



TO: Mayor and Councilmembers

FROM: Charles W. Ebeling, Public Works Director

CONTACT: Teresa Lopes, Senior Project Engineer

SUBJECT: Professional Services Agreement with COM3 Consulting, Inc., for Project Management Services of the Hollister Avenue Bridge Replacement Project

RECOMMENDATION:

Approve and authorize the City Manager to execute an Agreement with COM3 Consulting, Inc. (COM3) for engineering support for the Hollister Avenue Bridge Replacement Project (9033) for a total amount not-to-exceed of \$176,000 and with the termination date of June 30, 2023.

BACKGROUND:

The San Jose Creek Flood Control and Fish Passage Project provides capacity for 100-year storm events as well as a fish-passable design though the length of the concrete channel. The lower 4,100 linear feet portion of this project has been completed. At the north end of the channel is the Hollister Avenue Bridge. This bridge contains reactive aggregate which is causing the structure to deteriorate rapidly. In addition, the bridge represents an obstruction to the 100-year storm capacity of the downstream channel. The bridge has been classified by Caltrans as both Structurally Deficient and Functionally Obsolete, and bridge replacement funds have been programmed under the Federal Highway Bridge Program (HBP) for replacement of the bridge.

Funding for the Hollister Avenue Bridge Project (Project) is from the HBP which funds 88.53% of the project costs. The remaining 11.47% of project costs is funded through the City's GTIP and Measure A funds.

The Public Works Department has contracted for on-call engineering project management services and professional services since incorporation due to the limited number of permanent City staff available. COM3 has provided project management support to this project since 2002. COM3 was selected from the on-call engineering list that is updated every three to four years through a Statements of Qualifications (SOQ) with a Request for Qualifications (RFQ) process. On December 20, 2016, Council

approved Pre-Authorized Qualified Consultant List for various professional engineering services.

DISCUSSION:

Public Works staff has reviewed and negotiated the scope and cost for Agreement and the resulting for a total not-to-exceed the sum of \$176,000 over the term of the five (5) year contract, and with the termination date of June 30, 2023. The costs associated with Agreement will be funded 88.53% through HBP as detailed below. Staff is pleased with the quality of professional services provided by COM3 and recommends approval of the Agreement for the Hollister Avenue Bridge Replacement.

Design was completed by the end of 2017. Due to construction funding availability constraints, construction is scheduled to commence in 2019 in conjunction with the Ekwil Street Extension Project.

FISCAL IMPACTS:

The Project is funded through the HBP (Fund 401). Federal funding under this program amounts to 88.53% of all project related costs. The remaining 11.47% will be funded through the City's GTIP (Fund 220).

Fund	Account	Description	FY2017-18 Adopted	YTD Actual	Encumbered	Available Balance
205	5-9033-706	CIP - Services	\$ 109,350	\$ 18,825	\$ 11,715	\$ 78,811
220	5-9033-706	CIP - Services	\$ 777,072	\$ 7,376	\$ 46,198	\$ 723,498
401	5-9033-704	Land Acquisition	\$ 982,843	\$ -	\$ -	\$ 982,843
401	5-9033-705	CIP - Capital Outlay	\$ 3,646,500	\$ -	\$ -	\$ 3,646,500
401	5-9033-706	CIP - Services	\$ 1,289,428	\$ 165,742	\$ 399,485	\$ 724,200
		Total	\$ 6,805,193	\$ 191,943	\$ 457,398	\$ 6,155,852

The FY2017-18 Budget includes sufficient funds to cover this agreement; therefore, no additional appropriations are necessary.

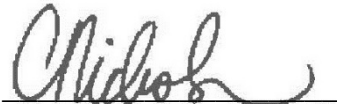
ALTERNATIVES:

The Council may elect not to approve the Agreement for the project engineering support and direct staff to focus on other priority projects. This would delay the design progress on the Project and could result in the loss of the programmed HBP funding. In addition, given the condition of the existing bridge, delaying replacement could present a structural safety concern and would also continue to cause flood water breakouts into Goleta Old Town from immediately upstream of the bridge.

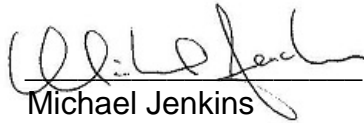
Reviewed By:

Legal Review By:

Approved By:



Carmen Nichols
Deputy City Manager



Michael Jenkins
City Attorney



Michelle Greene
City Manager

ATTACHMENTS:

1. COM3 Consulting, Inc. Agreement for Engineering Support for the Hollister Avenue Bridge Replacement Project

ATTACHMENT 1

Agreement with COM3 Consulting, Inc. for Engineering Support for the Hollister
Avenue Bridge Replacement Project (9033)

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES
BETWEEN THE CITY OF GOLETA
AND
COM3 CONSULTING, INC.**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES (herein referred to as "AGREEMENT") is made and entered into this 19th day of June, 2018, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **COM3 CONSULTING, INC.**, a California Corporation (herein referred to as "CONSULTANT").

WHEREAS, the CITY has a need for professional engineering services and project management services for the Hollister Bridge Replacement Project; and

WHEREAS, 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

WHEREAS, the CONSULTANT was approved by Council on December 20, 2016 and placed on a short list of pre-approved consultants for engineering design services after review of a Request for Qualifications; and

WHEREAS, the City Council, on this 19th day of June, 2018, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

CITY and CONSULTANT agree as follows:

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 engineering services and project management services in conjunction with Hollister Avenue Bridge Replacement Project. Services shall generally include professional engineering and project management services, 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 \$176,000 (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, 2023, 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 the compensation exhibit. 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, Senior Project Engineer. 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, 2023, 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. All services shall be completed within the term of this agreement.

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. Gerald Comati 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) Indemnification and Defense for Professional Service. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's duty to defend shall consist of reimbursement of defense costs incurred by CITY in direct proportion to the CONSULTANT's proportionate percentage of fault. CONSULTANT's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT's percentage of fault, the parties agree to mediation with a third party neutral to determine

the CONSULTANT's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the CITY.

(b) For All Other Liabilities. Notwithstanding the foregoing and without diminishing any rights of CITY, for any liability, claim, demand, allegation against CITY arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless CITY, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the CITY, except for the sole or active negligence of, or willful misconduct of the CITY.

(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 in the 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 and in the aggregate.

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

- a) 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) 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. TAXPAYER IDENTIFICATION NUMBER

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

22. 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.

23. 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.

24. USE OF THE TERM "CITY"

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

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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: Michelle Greene, City Manager
	City of Goleta
	130 Cremona Drive, Suite B
	Goleta, CA 93117

TO CONSULTANT: Gerald Comati, President
COM3 Consulting, Inc.
214 E. Victoria Street
Santa Barbara, CA 93101

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

CONSULTANT

Michelle Greene, City Manager

Gerald Comati, President

ATTEST

Deborah Lopez, City Clerk

Janean Comati, Chief Financial Officer

APPROVED AS TO FORM



Winnie Cai, Deputy City Attorney

EXHIBIT A SCOPE OF WORK

Project Management Assistance for the Hollister Avenue Bridge Project Services:

Tasks:

- a. Provide continuous interface with City staff regarding projects.
- b. Schedule and attend project team meetings and prepare meeting agendas and action items and track action items.
- c. Coordinate with other agencies including Caltrans, SBCAG, SB Bicycle Coalition, Resource Agencies, and County Flood Control.
- d. Prepare project status reports for City including reports to Council on project status.
- e. Prepare draft Staff Reports for Council Action items.
- f. Prepare, review and comment on any cooperative agreements necessary for projects.
- g. Prepare project correspondence for City as required.
- h. Provide technical review and comment on engineering deliverables.
- i. Development/maintenance of project schedules.
- j. Track and monitor project costs.
- k. Track and monitor project funding.
- l. Coordinate with Caltrans Local Assistance regarding HBP and prepare HBP funding documentations as required.
- m. Ensure compliance with Federal requirements.
- n. Assist City Staff in preparation of grant funding claims as necessary.
- o. Assist City Staff in securing additional funding for project, as necessary.
- p. Prepare RFP's for professional services, as required to continue progress of projects.
- q. Attend public hearings as required.
- r. Track right of way acquisition process.
- s. Coordinate eminent domain process if required.
- t. Meet with private property owners as required.

Deliverables:

- 1. Weekly Status Reports.
- 2. Monthly updated Project Schedule.
- 3. Bi Weekly Updated Action Log.
- 4. Monthly Right of Way Acquisition Status Report.
- 5. Draft Staff Report for Council.

**EXHIBIT B
SCHEDULE OF FEES**

	\$/Hr
Gerald Comati, President	\$170
Various, Administrative Support	\$45