivery - \$25/ea

First Class USPS - \$5.00/ea

UPS Ground - \$10.00/ea