

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

DATE: April 22, 2014

SUBJECT: APPROVE MASTER AGREEMENTS FOR PROFESSIONAL SERVICES TO PREPARE TRANSPORTATION STUDIES IN THE CITY OF CONCORD**Report in Brief**

The Transportation Division in the Community and Economic Development Department is responsible for preparing transportation planning and traffic operations studies in the City of Concord. Studies involving limited quantitative analysis are normally handled in-house by City staff. Other studies requiring more intensive analysis and computerized modeling need the support of outside professional transportation consulting firms to facilitate preparation of such studies for both City-sponsored and private development projects.

Staff recommends that the City Council approve master agreements for professional services with six transportation consulting firms and authorize the City Manager to execute the agreements.

Background

The Transportation Division is responsible for preparing transportation studies including transportation planning and traffic operations studies, traffic impact and parking studies, and traffic signal timing studies. The City utilizes the services of outside consultants to prepare such studies involving rigorous technical analysis to complete City-sponsored and private development projects.

The purpose of the proposed master agreements is to simplify and accelerate delivery of professional services for small- to medium-sized projects by providing a single agreement that can be used in conjunction with the traditional Request for Proposal/Purchase Order process. The project schedule is accelerated by the several weeks it would take to bring each contract individually to the City Council for approval. Staff will ensure the integrity of the process by assigning projects as appropriate to selected consultants under the proposed agreements based on their specialized area of expertise, ability to meet the project schedule, and an evenly distributed workload.

Currently, the City has master agreements for professional services with four transportation consulting firms, including Dowling Associates, Inc. (now Kittelson & Associates, Inc.); Kimley-Horn and Associates, Inc.; Omni-Means, Lt; and DKS Associates. These agreements will expire on June 30, 2014 and should be renewed as discussed above.

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Discussion

Since 2008, the City has used a streamlined process for selecting traffic consultants to provide on-call services, by entering into three-year master agreements with a well-rounded group of consulting firms that are best known for their specialized areas of expertise. This process ensures that an ideal group of traffic consultants in the San Francisco Bay Area is approved by the City Council to provide support services in Concord based on their experience, performance track record in the City, and familiarity with local issues. This process is used in this case in lieu of the traditional, project-specific Request-for-Proposal (RFP) process to fit the specific needs of the City for on-call services for a defined period of time, as described below.

The proposed master agreements for professional services (Attachments 1 through 6) with six consulting firms cover specialized traffic studies in the areas of transportation planning and traffic engineering in the City of Concord. Four of these firms are currently under contract with the City through individual master agreements to provide professional services through June 30, 2014. These firms have recently conducted transportation studies for City-sponsored and private development projects in Concord and have performed well. The other two consultants under consideration, Fehr & Peers and URS Corporation, are not under contract with the City at the present time. These firms are well established in the San Francisco Bay Area and have performed a number of transportation studies in the Concord area over the past few years.

Staff has reviewed these firms' recent experience, performance, availability, interest, and familiarity with the City of Concord and Contra Costa County in general. Based on this review, it was determined that these firms represent the best choices available to provide transportation consulting services in Concord for the next three years. As such, Staff recommends that the City execute the proposed master agreements with all six consultants. Together, the six consultants listed below will bring a broad range of transportation expertise that will greatly benefit the City of Concord.

Additional information on each consultant is provided below.

Kimley-Horn and Associates, Inc.

Kimley-Horn and Associates has recently provided professional services on several projects in Concord, including transportation planning, traffic impact, traffic safety, and traffic signal timing studies. This firm prepared the traffic impact fee study for the 2013 Off-site Street Improvement Program (OSIP) Update. Current master agreement with Kimley-Horn and Associates expires on June 30, 2014.

Kimley-Horn and Associates offers specialized expertise in the areas of traffic simulation, corridor studies and public transit.

Omni-Means, Ltd.

Omni-Means has recently performed several traffic impact and parking studies for development projects in Concord. This firm is highly familiar with the City's General Plan policies and is knowledgeable on regional transportation issues in Contra Costa County. Omni-Means performed a parking demand study in 2012 for

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downtown Concord and reviewed the feasibility of implementing metered parking in the Todos Santos Plaza area. Current master agreement with Omni-Means expires on June 30, 2014.

Omni-Means offers specialized expertise in the area of traffic impact and parking analysis.

Kittelson & Associates, Inc.

Kittelson & Associates (previously Dowling Associates) conducted the travel demand modeling and traffic analysis for the Concord 2030 Urban Area General Plan EIR and the Concord Community Reuse Plan EIR. Additionally, this firm recently conducted travel demand forecasting analysis for SR4 and examined potential changes to traffic patterns in Concord as a result of implementing certain capacity improvement projects on this freeway within the Concord area. Current master agreement with Dowling Associates (now Kittelson & Associates) expires on June 30, 2014.

Kittelson & Associates offers specialized expertise in the areas of travel demand modeling and traffic forecasting.

DKS Associates

In the past 30 years, DKS Associates has performed a number of transportation services in Concord including, but not limited to, traffic signal design and timing studies. This firm offers specialized expertise in the areas of traffic signal coordination and automated traffic management system design. DKS recently completed the Phase 1 Traffic Signal Master Plan study to identify citywide signal system deficiencies for potential funding of system improvements through federal grants. Current master agreement with DKS Associates expires on June 30, 2014.

DKS Associates offers specialized expertise in the areas of automated traffic signal management systems and adaptive signal timing.

Fehr & Peers

Fehr & Peers has provided transportation planning and design services in Concord for many years, including preparation of the traffic impact study for the John Muir Medical Center Expansion Project EIR, design plans for a new traffic signal at Treat Boulevard/Oak Grove Plaza, and modification plans for the traffic signal at Port Chicago Highway/Bates Avenue. Fehr & Peers has also served as the traffic consultant on the Downtown Specific Plan project.

Fehr & Peers offers specialized expertise in the area of Complete Streets design for multi-modal transportation systems.

URS Corporation

URS Corporation is a well-established company providing multi-discipline services worldwide, including transportation planning and traffic engineering. In recent years, this firm has prepared project initiation studies,

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environmental analyses, and design services for freeway projects for the Contra Costa Transportation Authority (CCTA), including the I-680/SR-4 Interchange Improvement Project. Although this firm has not performed services in the past for the City of Concord, it has the ability to serve as a technical liaison between the City and CCTA to assist with supplemental/peer review of likely benefits to the City as a result of implementing an array of capacity improvements on Highway 4 through the Concord area. Additionally, URS is well equipped to provide traditional traffic engineering services for the City of Concord.

URS Corporation offers specialized expertise in the areas of planning and design of freeway improvement projects, as well as integration with local traffic operations systems.

Proposed Master Agreements

City Council's approval of the proposed master agreements authorizes staff to assign projects to selected consultants utilizing a streamlined Request for Proposal/Purchase Order process. For each project, staff will select the best-suited consultant based on qualifications, availability and specific needs of the project. The selected consultant will be asked to prepare a study proposal outlining the scope of work, cost and schedule. Staff will review the proposal and provide comments. Once the proposal has been finalized, the consultant will be directed to proceed with the work.

Under the proposed master agreements, the Director of Community and Economic Development or the Transportation Manager is authorized to direct the selected consultant to proceed with the work for a not-to-exceed amount of \$75,000. Study proposals exceeding \$75,000 in consultant fees will be presented to the City Council for consideration and approval. When the consultant invoices the City for services rendered, staff will charge the expenses to the appropriate purchase order issued for this work and will use this process to keep track of consultant expenditures through the fiscal year.

Traffic impact/parking studies for private development projects will not require issuing a purchase order, as developers will cover the cost of these services under separate reimbursable accounts. The six consulting firms listed above will represent the City-approved list of consultants that developers can retain to conduct traffic impact/parking studies for their development projects, unless otherwise directed by the Director of Community and Economic Development or the Transportation Manager.

The proposed master agreements expire on June 30, 2017. The total contract amount for each consultant is capped at \$250,000 per year. Each company fully understands that this is not a guarantee of \$250,000 worth of work each year or, for that matter, a guarantee of any specific level of work from the City. City Attorney's staff reviewed the master agreements and their comments have been integrated into the agreements.

Fiscal Impact

Traffic studies for development projects are paid for by developers. City-sponsored transportation studies are funded through the Transportation Division's operating budget or other funding sources. Transportation studies for Capital Improvement Program (CIP) projects are funded through the adopted CIP program. The master agreements Council is being asked to approve through this staff report makes no changes to the budgeted amounts in any of these categories.

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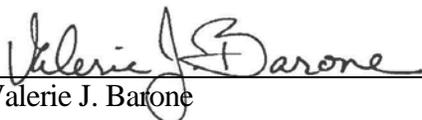
Public Contact

Posting of the Council agenda

Recommendation for Action

Approve master agreements for professional services with six transportation consulting firms and authorize the City Manager to execute the agreements.

Prepared by: Ray Kuzbari
Transportation Manager
Ray.Kuzbari@cityofconcord.org



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

Reviewed by: Victoria Walker
Dir. of Community & Economic Development
Victoria.Walker@cityofconcord.org

Enclosures: Attachment 1: Kimley-Horn and Associates, Inc. Master Agreement for Professional Services
Attachment 2: Omni-Means Ltd. Master Agreement for Professional Services
Attachment 3: Kittelson & Associates, Inc. Master Agreement for Professional Services
Attachment 4: DKS Associates Master Agreement for Professional Services
Attachment 5: Fehr & Peers Master Agreement for Professional Services
Attachment 6: URS Corporation Master Agreement for Professional Services

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MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Attachment 1

1 THIS MASTER AGREEMENT ("Master Agreement") is entered on April 22, 2014 between
2 the City of Concord ("CITY") and Kimley-Horn and Associates, Inc., 6150 Stoneridge Mall Road,
3 Suite 200, Pleasanton, CA 94588 ("CONSULTANT").

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

6 The CITY desires to contract with CONSULTANT to provide the professional services
7 described in Section 2 of this Master Agreement, upon the terms and conditions hereinafter set forth.

8 On April 22, 2014, the City Council authorized the City Manager to execute this Master
9 Agreement with CONSULTANT.

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. **TERM.** This Master Agreement shall commence on July 1, 2014 and expire on June
13 30, 2017.

14 2. **SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by
15 the CITY's Authorized Representative, CONSULTANT shall perform the services described below.
16 CITY retains all rights of approval and discretion with respect to the projects and undertakings
17 contemplated by this Master Agreement. CONSULTANT has agreed to provide services that may
18 include, but not be limited to:

- 19 • Transportation planning and traffic operations studies;
- 20 • Traffic impact and parking studies;
- 21 • Traffic signal timing studies;
- 22 • Traffic design (including signals, signing & striping, temporary traffic control, etc.); and
- 23 • Traffic forecasting and freeway studies.

24 3. **PAYMENT.** CONSULTANT shall be compensated on a time and materials basis,
25 not to exceed \$250,000 per fiscal year for services rendered in Section 2, as described in the Purchase
26 Order and CONSULTANT's work proposal process described below, in accordance with the terms
27 and conditions included herein. Any Amendment to this Master Agreement that includes an increase
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1 to this compensation amount shall be made in accordance with Section 5 below.

2 The CITY Representatives, as identified in Section 4 below, or their designees, are authorized
3 to develop and approve Purchase Orders for specific work projects by CONSULTANT in each fiscal
4 year for the total not-to-exceed amount of \$250,000 per fiscal year. For each project, said CITY
5 Representatives will select CONSULTANT based on its availability and the specific needs of the
6 project. CONSULTANT shall prepare a work proposal outlining the scope of work, cost and schedule
7 for CITY's Transportation Division review and approval. Said CITY Representatives are authorized
8 to direct CONSULTANT to proceed with the work on any individual project up to \$75,000 based on
9 the work proposal and a Purchase Order for CONSULTANT. Work proposals providing for more
10 than \$75,000 in compensation for one project shall be presented to the City Council for consideration
11 and approval.

12 CONSULTANT may submit monthly statements for services rendered; all statements shall
13 include adequate documentation demonstrating work performed during the billing period. It is
14 intended that CITY review such statement and pay CONSULTANT for services rendered within 30
15 days of receipt of a statement that meets all requirements of this Master Agreement. Payment by
16 CITY shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the
17 CITY at the time of payment.

18 **4. AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent
19 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered
20 by CONSULTANT under this Master Agreement except where approval for the CITY is specifically
21 required by the City Council. The CITY's authorized representatives are Victoria Walker, Director of
22 the Community and Economic Development Department, and Ray Kuzbari, Transportation Manager.

23 The CONSULTANT's authorized representative is Brian E. Sowers, Vice President.

24 **5. AMENDMENT TO MASTER AGREEMENT.** This Master Agreement may be
25 amended in writing, subject to approval by both parties. If additional services are requested by CITY
26 other than as described in the above Scope of Services or exceeding the compensation limit of
27 \$250,000 per fiscal year specified in Section 3, this Master Agreement may be amended, modified, or
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1 changed by the parties subject to mutual consent and in accordance with the CITY's Municipal Code
2 by execution of an Amendment by authorized representatives of both parties setting forth the
3 additional scope of services to be performed, the performance time schedule, and the compensation
4 for such services.

5 **A. Amendment for Additional Compensation.** The City Manager is authorized
6 to execute amendments providing for additional compensation to CONSULTANT not to exceed
7 \$50,000 during the fiscal year, including the base contract amount, throughout the term of this Master
8 Agreement. Any additional compensation to CONSULTANT that is \$50,000 or more for the fiscal
9 year, including the base contract amount, must be approved by City Council.

10 Consultant's failure to secure CITY's written authorization for additional compensation or
11 changes to the Scope of Work shall constitute a waiver of any and all right to adjustment in the price
12 or time due, whether by way of compensation, restitution, quantum merit, or similar relief.

13 **6. INDEPENDENT CONTRACTOR.** Both parties understand and acknowledge that
14 CONSULTANT, its agents, employers and subcontractors are and shall at all times remain as to the
15 CITY wholly independent contractors. Neither the CITY nor any of its officers or employees shall
16 have any control over the manner by which the CONSULTANT performs this Master Agreement and
17 shall only dictate the results of the performance. CONSULTANT shall not represent that
18 CONSULTANT or its agents, employees or subcontractors are agents or employees of the CITY, and
19 CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY in any
20 capacity whatsoever as an agent, and shall have no authority, express or implied, to bind the CITY to
21 any obligation whatsoever, unless otherwise provided in this Master Agreement.

22 As an independent contractor, CONSULTANT shall not be eligible for any benefits, which the
23 City may provide to its employees; and, all persons, if any, hired by CONSULTANT shall be
24 employees or subcontractors of CONSULTANT and shall not be construed as employees or agents of
25 the CITY in any respect. CONSULTANT shall receive no premium or enhanced pay for work
26 normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work
27 performed during non-standard business hours, such as in the evenings or on weekends.

1 CONSULTANT shall not receive a premium or enhanced pay for work performed on a recognized
2 holiday. CONSULTANT shall not receive paid time off for days not worked, whether it is in the form
3 of sick leave, administrative leave, or for any other form of absence. CONSULTANT shall pay all
4 taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment
5 insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal
6 property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in
7 connection with the services to be performed by CONSULTANT.

8 **7. STANDARD OF PERFORMANCE.** CONSULTANT represents and warrants to
9 CITY that CONSULTANT is skilled and able to provide such services described in the Scope of
10 Work and that such services shall be performed in an expeditious manner, and with the degree of skill
11 and care that is required by current, good, and sound procedures and practices. CONSULTANT
12 further agrees that the services shall be in conformance with generally accepted professional standards
13 prevailing at the time work is performed.

14 **8. PERFORMANCE BY CONSULTANT.** CONSULTANT shall not employ other
15 consultants, subconsultants, experts, or contractors without the prior written approval of the CITY.
16 Notwithstanding the foregoing, CITY shall not be obligated or liable for payment hereunder to any
17 party other than the CONSULTANT. CONSULTANT hereby designates the CONSULTANT'S
18 representative as the person primarily responsible for the day-to-day performance of
19 CONSULTANT'S work under this Master Agreement. CONSULTANT shall not change the
20 CONSULTANT'S representative without the prior written consent of the CITY. Unless otherwise
21 expressly agreed by the CITY, CONSULTANT'S representative shall remain responsible for the
22 quality and timeliness of performance of the services, notwithstanding any permitted or approved
23 delegation hereunder.

24 **9. OWNERSHIP AND MAINTENANCE OF DOCUMENTS.** All documents
25 furnished by CONSULTANT pursuant to this Master Agreement are instruments of
26 CONSULTANT'S services in respect to this project. They are not intended nor are represented to be
27 suitable for reuse by others except CITY on extensions of this project or on any other project. Any
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1 reuse without specific written verification and adoption by CONSULTANT for the specific purposes
2 intended will be at user's sole risk and without liability or legal exposure and expenses to
3 CONSULTANT, including attorney's fees arising out of such unauthorized reuse.

4 CONSULTANT's records, documents, calculations, and all other instruments of service
5 pertaining to actual project shall be given to CITY at the completion of the project. The CITY
6 reserves the right to specify the file format that electronic document deliverables are presented to the
7 CITY.

8 **10. INDEMNIFICATION.** CONSULTANT agrees to defend, indemnify and hold
9 harmless the CITY, its officers, officials, employees, agents and volunteers from and against any and
10 all claims, demands, actions, losses, demands, injuries and liability (including all attorney fees and
11 other litigation expenses) arising out of negligent or reckless acts, willful misconduct, or errors or
12 omissions by CONSULTANT in its performance of the terms of this Master Agreement. The
13 obligations arising out of this provision shall remain in effect following the expiration of this
14 Agreement.

15 **11. INSURANCE.** CONSULTANT shall, at its own expense, procure and maintain in
16 full force at all times during the term of this Master Agreement the following insurance:

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

21 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile
22 liability insurance covering all vehicles used in the performance of this Master Agreement providing
23 a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal
24 injury, and property damage.

25 **C. Professional Liability Coverage (Errors and Omissions).** If applicable,
26 CONSULTANT shall maintain professional liability insurance with coverage for all negligent errors,
27 acts or omissions committed by CONSULTANT, its agents and employees in the performance of this
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1 Master Agreement. The amount of this insurance shall be not less than one million dollars
2 (\$1,000,000) on a claims made annual aggregate basis or a combined single limit per occurrence basis.

3 **D. Compliance with State Workers' Compensation Requirements.**

4 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation
5 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all
6 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being
7 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall
8 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and
9 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision
10 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

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

13 (1) **Additional Insured.** CITY, its officers, agents, employees, and
14 volunteers are to be covered as an additional insured as respects: Liability arising out of activities
15 performed by or on behalf of CONSULTANT and operations of CONSULTANT, premises owned,
16 occupied, or used by CONSULTANT. The coverage shall contain no special limitations on the scope
17 or protection afforded to CITY, its officers, officials, employees, or volunteers, and shall be in a form
18 that is approved by the City Attorney's Office.

19 Except for worker's compensation and professional liability insurance, the policies mentioned
20 in this subsection shall name CITY as an additional insured and provide for notice of cancellation to
21 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT
22 receives any notice of cancellation or nonrenewal from its insurer.

23 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be
24 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any
25 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,
26 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute
27 with it.

1 (3) **Reporting Provisions.** Any failure to comply with the reporting
2 provisions of the policy shall not affect the coverage provided to the CITY, its officers, officials,
3 employees, or volunteers.

4 (4) **Verification of Coverage.** CONSULTANT shall furnish CITY with
5 certificates of insurance and the original endorsements effecting coverage required by this Master
6 Agreement. The certificates and endorsements for each insurance policy are to be signed by a person
7 authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued
8 by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney
9 and shall be delivered to CITY at the time of the execution of this Master Agreement or before work
10 commences. Such policies and certificates shall be in a form approved by the City Attorney. CITY
11 reserves the right to require complete certified copies of all required insurance policies at any time
12 upon reasonable notice.

13 12. **TIME OF PERFORMANCE.** The time of performance of the services under this
14 Master Agreement is of the essence, and all time deadlines identified in this Master Agreement or
15 Scope of Services shall be strictly construed.

16 13. **SUSPENSION OF WORK.** CITY may, at any time, by ten (10) days' written notice,
17 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for
18 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services
19 performed and reimbursable expenses incurred prior to the suspension date. During the period of
20 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
21 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

22 14. **TERMINATION.** CITY may terminate this Master Agreement for any reason upon
23 ten (10) days written notice to the other party. CITY may terminate the Master Agreement upon five
24 (5) days written notice if CONSULTANT breaches this Master Agreement. In the event of any
25 termination, CONSULTANT shall promptly deliver to the CITY any and all finished and unfinished
26 reports or other written, recorded, photographic, or visual materials, documents, data, and other
27 deliverables ("Work Materials") prepared for the CITY prior to the effective date of such termination,
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1 all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will pay
2 CONSULTANT for the services performed as of the effective date of the termination.

3 **15. COMPLIANCE WITH CIVIL RIGHTS.** During the performance of this contract,
4 CONSULTANT agrees as follows:

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

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

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

19 **16. CONFLICT OF INTEREST.**

20 **A.** CONSULTANT covenants and represents that neither it, nor any officer or
21 principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in
22 any manner with the interests of CITY or which would in any way hinder CONSULTANT'S
23 performance of services under this Master Agreement. CONSULTANT further covenants that in the
24 performance of the Master Agreement, no person having any such interest shall be employed by it as
25 an officer, employee, agent or subcontractor without the express written consent of the CITY.
26 CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of
27 interest, with the interests of the CITY in the performance of this Master Agreement.

1 B. CONSULTANT is not a designated employee within the meaning of the
2 Political Reform Act because CONSULTANT:

3 (1) Will conduct research and arrive at conclusions with respect to its rendition
4 of information, advice, recommendation or counsel independent of the control and direction of the
5 CITY or of any CITY official, other than normal contract monitoring; and

6 (2) Possesses no authority with respect to any CITY decision beyond the
7 rendition of information, advice, recommendation or counsel. [2 Cal. Code Regs. § 18700(a)(2)].

8 **17. COMPLIANCE WITH LAWS.** CONSULTANT shall comply with all applicable
9 Federal, State of California, and local laws, rules, and regulations and shall obtain all applicable
10 licenses, including a business license with the City of Concord, and permits for the conduct of its
11 business and the performance of the services.

12 **18. CHOICE OF LAW.** This Master Agreement shall be construed and interpreted in
13 accordance with the laws of the State of California, excluding any choice of law rules which may
14 direct the application of the laws of another jurisdiction. In the event that suit shall be brought by
15 either party hereunder, the parties agree that trial of such action shall be held exclusively in a state
16 court in the County of Contra Costa, California.

17 **19. NON-WAIVER.** The waiver by either party of any breach of any term, covenant, or
18 condition contained in the Master Agreement, or any default in their performance of any obligations
19 under the Master Agreement shall not be deemed to be a waiver of any other breach or default of the
20 same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of
21 breach of default constitute a continuing waiver of same.

22 **20. ENFORCEABILITY; INTERPRETATION.** In the event that any of the provisions
23 or portions of application of any of the provisions of the Master Agreement are held to be illegal or
24 invalid by a court of competent jurisdiction, CITY and CONSULTANT shall negotiate an equitable
25 adjustment in the provisions of the Master Agreement with a view toward affecting the purpose of the
26 Master Agreement. The illegality or invalidity of any of the provisions or portions of application of
27 any of the provisions of the Master Agreement shall not affect the legality or enforceability of the
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1 remaining provisions or portions of application of any of the provisions of the Master Agreement.
2 This Master Agreement shall be interpreted as though it was a product of a joint drafting effort and no
3 provisions shall be interpreted against a party on the ground that said party was solely or primarily
4 responsible for drafting the language to be interpreted.

5 **21. INTEGRATION.** All exhibits identified in this Master Agreement are attached hereto
6 and incorporated herein by reference. The Master Agreement contains the entire agreement and
7 understanding between the parties as to the subject matter of this Master Agreement. It merges and
8 supersedes all prior or contemporaneous agreements, commitments, representation, writings, and
9 discussions between CONSULTANT and CITY, whether oral or written.

10 **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**
11 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,
12 assigns, and legal representatives to the terms and obligations of this Master Agreement.
13 CONSULTANT shall not assign or transfer any interest in the Master Agreement without the CITY's
14 prior written consent, which consent shall be in the CITY's sole discretion. Any attempted
15 assignment or transfer in breach of this provision shall be void. This Master Agreement is not
16 intended and shall not be construed to create any third party benefit. This Master Agreement is not
17 intended and shall not be construed to create a joint venture or partnership between the parties.
18 CONSULTANT, its officers, employees and agents shall not have any power to bind or commit the
19 CITY to any decision.

20 **23. FINANCIAL RECORDS.** Records of CONSULTANT's direct labor costs, payroll
21 costs, and reimbursable expenses pertaining to this project covered by this Master Agreement will be
22 kept on a generally recognized accounting basis and made available to CITY if and when required.

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

1
2 To CITY:

**Victoria Walker, CED Director
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578
Phone: (925) 671-3434
Fax: (925) 671-3381**

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6 To CONSULTANT:

**Brian E. Sowers, Vice President
Kimley-Horn and Associates, Inc.
6150 Stoneridge Mall Road, Suite 200
Pleasanton, CA 94588
Phone: (925) 398-4840
Fax: (714) 938-9488**

7
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9
10 **25. NON-LIABILITY.** No member of the CITY and no other officer, employee or agent
11 of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or
12 breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in
13 interest, or for any obligations directly or indirectly incurred under the terms of this Master
14 Agreement.

15 **26. EXECUTION.** Each individual or entity executing this Master Agreement on behalf
16 of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and
17 deliver this Master Agreement on behalf of CONSULTANT and that such execution is binding upon
18 CONSULTANT.

19 This Master Agreement may be executed in several counterparts, each of which shall
20 constitute one and the same instrument and shall become binding upon the parties when at least one
21 copy hereof shall have been signed by both parties hereto. In approving this Master Agreement, it
22 shall not be necessary to produce or account for more than one such counterpart.

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

1 **CONSULTANT**

2 **CITY OF CONCORD, a Municipal Corporation**

3 By: _____
4 Name: Brian E. Sowers, Vice President
5 Title: Kimley-Horn and Associates, Inc.
6 Address: 6150 Stoneridge Mall Road, Suite 200
7 Pleasanton, CA 94588
8 Telephone: (925) 398-4840

3 By: _____
4 Name: Valerie J. Barone
5 Title: City Manager
6 Address: 1950 Parkside Drive
7 Concord, CA 94519
8 Telephone: (925) 671-3150

9 APPROVED AS TO FORM:

9 ATTEST:

10 _____
11 City Attorney

10 _____
11 City Clerk

12 **FINANCE DIRECTOR'S CERTIFICATION:**

13 Concord, California

14 Date: April 22, 2014

15
16 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
17 DURING THE CURRENT FISCAL YEAR 2014/15 TO PAY THE ANTICIPATED
18 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, NOT TO EXCEED THE
19 SUM OF \$250,000.

20 _____
21 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Attachment 2

1 THIS MASTER AGREEMENT ("Master Agreement") is entered on April 22, 2014 between
2 the City of Concord ("CITY") and Omni-Means, Ltd., 943 Reserve Drive, Suite 100, Roseville, CA
3 95678 ("CONSULTANT").

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

6 The CITY desires to contract with CONSULTANT to provide the professional services
7 described in Section 2 of this Master Agreement, upon the terms and conditions hereinafter set forth.

8 On April 22, 2014, the City Council authorized the City Manager to execute this Master
9 Agreement with CONSULTANT.

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. **TERM.** This Master Agreement shall commence on July 1, 2014 and expire on June
13 30, 2017.

14 2. **SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by
15 the CITY's Authorized Representative, CONSULTANT shall perform the services described below.
16 CITY retains all rights of approval and discretion with respect to the projects and undertakings
17 contemplated by this Master Agreement. CONSULTANT has agreed to provide services that may
18 include, but not be limited to:

- 19 • Transportation planning and traffic operations studies;
- 20 • Traffic impact and parking studies;
- 21 • Traffic signal timing studies;
- 22 • Traffic design (including signals, signing & striping, temporary traffic control, etc.); and
- 23 • Traffic forecasting and freeway studies.

24 3. **PAYMENT.** CONSULTANT shall be compensated on a time and materials basis,
25 not to exceed \$250,000 per fiscal year for services rendered in Section 2, as described in the Purchase
26 Order and CONSULTANT's work proposal process described below, in accordance with the terms
27 and conditions included herein. Any Amendment to this Master Agreement that includes an increase
28

1 to this compensation amount shall be made in accordance with Section 5 below.

2 The CITY Representatives, as identified in Section 4 below, or their designees, are authorized
3 to develop and approve Purchase Orders for specific work projects by CONSULTANT in each fiscal
4 year for the total not-to-exceed amount of \$250,000 per fiscal year. For each project, said CITY
5 Representatives will select CONSULTANT based on its availability and the specific needs of the
6 project. CONSULTANT shall prepare a work proposal outlining the scope of work, cost and schedule
7 for CITY's Transportation Division review and approval. Said CITY Representatives are authorized
8 to direct CONSULTANT to proceed with the work on any individual project up to \$75,000 based on
9 the work proposal and a Purchase Order for CONSULTANT. Work proposals providing for more
10 than \$75,000 in compensation for one project shall be presented to the City Council for consideration
11 and approval.

12 CONSULTANT may submit monthly statements for services rendered; all statements shall
13 include adequate documentation demonstrating work performed during the billing period. It is
14 intended that CITY review such statement and pay CONSULTANT for services rendered within 30
15 days of receipt of a statement that meets all requirements of this Master Agreement. Payment by
16 CITY shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the
17 CITY at the time of payment.

18 **4. AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent
19 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered
20 by CONSULTANT under this Master Agreement except where approval for the CITY is specifically
21 required by the City Council. The CITY's authorized representatives are Victoria Walker, Director of
22 the Community and Economic Development Department, and Ray Kuzbari, Transportation Manager.

23 The CONSULTANT's authorized representative is H. Ross Ainsworth, President.

24 **5. AMENDMENT TO MASTER AGREEMENT.** This Master Agreement may be
25 amended in writing, subject to approval by both parties. If additional services are requested by CITY
26 other than as described in the above Scope of Services or exceeding the compensation limit of
27 \$250,000 per fiscal year specified in Section 3, this Master Agreement may be amended, modified, or
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1 changed by the parties subject to mutual consent and in accordance with the CITY's Municipal Code
2 by execution of an Amendment by authorized representatives of both parties setting forth the
3 additional scope of services to be performed, the performance time schedule, and the compensation
4 for such services.

5 **A. Amendment for Additional Compensation.** The City Manager is authorized
6 to execute amendments providing for additional compensation to CONSULTANT not to exceed
7 \$50,000 during the fiscal year, including the base contract amount, throughout the term of this Master
8 Agreement. Any additional compensation to CONSULTANT that is \$50,000 or more for the fiscal
9 year, including the base contract amount, must be approved by City Council.

10 Consultant's failure to secure CITY's written authorization for additional compensation or
11 changes to the Scope of Work shall constitute a waiver of any and all right to adjustment in the price
12 or time due, whether by way of compensation, restitution, quantum merit, or similar relief.

13 **6. INDEPENDENT CONTRACTOR.** Both parties understand and acknowledge that
14 CONSULTANT, its agents, employers and subcontractors are and shall at all times remain as to the
15 CITY wholly independent contractors. Neither the CITY nor any of its officers or employees shall
16 have any control over the manner by which the CONSULTANT performs this Master Agreement and
17 shall only dictate the results of the performance. CONSULTANT shall not represent that
18 CONSULTANT or its agents, employees or subcontractors are agents or employees of the CITY, and
19 CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY in any
20 capacity whatsoever as an agent, and shall have no authority, express or implied, to bind the CITY to
21 any obligation whatsoever, unless otherwise provided in this Master Agreement.

22 As an independent contractor, CONSULTANT shall not be eligible for any benefits, which the
23 City may provide to its employees; and, all persons, if any, hired by CONSULTANT shall be
24 employees or subcontractors of CONSULTANT and shall not be construed as employees or agents of
25 the CITY in any respect. CONSULTANT shall receive no premium or enhanced pay for work
26 normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work
27 performed during non-standard business hours, such as in the evenings or on weekends.

1 CONSULTANT shall not receive a premium or enhanced pay for work performed on a recognized
2 holiday. CONSULTANT shall not receive paid time off for days not worked, whether it is in the form
3 of sick leave, administrative leave, or for any other form of absence. CONSULTANT shall pay all
4 taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment
5 insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal
6 property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in
7 connection with the services to be performed by CONSULTANT.

8 **7. STANDARD OF PERFORMANCE.** CONSULTANT represents and warrants to
9 CITY that CONSULTANT is skilled and able to provide such services described in the Scope of
10 Work and that such services shall be performed in an expeditious manner, and with the degree of skill
11 and care that is required by current, good, and sound procedures and practices. CONSULTANT
12 further agrees that the services shall be in conformance with generally accepted professional standards
13 prevailing at the time work is performed.

14 **8. PERFORMANCE BY CONSULTANT.** CONSULTANT shall not employ other
15 consultants, subconsultants, experts, or contractors without the prior written approval of the CITY.
16 Notwithstanding the foregoing, CITY shall not be obligated or liable for payment hereunder to any
17 party other than the CONSULTANT. CONSULTANT hereby designates the CONSULTANT'S
18 representative as the person primarily responsible for the day-to-day performance of
19 CONSULTANT'S work under this Master Agreement. CONSULTANT shall not change the
20 CONSULTANT'S representative without the prior written consent of the CITY. Unless otherwise
21 expressly agreed by the CITY, CONSULTANT'S representative shall remain responsible for the
22 quality and timeliness of performance of the services, notwithstanding any permitted or approved
23 delegation hereunder.

24 **9. OWNERSHIP AND MAINTENANCE OF DOCUMENTS.** All documents
25 furnished by CONSULTANT pursuant to this Master Agreement are instruments of
26 CONSULTANT'S services in respect to this project. They are not intended nor are represented to be
27 suitable for reuse by others except CITY on extensions of this project or on any other project. Any
28

1 reuse without specific written verification and adoption by CONSULTANT for the specific purposes
2 intended will be at user's sole risk and without liability or legal exposure and expenses to
3 CONSULTANT, including attorney's fees arising out of such unauthorized reuse.

4 CONSULTANT's records, documents, calculations, and all other instruments of service
5 pertaining to actual project shall be given to CITY at the completion of the project. The CITY
6 reserves the right to specify the file format that electronic document deliverables are presented to the
7 CITY.

8 **10. INDEMNIFICATION.** CONSULTANT agrees to defend, indemnify and hold
9 harmless the CITY, its officers, officials, employees, agents and volunteers from and against any and
10 all claims, demands, actions, losses, demands, injuries and liability (including all attorney fees and
11 other litigation expenses) arising out of negligent or reckless acts, willful misconduct, or errors or
12 omissions by CONSULTANT in its performance of the terms of this Master Agreement. The
13 obligations arising out of this provision shall remain in effect following the expiration of this
14 Agreement.

15 **11. INSURANCE.** CONSULTANT shall, at its own expense, procure and maintain in
16 full force at all times during the term of this Master Agreement the following insurance:

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

21 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile
22 liability insurance covering all vehicles used in the performance of this Master Agreement providing
23 a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal
24 injury, and property damage.

25 **C. Professional Liability Coverage (Errors and Omissions).** If applicable,
26 CONSULTANT shall maintain professional liability insurance with coverage for all negligent errors,
27 acts or omissions committed by CONSULTANT, its agents and employees in the performance of this
28

1 Master Agreement. The amount of this insurance shall be not less than one million dollars
2 (\$1,000,000) on a claims made annual aggregate basis or a combined single limit per occurrence basis.

3 **D. Compliance with State Workers' Compensation Requirements.**

4 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation
5 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all
6 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being
7 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall
8 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and
9 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision
10 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

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

13 (1) **Additional Insured.** CITY, its officers, agents, employees, and
14 volunteers are to be covered as an additional insured as respects: Liability arising out of activities
15 performed by or on behalf of CONSULTANT and operations of CONSULTANT, premises owned,
16 occupied, or used by CONSULTANT. The coverage shall contain no special limitations on the scope
17 or protection afforded to CITY, its officers, officials, employees, or volunteers, and shall be in a form
18 that is approved by the City Attorney's Office.

19 Except for worker's compensation and professional liability insurance, the policies mentioned
20 in this subsection shall name CITY as an additional insured and provide for notice of cancellation to
21 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT
22 receives any notice of cancellation or nonrenewal from its insurer.

23 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be
24 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any
25 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,
26 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute
27 with it.

1 (3) **Reporting Provisions.** Any failure to comply with the reporting
2 provisions of the policy shall not affect the coverage provided to the CITY, its officers, officials,
3 employees, or volunteers.

4 (4) **Verification of Coverage.** CONSULTANT shall furnish CITY with
5 certificates of insurance and the original endorsements effecting coverage required by this Master
6 Agreement. The certificates and endorsements for each insurance policy are to be signed by a person
7 authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued
8 by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney
9 and shall be delivered to CITY at the time of the execution of this Master Agreement or before work
10 commences. Such policies and certificates shall be in a form approved by the City Attorney. CITY
11 reserves the right to require complete certified copies of all required insurance policies at any time
12 upon reasonable notice.

13 12. **TIME OF PERFORMANCE.** The time of performance of the services under this
14 Master Agreement is of the essence, and all time deadlines identified in this Master Agreement or
15 Scope of Services shall be strictly construed.

16 13. **SUSPENSION OF WORK.** CITY may, at any time, by ten (10) days' written notice,
17 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for
18 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services
19 performed and reimbursable expenses incurred prior to the suspension date. During the period of
20 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
21 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

22 14. **TERMINATION.** CITY may terminate this Master Agreement for any reason upon
23 ten (10) days written notice to the other party. CITY may terminate the Master Agreement upon five
24 (5) days written notice if CONSULTANT breaches this Master Agreement. In the event of any
25 termination, CONSULTANT shall promptly deliver to the CITY any and all finished and unfinished
26 reports or other written, recorded, photographic, or visual materials, documents, data, and other
27 deliverables ("Work Materials") prepared for the CITY prior to the effective date of such termination,
28

1 all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will pay
2 CONSULTANT for the services performed as of the effective date of the termination.

3 **15. COMPLIANCE WITH CIVIL RIGHTS.** During the performance of this contract,
4 CONSULTANT agrees as follows:

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

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

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

19 **16. CONFLICT OF INTEREST.**

20 **A.** CONSULTANT covenants and represents that neither it, nor any officer or
21 principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in
22 any manner with the interests of CITY or which would in any way hinder CONSULTANT'S
23 performance of services under this Master Agreement. CONSULTANT further covenants that in the
24 performance of the Master Agreement, no person having any such interest shall be employed by it as
25 an officer, employee, agent or subcontractor without the express written consent of the CITY.
26 CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of
27 interest, with the interests of the CITY in the performance of this Master Agreement.

1 B. CONSULTANT is not a designated employee within the meaning of the
2 Political Reform Act because CONSULTANT:

3 (1) Will conduct research and arrive at conclusions with respect to its rendition
4 of information, advice, recommendation or counsel independent of the control and direction of the
5 CITY or of any CITY official, other than normal contract monitoring; and

6 (2) Possesses no authority with respect to any CITY decision beyond the
7 rendition of information, advice, recommendation or counsel. [2 Cal. Code Regs. § 18700(a)(2)].

8 **17. COMPLIANCE WITH LAWS.** CONSULTANT shall comply with all applicable
9 Federal, State of California, and local laws, rules, and regulations and shall obtain all applicable
10 licenses, including a business license with the City of Concord, and permits for the conduct of its
11 business and the performance of the services.

12 **18. CHOICE OF LAW.** This Master Agreement shall be construed and interpreted in
13 accordance with the laws of the State of California, excluding any choice of law rules which may
14 direct the application of the laws of another jurisdiction. In the event that suit shall be brought by
15 either party hereunder, the parties agree that trial of such action shall be held exclusively in a state
16 court in the County of Contra Costa, California.

17 **19. NON-WAIVER.** The waiver by either party of any breach of any term, covenant, or
18 condition contained in the Master Agreement, or any default in their performance of any obligations
19 under the Master Agreement shall not be deemed to be a waiver of any other breach or default of the
20 same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of
21 breach of default constitute a continuing waiver of same.

22 **20. ENFORCEABILITY; INTERPRETATION.** In the event that any of the provisions
23 or portions of application of any of the provisions of the Master Agreement are held to be illegal or
24 invalid by a court of competent jurisdiction, CITY and CONSULTANT shall negotiate an equitable
25 adjustment in the provisions of the Master Agreement with a view toward affecting the purpose of the
26 Master Agreement. The illegality or invalidity of any of the provisions or portions of application of
27 any of the provisions of the Master Agreement shall not affect the legality or enforceability of the
28

1 remaining provisions or portions of application of any of the provisions of the Master Agreement.
2 This Master Agreement shall be interpreted as though it was a product of a joint drafting effort and no
3 provisions shall be interpreted against a party on the ground that said party was solely or primarily
4 responsible for drafting the language to be interpreted.

5 **21. INTEGRATION.** All exhibits identified in this Master Agreement are attached hereto
6 and incorporated herein by reference. The Master Agreement contains the entire agreement and
7 understanding between the parties as to the subject matter of this Master Agreement. It merges and
8 supersedes all prior or contemporaneous agreements, commitments, representation, writings, and
9 discussions between CONSULTANT and CITY, whether oral or written.

10 **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**
11 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,
12 assigns, and legal representatives to the terms and obligations of this Master Agreement.
13 CONSULTANT shall not assign or transfer any interest in the Master Agreement without the CITY's
14 prior written consent, which consent shall be in the CITY's sole discretion. Any attempted
15 assignment or transfer in breach of this provision shall be void. This Master Agreement is not
16 intended and shall not be construed to create any third party benefit. This Master Agreement is not
17 intended and shall not be construed to create a joint venture or partnership between the parties.
18 CONSULTANT, its officers, employees and agents shall not have any power to bind or commit the
19 CITY to any decision.

20 **23. FINANCIAL RECORDS.** Records of CONSULTANT's direct labor costs, payroll
21 costs, and reimbursable expenses pertaining to this project covered by this Master Agreement will be
22 kept on a generally recognized accounting basis and made available to CITY if and when required.

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

1
2 To CITY:

**Victoria Walker, CED Director
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578
Phone: (925) 671-3434
Fax: (925) 671-3381**

3
4
5
6 To CONSULTANT:

**H. Ross Ainsworth, President
Omni-Means, Ltd.
943 Reserve Drive, Suite 100
Roseville, CA 95678
Phone: (916) 782-8688
Fax: (916) 782-8689**

7
8
9
10 **25. NON-LIABILITY.** No member of the CITY and no other officer, employee or agent
11 of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or
12 breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in
13 interest, or for any obligations directly or indirectly incurred under the terms of this Master
14 Agreement.

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16 of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and
17 deliver this Master Agreement on behalf of CONSULTANT and that such execution is binding upon
18 CONSULTANT.

19 This Master Agreement may be executed in several counterparts, each of which shall
20 constitute one and the same instrument and shall become binding upon the parties when at least one
21 copy hereof shall have been signed by both parties hereto. In approving this Master Agreement, it
22 shall not be necessary to produce or account for more than one such counterpart.

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

1 **CONSULTANT**

2 **CITY OF CONCORD, a Municipal**
3 **Corporation**

4 By: _____
5 Name: H. Ross Ainsworth, President
6 Title: Omni-Means, Ltd.
7 Address: 943 Reserve Drive, Suite 100
8 Roseville, CA 95678
9 Telephone: (916) 782-8688

4 By: _____
5 Name: Valerie J. Barone
6 Title City Manager
7 Address: 1950 Parkside Drive
8 Concord, CA 94519
9 Telephone: (925) 671-3150

7 APPROVED AS TO FORM:

7 ATTEST:

9 _____
10 City Attorney

9 _____
10 City Clerk

11
12 **FINANCE DIRECTOR'S CERTIFICATION:**

13 Concord, California

14 Date: April 22, 2014

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16 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
17 DURING THE CURRENT FISCAL YEAR 2014/15 TO PAY THE ANTICIPATED
18 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, NOT TO EXCEED THE
19 SUM OF \$250,000.

19 _____
20 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Attachment 3

1 THIS MASTER AGREEMENT ("Master Agreement") is entered on April 22, 2014 between
2 the City of Concord ("CITY") and Kittelson & Associates, Inc., 155 Grand Avenue, Suite 900,
3 Oakland, CA 94612 ("CONSULTANT").

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

6 The CITY desires to contract with CONSULTANT to provide the professional services
7 described in Section 2 of this Master Agreement, upon the terms and conditions hereinafter set forth.

8 On April 22, 2014, the City Council authorized the City Manager to execute this Master
9 Agreement with CONSULTANT.

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11 parties herein contained, the parties hereto agree as follows:

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15 the CITY's Authorized Representative, CONSULTANT shall perform the services described below.
16 CITY retains all rights of approval and discretion with respect to the projects and undertakings
17 contemplated by this Master Agreement. CONSULTANT has agreed to provide services that may
18 include, but not be limited to:

- 19 • Transportation planning and traffic operations studies;
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4 year for the total not-to-exceed amount of \$250,000 per fiscal year. For each project, said CITY
5 Representatives will select CONSULTANT based on its availability and the specific needs of the
6 project. CONSULTANT shall prepare a work proposal outlining the scope of work, cost and schedule
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9 the work proposal and a Purchase Order for CONSULTANT. Work proposals providing for more
10 than \$75,000 in compensation for one project shall be presented to the City Council for consideration
11 and approval.

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13 include adequate documentation demonstrating work performed during the billing period. It is
14 intended that CITY review such statement and pay CONSULTANT for services rendered within 30
15 days of receipt of a statement that meets all requirements of this Master Agreement. Payment by
16 CITY shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the
17 CITY at the time of payment.

18 **4. AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent
19 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered
20 by CONSULTANT under this Master Agreement except where approval for the CITY is specifically
21 required by the City Council. The CITY's authorized representatives are Victoria Walker, Director of
22 the Community and Economic Development Department, and Ray Kuzbari, Transportation Manager.

23 The CONSULTANT's authorized representative is Alice Chen, Principal Planner.

24 **5. AMENDMENT TO MASTER AGREEMENT.** This Master Agreement may be
25 amended in writing, subject to approval by both parties. If additional services are requested by CITY
26 other than as described in the above Scope of Services or exceeding the compensation limit of
27 \$250,000 per fiscal year specified in Section 3, this Master Agreement may be amended, modified, or
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1 changed by the parties subject to mutual consent and in accordance with the CITY's Municipal Code
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3 additional scope of services to be performed, the performance time schedule, and the compensation
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6 to execute amendments providing for additional compensation to CONSULTANT not to exceed
7 \$50,000 during the fiscal year, including the base contract amount, throughout the term of this Master
8 Agreement. Any additional compensation to CONSULTANT that is \$50,000 or more for the fiscal
9 year, including the base contract amount, must be approved by City Council.

10 Consultant's failure to secure CITY's written authorization for additional compensation or
11 changes to the Scope of Work shall constitute a waiver of any and all right to adjustment in the price
12 or time due, whether by way of compensation, restitution, quantum merit, or similar relief.

13 **6. INDEPENDENT CONTRACTOR.** Both parties understand and acknowledge that
14 CONSULTANT, its agents, employers and subcontractors are and shall at all times remain as to the
15 CITY wholly independent contractors. Neither the CITY nor any of its officers or employees shall
16 have any control over the manner by which the CONSULTANT performs this Master Agreement and
17 shall only dictate the results of the performance. CONSULTANT shall not represent that
18 CONSULTANT or its agents, employees or subcontractors are agents or employees of the CITY, and
19 CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY in any
20 capacity whatsoever as an agent, and shall have no authority, express or implied, to bind the CITY to
21 any obligation whatsoever, unless otherwise provided in this Master Agreement.

22 As an independent contractor, CONSULTANT shall not be eligible for any benefits, which the
23 City may provide to its employees; and, all persons, if any, hired by CONSULTANT shall be
24 employees or subcontractors of CONSULTANT and shall not be construed as employees or agents of
25 the CITY in any respect. CONSULTANT shall receive no premium or enhanced pay for work
26 normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work
27 performed during non-standard business hours, such as in the evenings or on weekends.

1 CONSULTANT shall not receive a premium or enhanced pay for work performed on a recognized
2 holiday. CONSULTANT shall not receive paid time off for days not worked, whether it is in the form
3 of sick leave, administrative leave, or for any other form of absence. CONSULTANT shall pay all
4 taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment
5 insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal
6 property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in
7 connection with the services to be performed by CONSULTANT.

8 **7. STANDARD OF PERFORMANCE.** CONSULTANT represents and warrants to
9 CITY that CONSULTANT is skilled and able to provide such services described in the Scope of
10 Work and that such services shall be performed in an expeditious manner, and with the degree of skill
11 and care that is required by current, good, and sound procedures and practices. CONSULTANT
12 further agrees that the services shall be in conformance with generally accepted professional standards
13 prevailing at the time work is performed.

14 **8. PERFORMANCE BY CONSULTANT.** CONSULTANT shall not employ other
15 consultants, subconsultants, experts, or contractors without the prior written approval of the CITY.
16 Notwithstanding the foregoing, CITY shall not be obligated or liable for payment hereunder to any
17 party other than the CONSULTANT. CONSULTANT hereby designates the CONSULTANT'S
18 representative as the person primarily responsible for the day-to-day performance of
19 CONSULTANT'S work under this Master Agreement. CONSULTANT shall not change the
20 CONSULTANT'S representative without the prior written consent of the CITY. Unless otherwise
21 expressly agreed by the CITY, CONSULTANT'S representative shall remain responsible for the
22 quality and timeliness of performance of the services, notwithstanding any permitted or approved
23 delegation hereunder.

24 **9. OWNERSHIP AND MAINTENANCE OF DOCUMENTS.** All documents
25 furnished by CONSULTANT pursuant to this Master Agreement are instruments of
26 CONSULTANT'S services in respect to this project. They are not intended nor are represented to be
27 suitable for reuse by others except CITY on extensions of this project or on any other project. Any
28

1 reuse without specific written verification and adoption by CONSULTANT for the specific purposes
2 intended will be at user's sole risk and without liability or legal exposure and expenses to
3 CONSULTANT, including attorney's fees arising out of such unauthorized reuse.

4 CONSULTANT's records, documents, calculations, and all other instruments of service
5 pertaining to actual project shall be given to CITY at the completion of the project. The CITY
6 reserves the right to specify the file format that electronic document deliverables are presented to the
7 CITY.

8 **10. INDEMNIFICATION.** CONSULTANT agrees to defend, indemnify and hold
9 harmless the CITY, its officers, officials, employees, agents and volunteers from and against any and
10 all claims, demands, actions, losses, demands, injuries and liability (including all attorney fees and
11 other litigation expenses) arising out of negligent or reckless acts, willful misconduct, or errors or
12 omissions by CONSULTANT in its performance of the terms of this Master Agreement. The
13 obligations arising out of this provision shall remain in effect following the expiration of this
14 Agreement.

15 **11. INSURANCE.** CONSULTANT shall, at its own expense, procure and maintain in
16 full force at all times during the term of this Master Agreement the following insurance:

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

21 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile
22 liability insurance covering all vehicles used in the performance of this Master Agreement providing
23 a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal
24 injury, and property damage.

25 **C. Professional Liability Coverage (Errors and Omissions).** If applicable,
26 CONSULTANT shall maintain professional liability insurance with coverage for all negligent errors,
27 acts or omissions committed by CONSULTANT, its agents and employees in the performance of this
28

1 Master Agreement. The amount of this insurance shall be not less than one million dollars
2 (\$1,000,000) on a claims made annual aggregate basis or a combined single limit per occurrence basis.

3 **D. Compliance with State Workers' Compensation Requirements.**

4 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation
5 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all
6 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being
7 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall
8 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and
9 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision
10 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

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

13 (1) **Additional Insured.** CITY, its officers, agents, employees, and
14 volunteers are to be covered as an additional insured as respects: Liability arising out of activities
15 performed by or on behalf of CONSULTANT and operations of CONSULTANT, premises owned,
16 occupied, or used by CONSULTANT. The coverage shall contain no special limitations on the scope
17 or protection afforded to CITY, its officers, officials, employees, or volunteers, and shall be in a form
18 that is approved by the City Attorney's Office.

19 Except for worker's compensation and professional liability insurance, the policies mentioned
20 in this subsection shall name CITY as an additional insured and provide for notice of cancellation to
21 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT
22 receives any notice of cancellation or nonrenewal from its insurer.

23 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be
24 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any
25 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,
26 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute
27 with it.

1 (3) **Reporting Provisions.** Any failure to comply with the reporting
2 provisions of the policy shall not affect the coverage provided to the CITY, its officers, officials,
3 employees, or volunteers.

4 (4) **Verification of Coverage.** CONSULTANT shall furnish CITY with
5 certificates of insurance and the original endorsements effecting coverage required by this Master
6 Agreement. The certificates and endorsements for each insurance policy are to be signed by a person
7 authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued
8 by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney
9 and shall be delivered to CITY at the time of the execution of this Master Agreement or before work
10 commences. Such policies and certificates shall be in a form approved by the City Attorney. CITY
11 reserves the right to require complete certified copies of all required insurance policies at any time
12 upon reasonable notice.

13 12. **TIME OF PERFORMANCE.** The time of performance of the services under this
14 Master Agreement is of the essence, and all time deadlines identified in this Master Agreement or
15 Scope of Services shall be strictly construed.

16 13. **SUSPENSION OF WORK.** CITY may, at any time, by ten (10) days' written notice,
17 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for
18 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services
19 performed and reimbursable expenses incurred prior to the suspension date. During the period of
20 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
21 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

22 14. **TERMINATION.** CITY may terminate this Master Agreement for any reason upon
23 ten (10) days written notice to the other party. CITY may terminate the Master Agreement upon five
24 (5) days written notice if CONSULTANT breaches this Master Agreement. In the event of any
25 termination, CONSULTANT shall promptly deliver to the CITY any and all finished and unfinished
26 reports or other written, recorded, photographic, or visual materials, documents, data, and other
27 deliverables ("Work Materials") prepared for the CITY prior to the effective date of such termination,
28

1 all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will pay
2 CONSULTANT for the services performed as of the effective date of the termination.

3 **15. COMPLIANCE WITH CIVIL RIGHTS.** During the performance of this contract,
4 CONSULTANT agrees as follows:

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

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

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

19 **16. CONFLICT OF INTEREST.**

20 **A.** CONSULTANT covenants and represents that neither it, nor any officer or
21 principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in
22 any manner with the interests of CITY or which would in any way hinder CONSULTANT'S
23 performance of services under this Master Agreement. CONSULTANT further covenants that in the
24 performance of the Master Agreement, no person having any such interest shall be employed by it as
25 an officer, employee, agent or subcontractor without the express written consent of the CITY.
26 CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of
27 interest, with the interests of the CITY in the performance of this Master Agreement.

1 B. CONSULTANT is not a designated employee within the meaning of the
2 Political Reform Act because CONSULTANT:

3 (1) Will conduct research and arrive at conclusions with respect to its rendition
4 of information, advice, recommendation or counsel independent of the control and direction of the
5 CITY or of any CITY official, other than normal contract monitoring; and

6 (2) Possesses no authority with respect to any CITY decision beyond the
7 rendition of information, advice, recommendation or counsel. [2 Cal. Code Regs. § 18700(a)(2)].

8 **17. COMPLIANCE WITH LAWS.** CONSULTANT shall comply with all applicable
9 Federal, State of California, and local laws, rules, and regulations and shall obtain all applicable
10 licenses, including a business license with the City of Concord, and permits for the conduct of its
11 business and the performance of the services.

12 **18. CHOICE OF LAW.** This Master Agreement shall be construed and interpreted in
13 accordance with the laws of the State of California, excluding any choice of law rules which may
14 direct the application of the laws of another jurisdiction. In the event that suit shall be brought by
15 either party hereunder, the parties agree that trial of such action shall be held exclusively in a state
16 court in the County of Contra Costa, California.

17 **19. NON-WAIVER.** The waiver by either party of any breach of any term, covenant, or
18 condition contained in the Master Agreement, or any default in their performance of any obligations
19 under the Master Agreement shall not be deemed to be a waiver of any other breach or default of the
20 same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of
21 breach of default constitute a continuing waiver of same.

22 **20. ENFORCEABILITY; INTERPRETATION.** In the event that any of the provisions
23 or portions of application of any of the provisions of the Master Agreement are held to be illegal or
24 invalid by a court of competent jurisdiction, CITY and CONSULTANT shall negotiate an equitable
25 adjustment in the provisions of the Master Agreement with a view toward affecting the purpose of the
26 Master Agreement. The illegality or invalidity of any of the provisions or portions of application of
27 any of the provisions of the Master Agreement shall not affect the legality or enforceability of the
28

1 remaining provisions or portions of application of any of the provisions of the Master Agreement.
2 This Master Agreement shall be interpreted as though it was a product of a joint drafting effort and no
3 provisions shall be interpreted against a party on the ground that said party was solely or primarily
4 responsible for drafting the language to be interpreted.

5 **21. INTEGRATION.** All exhibits identified in this Master Agreement are attached hereto
6 and incorporated herein by reference. The Master Agreement contains the entire agreement and
7 understanding between the parties as to the subject matter of this Master Agreement. It merges and
8 supersedes all prior or contemporaneous agreements, commitments, representation, writings, and
9 discussions between CONSULTANT and CITY, whether oral or written.

10 **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**
11 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,
12 assigns, and legal representatives to the terms and obligations of this Master Agreement.
13 CONSULTANT shall not assign or transfer any interest in the Master Agreement without the CITY's
14 prior written consent, which consent shall be in the CITY's sole discretion. Any attempted
15 assignment or transfer in breach of this provision shall be void. This Master Agreement is not
16 intended and shall not be construed to create any third party benefit. This Master Agreement is not
17 intended and shall not be construed to create a joint venture or partnership between the parties.
18 CONSULTANT, its officers, employees and agents shall not have any power to bind or commit the
19 CITY to any decision.

20 **23. FINANCIAL RECORDS.** Records of CONSULTANT's direct labor costs, payroll
21 costs, and reimbursable expenses pertaining to this project covered by this Master Agreement will be
22 kept on a generally recognized accounting basis and made available to CITY if and when required.

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

1
2 To CITY:

**Victoria Walker, CED Director
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578
Phone: (925) 671-3434
Fax: (925) 671-3381**

3
4
5 To CONSULTANT:

**Alice Chen, Principal Planner
Kittelson & Associates, Inc.
155 Grand Avenue, Suite 900
Oakland, CA 94612
Phone: (510) 433-8090
Fax: (510) 839-0871**

6
7
8
9
10 **25. NON-LIABILITY.** No member of the CITY and no other officer, employee or agent
11 of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or
12 breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in
13 interest, or for any obligations directly or indirectly incurred under the terms of this Master
14 Agreement.

15 **26. EXECUTION.** Each individual or entity executing this Master Agreement on behalf
16 of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and
17 deliver this Master Agreement on behalf of CONSULTANT and that such execution is binding upon
18 CONSULTANT.

19 This Master Agreement may be executed in several counterparts, each of which shall
20 constitute one and the same instrument and shall become binding upon the parties when at least one
21 copy hereof shall have been signed by both parties hereto. In approving this Master Agreement, it
22 shall not be necessary to produce or account for more than one such counterpart.

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

1 **CONSULTANT**

2 **CITY OF CONCORD, a Municipal Corporation**

3 By: _____
4 Name: Alice Chen, Principal Planner
5 Title: Kittelson & Associates, Inc.
6 Address: 155 Grand Avenue, Suite 900
7 Oakland, CA 94612
8 Telephone: (510) 433-8090

3 By: _____
4 Name: Valerie J. Barone
5 Title: City Manager
6 Address: 1950 Parkside Drive
7 Concord, CA 94519
8 Telephone: (925) 671-3150

9 APPROVED AS TO FORM:

9 ATTEST:

10 _____
11 City Attorney

10 _____
11 City Clerk

12 **FINANCE DIRECTOR'S CERTIFICATION:**

13 Concord, California

14 Date: April 22, 2014

15
16 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
17 DURING THE CURRENT FISCAL YEAR 2014/15 TO PAY THE ANTICIPATED
18 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, NOT TO EXCEED THE
19 SUM OF \$250,000.

20 _____
21 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Attachment 4

1 THIS MASTER AGREEMENT ("Master Agreement") is entered on April 22, 2014 between
2 the City of Concord ("CITY") and DKS Associates, 1970 Broadway, Suite 740, Oakland, CA 94612-
3 2219 ("CONSULTANT").

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

6 The CITY desires to contract with CONSULTANT to provide the professional services
7 described in Section 2 of this Master Agreement, upon the terms and conditions hereinafter set forth.

8 On April 22, 2014, the City Council authorized the City Manager to execute this Master
9 Agreement with CONSULTANT.

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. **TERM.** This Master Agreement shall commence on July 1, 2014 and expire on June
13 30, 2017.

14 2. **SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by
15 the CITY's Authorized Representative, CONSULTANT shall perform the services described below.
16 CITY retains all rights of approval and discretion with respect to the projects and undertakings
17 contemplated by this Master Agreement. CONSULTANT has agreed to provide services that may
18 include, but not be limited to:

- 19 • Transportation planning and traffic operations studies;
- 20 • Traffic impact and parking studies;
- 21 • Traffic signal timing studies;
- 22 • Traffic design (including signals, signing & striping, temporary traffic control, etc.); and
- 23 • Traffic forecasting and freeway studies.

24 3. **PAYMENT.** CONSULTANT shall be compensated on a time and materials basis,
25 not to exceed \$250,000 per fiscal year for services rendered in Section 2, as described in the Purchase
26 Order and CONSULTANT's work proposal process described below, in accordance with the terms
27 and conditions included herein. Any Amendment to this Master Agreement that includes an increase
28

1 to this compensation amount shall be made in accordance with Section 5 below.

2 The CITY Representatives, as identified in Section 4 below, or their designees, are authorized
3 to develop and approve Purchase Orders for specific work projects by CONSULTANT in each fiscal
4 year for the total not-to-exceed amount of \$250,000 per fiscal year. For each project, said CITY
5 Representatives will select CONSULTANT based on its availability and the specific needs of the
6 project. CONSULTANT shall prepare a work proposal outlining the scope of work, cost and schedule
7 for CITY's Transportation Division review and approval. Said CITY Representatives are authorized
8 to direct CONSULTANT to proceed with the work on any individual project up to \$75,000 based on
9 the work proposal and a Purchase Order for CONSULTANT. Work proposals providing for more
10 than \$75,000 in compensation for one project shall be presented to the City Council for consideration
11 and approval.

12 CONSULTANT may submit monthly statements for services rendered; all statements shall
13 include adequate documentation demonstrating work performed during the billing period. It is
14 intended that CITY review such statement and pay CONSULTANT for services rendered within 30
15 days of receipt of a statement that meets all requirements of this Master Agreement. Payment by
16 CITY shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the
17 CITY at the time of payment.

18 **4. AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent
19 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered
20 by CONSULTANT under this Master Agreement except where approval for the CITY is specifically
21 required by the City Council. The CITY's authorized representatives are Victoria Walker, Director of
22 the Community and Economic Development Department, and Ray Kuzbari, Transportation Manager.

23 The CONSULTANT's authorized representative is Kevin Fehon, Principal.

24 **5. AMENDMENT TO MASTER AGREEMENT.** This Master Agreement may be
25 amended in writing, subject to approval by both parties. If additional services are requested by CITY
26 other than as described in the above Scope of Services or exceeding the compensation limit of
27 \$250,000 per fiscal year specified in Section 3, this Master Agreement may be amended, modified, or
28

1 changed by the parties subject to mutual consent and in accordance with the CITY's Municipal Code
2 by execution of an Amendment by authorized representatives of both parties setting forth the
3 additional scope of services to be performed, the performance time schedule, and the compensation
4 for such services.

5 **A. Amendment for Additional Compensation.** The City Manager is authorized
6 to execute amendments providing for additional compensation to CONSULTANT not to exceed
7 \$50,000 during the fiscal year, including the base contract amount, throughout the term of this Master
8 Agreement. Any additional compensation to CONSULTANT that is \$50,000 or more for the fiscal
9 year, including the base contract amount, must be approved by City Council.

10 Consultant's failure to secure CITY's written authorization for additional compensation or
11 changes to the Scope of Work shall constitute a waiver of any and all right to adjustment in the price
12 or time due, whether by way of compensation, restitution, quantum merit, or similar relief.

13 **6. INDEPENDENT CONTRACTOR.** Both parties understand and acknowledge that
14 CONSULTANT, its agents, employers and subcontractors are and shall at all times remain as to the
15 CITY wholly independent contractors. Neither the CITY nor any of its officers or employees shall
16 have any control over the manner by which the CONSULTANT performs this Master Agreement and
17 shall only dictate the results of the performance. CONSULTANT shall not represent that
18 CONSULTANT or its agents, employees or subcontractors are agents or employees of the CITY, and
19 CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY in any
20 capacity whatsoever as an agent, and shall have no authority, express or implied, to bind the CITY to
21 any obligation whatsoever, unless otherwise provided in this Master Agreement.

22 As an independent contractor, CONSULTANT shall not be eligible for any benefits, which the
23 City may provide to its employees; and, all persons, if any, hired by CONSULTANT shall be
24 employees or subcontractors of CONSULTANT and shall not be construed as employees or agents of
25 the CITY in any respect. CONSULTANT shall receive no premium or enhanced pay for work
26 normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work
27 performed during non-standard business hours, such as in the evenings or on weekends.

1 CONSULTANT shall not receive a premium or enhanced pay for work performed on a recognized
2 holiday. CONSULTANT shall not receive paid time off for days not worked, whether it is in the form
3 of sick leave, administrative leave, or for any other form of absence. CONSULTANT shall pay all
4 taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment
5 insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal
6 property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in
7 connection with the services to be performed by CONSULTANT.

8 **7. STANDARD OF PERFORMANCE.** CONSULTANT represents and warrants to
9 CITY that CONSULTANT is skilled and able to provide such services described in the Scope of
10 Work and that such services shall be performed in an expeditious manner, and with the degree of skill
11 and care that is required by current, good, and sound procedures and practices. CONSULTANT
12 further agrees that the services shall be in conformance with generally accepted professional standards
13 prevailing at the time work is performed.

14 **8. PERFORMANCE BY CONSULTANT.** CONSULTANT shall not employ other
15 consultants, subconsultants, experts, or contractors without the prior written approval of the CITY.
16 Notwithstanding the foregoing, CITY shall not be obligated or liable for payment hereunder to any
17 party other than the CONSULTANT. CONSULTANT hereby designates the CONSULTANT'S
18 representative as the person primarily responsible for the day-to-day performance of
19 CONSULTANT'S work under this Master Agreement. CONSULTANT shall not change the
20 CONSULTANT'S representative without the prior written consent of the CITY. Unless otherwise
21 expressly agreed by the CITY, CONSULTANT'S representative shall remain responsible for the
22 quality and timeliness of performance of the services, notwithstanding any permitted or approved
23 delegation hereunder.

24 **9. OWNERSHIP AND MAINTENANCE OF DOCUMENTS.** All documents
25 furnished by CONSULTANT pursuant to this Master Agreement are instruments of
26 CONSULTANT'S services in respect to this project. They are not intended nor are represented to be
27 suitable for reuse by others except CITY on extensions of this project or on any other project. Any
28

1 reuse without specific written verification and adoption by CONSULTANT for the specific purposes
2 intended will be at user's sole risk and without liability or legal exposure and expenses to
3 CONSULTANT, including attorney's fees arising out of such unauthorized reuse.

4 CONSULTANT's records, documents, calculations, and all other instruments of service
5 pertaining to actual project shall be given to CITY at the completion of the project. The CITY
6 reserves the right to specify the file format that electronic document deliverables are presented to the
7 CITY.

8 **10. INDEMNIFICATION.** CONSULTANT agrees to defend, indemnify and hold
9 harmless the CITY, its officers, officials, employees, agents and volunteers from and against any and
10 all claims, demands, actions, losses, demands, injuries and liability (including all attorney fees and
11 other litigation expenses) arising out of negligent or reckless acts, willful misconduct, or errors or
12 omissions by CONSULTANT in its performance of the terms of this Master Agreement. The
13 obligations arising out of this provision shall remain in effect following the expiration of this
14 Agreement.

15 **11. INSURANCE.** CONSULTANT shall, at its own expense, procure and maintain in
16 full force at all times during the term of this Master Agreement the following insurance:

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

21 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile
22 liability insurance covering all vehicles used in the performance of this Master Agreement providing
23 a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal
24 injury, and property damage.

25 **C. Professional Liability Coverage (Errors and Omissions).** If applicable,
26 CONSULTANT shall maintain professional liability insurance with coverage for all negligent errors,
27 acts or omissions committed by CONSULTANT, its agents and employees in the performance of this
28

1 Master Agreement. The amount of this insurance shall be not less than one million dollars
2 (\$1,000,000) on a claims made annual aggregate basis or a combined single limit per occurrence basis.

3 **D. Compliance with State Workers' Compensation Requirements.**

4 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation
5 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all
6 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being
7 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall
8 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and
9 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision
10 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

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

13 (1) **Additional Insured.** CITY, its officers, agents, employees, and
14 volunteers are to be covered as an additional insured as respects: Liability arising out of activities
15 performed by or on behalf of CONSULTANT and operations of CONSULTANT, premises owned,
16 occupied, or used by CONSULTANT. The coverage shall contain no special limitations on the scope
17 or protection afforded to CITY, its officers, officials, employees, or volunteers, and shall be in a form
18 that is approved by the City Attorney's Office.

19 Except for worker's compensation and professional liability insurance, the policies mentioned
20 in this subsection shall name CITY as an additional insured and provide for notice of cancellation to
21 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT
22 receives any notice of cancellation or nonrenewal from its insurer.

23 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be
24 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any
25 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,
26 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute
27 with it.

1 (3) **Reporting Provisions.** Any failure to comply with the reporting
2 provisions of the policy shall not affect the coverage provided to the CITY, its officers, officials,
3 employees, or volunteers.

4 (4) **Verification of Coverage.** CONSULTANT shall furnish CITY with
5 certificates of insurance and the original endorsements effecting coverage required by this Master
6 Agreement. The certificates and endorsements for each insurance policy are to be signed by a person
7 authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued
8 by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney
9 and shall be delivered to CITY at the time of the execution of this Master Agreement or before work
10 commences. Such policies and certificates shall be in a form approved by the City Attorney. CITY
11 reserves the right to require complete certified copies of all required insurance policies at any time
12 upon reasonable notice.

13 12. **TIME OF PERFORMANCE.** The time of performance of the services under this
14 Master Agreement is of the essence, and all time deadlines identified in this Master Agreement or
15 Scope of Services shall be strictly construed.

16 13. **SUSPENSION OF WORK.** CITY may, at any time, by ten (10) days' written notice,
17 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for
18 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services
19 performed and reimbursable expenses incurred prior to the suspension date. During the period of
20 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
21 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

22 14. **TERMINATION.** CITY may terminate this Master Agreement for any reason upon
23 ten (10) days written notice to the other party. CITY may terminate the Master Agreement upon five
24 (5) days written notice if CONSULTANT breaches this Master Agreement. In the event of any
25 termination, CONSULTANT shall promptly deliver to the CITY any and all finished and unfinished
26 reports or other written, recorded, photographic, or visual materials, documents, data, and other
27 deliverables ("Work Materials") prepared for the CITY prior to the effective date of such termination,
28

1 all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will pay
2 CONSULTANT for the services performed as of the effective date of the termination.

3 **15. COMPLIANCE WITH CIVIL RIGHTS.** During the performance of this contract,
4 CONSULTANT agrees as follows:

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

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

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

19 **16. CONFLICT OF INTEREST.**

20 **A.** CONSULTANT covenants and represents that neither it, nor any officer or
21 principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in
22 any manner with the interests of CITY or which would in any way hinder CONSULTANT'S
23 performance of services under this Master Agreement. CONSULTANT further covenants that in the
24 performance of the Master Agreement, no person having any such interest shall be employed by it as
25 an officer, employee, agent or subcontractor without the express written consent of the CITY.
26 CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of
27 interest, with the interests of the CITY in the performance of this Master Agreement.

1 B. CONSULTANT is not a designated employee within the meaning of the
2 Political Reform Act because CONSULTANT:

3 (1) Will conduct research and arrive at conclusions with respect to its rendition
4 of information, advice, recommendation or counsel independent of the control and direction of the
5 CITY or of any CITY official, other than normal contract monitoring; and

6 (2) Possesses no authority with respect to any CITY decision beyond the
7 rendition of information, advice, recommendation or counsel. [2 Cal. Code Regs. § 18700(a)(2)].

8 **17. COMPLIANCE WITH LAWS.** CONSULTANT shall comply with all applicable
9 Federal, State of California, and local laws, rules, and regulations and shall obtain all applicable
10 licenses, including a business license with the City of Concord, and permits for the conduct of its
11 business and the performance of the services.

12 **18. CHOICE OF LAW.** This Master Agreement shall be construed and interpreted in
13 accordance with the laws of the State of California, excluding any choice of law rules which may
14 direct the application of the laws of another jurisdiction. In the event that suit shall be brought by
15 either party hereunder, the parties agree that trial of such action shall be held exclusively in a state
16 court in the County of Contra Costa, California.

17 **19. NON-WAIVER.** The waiver by either party of any breach of any term, covenant, or
18 condition contained in the Master Agreement, or any default in their performance of any obligations
19 under the Master Agreement shall not be deemed to be a waiver of any other breach or default of the
20 same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of
21 breach of default constitute a continuing waiver of same.

22 **20. ENFORCEABILITY; INTERPRETATION.** In the event that any of the provisions
23 or portions of application of any of the provisions of the Master Agreement are held to be illegal or
24 invalid by a court of competent jurisdiction, CITY and CONSULTANT shall negotiate an equitable
25 adjustment in the provisions of the Master Agreement with a view toward affecting the purpose of the
26 Master Agreement. The illegality or invalidity of any of the provisions or portions of application of
27 any of the provisions of the Master Agreement shall not affect the legality or enforceability of the
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1 remaining provisions or portions of application of any of the provisions of the Master Agreement.
2 This Master Agreement shall be interpreted as though it was a product of a joint drafting effort and no
3 provisions shall be interpreted against a party on the ground that said party was solely or primarily
4 responsible for drafting the language to be interpreted.

5 **21. INTEGRATION.** All exhibits identified in this Master Agreement are attached hereto
6 and incorporated herein by reference. The Master Agreement contains the entire agreement and
7 understanding between the parties as to the subject matter of this Master Agreement. It merges and
8 supersedes all prior or contemporaneous agreements, commitments, representation, writings, and
9 discussions between CONSULTANT and CITY, whether oral or written.

10 **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**
11 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,
12 assigns, and legal representatives to the terms and obligations of this Master Agreement.
13 CONSULTANT shall not assign or transfer any interest in the Master Agreement without the CITY's
14 prior written consent, which consent shall be in the CITY's sole discretion. Any attempted
15 assignment or transfer in breach of this provision shall be void. This Master Agreement is not
16 intended and shall not be construed to create any third party benefit. This Master Agreement is not
17 intended and shall not be construed to create a joint venture or partnership between the parties.
18 CONSULTANT, its officers, employees and agents shall not have any power to bind or commit the
19 CITY to any decision.

20 **23. FINANCIAL RECORDS.** Records of CONSULTANT's direct labor costs, payroll
21 costs, and reimbursable expenses pertaining to this project covered by this Master Agreement will be
22 kept on a generally recognized accounting basis and made available to CITY if and when required.

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

1
2 To CITY:

**Victoria Walker, CED Director
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578
Phone: (925) 671-3434
Fax: (925) 671-3381**

3
4
5
6 To CONSULTANT:

**Kevin Fehon, Principal
DKS Associates
1970 Broadway, Suite 740
Oakland, CA 94612-2219
Phone: (510) 763-2061
Fax: (510) 268-1739**

7
8
9
10 **25. NON-LIABILITY.** No member of the CITY and no other officer, employee or agent
11 of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or
12 breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in
13 interest, or for any obligations directly or indirectly incurred under the terms of this Master
14 Agreement.

15 **26. EXECUTION.** Each individual or entity executing this Master Agreement on behalf
16 of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and
17 deliver this Master Agreement on behalf of CONSULTANT and that such execution is binding upon
18 CONSULTANT.

19 This Master Agreement may be executed in several counterparts, each of which shall
20 constitute one and the same instrument and shall become binding upon the parties when at least one
21 copy hereof shall have been signed by both parties hereto. In approving this Master Agreement, it
22 shall not be necessary to produce or account for more than one such counterpart.

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

1 **CONSULTANT**

2 **CITY OF CONCORD, a Municipal Corporation**

3 By: _____
4 Name: Kevin Fehon, Principal
5 Title: DKS Associates
6 Address: 1970 Broadway, Suite 740
7 Oakland, CA 94612-2219
8 Telephone: (510) 763-2061

3 By: _____
4 Name: Valerie J. Barone
5 Title City Manager
6 Address: 1950 Parkside Drive
7 Concord, CA 94519
8 Telephone: (925) 671-3150

9 APPROVED AS TO FORM:

9 ATTEST:

10 _____
11 City Attorney

10 _____
11 City Clerk

12 **FINANCE DIRECTOR'S CERTIFICATION:**

13 Concord, California

14 Date: Aprill 22, 2014

15
16 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
17 DURING THE CURRENT FISCAL YEAR 2014/15 TO PAY THE ANTICIPATED
18 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, NOT TO EXCEED THE
19 SUM OF \$250,000.

20 _____
21 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Attachment 5

1 THIS MASTER AGREEMENT ("Master Agreement") is entered on April 22, 2014 between
2 the City of Concord ("CITY") and Fehr & Peers, 100 Pringle Avenue, Suite 600, Walnut Creek, CA
3 94596 ("CONSULTANT").

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

6 The CITY desires to contract with CONSULTANT to provide the professional services
7 described in Section 2 of this Master Agreement, upon the terms and conditions hereinafter set forth.

8 On April 22, 2014, the City Council authorized the City Manager to execute this Master
9 Agreement with CONSULTANT.

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. **TERM.** This Master Agreement shall commence on July 1, 2014 and expire on June
13 30, 2017.

14 2. **SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by
15 the CITY's Authorized Representative, CONSULTANT shall perform the services described below.
16 CITY retains all rights of approval and discretion with respect to the projects and undertakings
17 contemplated by this Master Agreement. CONSULTANT has agreed to provide services that may
18 include, but not be limited to:

- 19 • Transportation planning and traffic operations studies;
- 20 • Traffic impact and parking studies;
- 21 • Traffic signal timing studies;
- 22 • Traffic design (including signals, signing & striping, temporary traffic control, etc.); and
- 23 • Traffic forecasting and freeway studies.

24 3. **PAYMENT.** CONSULTANT shall be compensated on a time and materials basis,
25 not to exceed \$250,000 per fiscal year for services rendered in Section 2, as described in the Purchase
26 Order and CONSULTANT's work proposal process described below, in accordance with the terms
27 and conditions included herein. Any Amendment to this Master Agreement that includes an increase
28

1 to this compensation amount shall be made in accordance with Section 5 below.

2 The CITY Representatives, as identified in Section 4 below, or their designees, are authorized
3 to develop and approve Purchase Orders for specific work projects by CONSULTANT in each fiscal
4 year for the total not-to-exceed amount of \$250,000 per fiscal year. For each project, said CITY
5 Representatives will select CONSULTANT based on its availability and the specific needs of the
6 project. CONSULTANT shall prepare a work proposal outlining the scope of work, cost and schedule
7 for CITY's Transportation Division review and approval. Said CITY Representatives are authorized
8 to direct CONSULTANT to proceed with the work on any individual project up to \$75,000 based on
9 the work proposal and a Purchase Order for CONSULTANT. Work proposals providing for more
10 than \$75,000 in compensation for one project shall be presented to the City Council for consideration
11 and approval.

12 CONSULTANT may submit monthly statements for services rendered; all statements shall
13 include adequate documentation demonstrating work performed during the billing period. It is
14 intended that CITY review such statement and pay CONSULTANT for services rendered within 30
15 days of receipt of a statement that meets all requirements of this Master Agreement. Payment by
16 CITY shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the
17 CITY at the time of payment.

18 **4. AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent
19 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered
20 by CONSULTANT under this Master Agreement except where approval for the CITY is specifically
21 required by the City Council. The CITY's authorized representatives are Victoria Walker, Director of
22 the Community and Economic Development Department, and Ray Kuzbari, Transportation Manager.

23 The CONSULTANT's authorized representative is Kathrin Tellez, Associate.

24 **5. AMENDMENT TO MASTER AGREEMENT.** This Master Agreement may be
25 amended in writing, subject to approval by both parties. If additional services are requested by CITY
26 other than as described in the above Scope of Services or exceeding the compensation limit of
27 \$250,000 per fiscal year specified in Section 3, this Master Agreement may be amended, modified, or
28

1 changed by the parties subject to mutual consent and in accordance with the CITY's Municipal Code
2 by execution of an Amendment by authorized representatives of both parties setting forth the
3 additional scope of services to be performed, the performance time schedule, and the compensation
4 for such services.

5 **A. Amendment for Additional Compensation.** The City Manager is authorized
6 to execute amendments providing for additional compensation to CONSULTANT not to exceed
7 \$50,000 during the fiscal year, including the base contract amount, throughout the term of this Master
8 Agreement. Any additional compensation to CONSULTANT that is \$50,000 or more for the fiscal
9 year, including the base contract amount, must be approved by City Council.

10 Consultant's failure to secure CITY's written authorization for additional compensation or
11 changes to the Scope of Work shall constitute a waiver of any and all right to adjustment in the price
12 or time due, whether by way of compensation, restitution, quantum merit, or similar relief.

13 **6. INDEPENDENT CONTRACTOR.** Both parties understand and acknowledge that
14 CONSULTANT, its agents, employers and subcontractors are and shall at all times remain as to the
15 CITY wholly independent contractors. Neither the CITY nor any of its officers or employees shall
16 have any control over the manner by which the CONSULTANT performs this Master Agreement and
17 shall only dictate the results of the performance. CONSULTANT shall not represent that
18 CONSULTANT or its agents, employees or subcontractors are agents or employees of the CITY, and
19 CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY in any
20 capacity whatsoever as an agent, and shall have no authority, express or implied, to bind the CITY to
21 any obligation whatsoever, unless otherwise provided in this Master Agreement.

22 As an independent contractor, CONSULTANT shall not be eligible for any benefits, which the
23 City may provide to its employees; and, all persons, if any, hired by CONSULTANT shall be
24 employees or subcontractors of CONSULTANT and shall not be construed as employees or agents of
25 the CITY in any respect. CONSULTANT shall receive no premium or enhanced pay for work
26 normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work
27 performed during non-standard business hours, such as in the evenings or on weekends.

1 CONSULTANT shall not receive a premium or enhanced pay for work performed on a recognized
2 holiday. CONSULTANT shall not receive paid time off for days not worked, whether it is in the form
3 of sick leave, administrative leave, or for any other form of absence. CONSULTANT shall pay all
4 taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment
5 insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal
6 property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in
7 connection with the services to be performed by CONSULTANT.

8 **7. STANDARD OF PERFORMANCE.** CONSULTANT represents and warrants to
9 CITY that CONSULTANT is skilled and able to provide such services described in the Scope of
10 Work and that such services shall be performed in an expeditious manner, and with the degree of skill
11 and care that is required by current, good, and sound procedures and practices. CONSULTANT
12 further agrees that the services shall be in conformance with generally accepted professional standards
13 prevailing at the time work is performed.

14 **8. PERFORMANCE BY CONSULTANT.** CONSULTANT shall not employ other
15 consultants, subconsultants, experts, or contractors without the prior written approval of the CITY.
16 Notwithstanding the foregoing, CITY shall not be obligated or liable for payment hereunder to any
17 party other than the CONSULTANT. CONSULTANT hereby designates the CONSULTANT'S
18 representative as the person primarily responsible for the day-to-day performance of
19 CONSULTANT'S work under this Master Agreement. CONSULTANT shall not change the
20 CONSULTANT'S representative without the prior written consent of the CITY. Unless otherwise
21 expressly agreed by the CITY, CONSULTANT'S representative shall remain responsible for the
22 quality and timeliness of performance of the services, notwithstanding any permitted or approved
23 delegation hereunder.

24 **9. OWNERSHIP AND MAINTENANCE OF DOCUMENTS.** All documents
25 furnished by CONSULTANT pursuant to this Master Agreement are instruments of
26 CONSULTANT's services in respect to this project. They are not intended nor are represented to be
27 suitable for reuse by others except CITY on extensions of this project or on any other project. Any
28

1 reuse without specific written verification and adoption by CONSULTANT for the specific purposes
2 intended will be at user's sole risk and without liability or legal exposure and expenses to
3 CONSULTANT, including attorney's fees arising out of such unauthorized reuse.

4 CONSULTANT's records, documents, calculations, and all other instruments of service
5 pertaining to actual project shall be given to CITY at the completion of the project. The CITY
6 reserves the right to specify the file format that electronic document deliverables are presented to the
7 CITY.

8 **10. INDEMNIFICATION.** CONSULTANT agrees to defend, indemnify and hold
9 harmless the CITY, its officers, officials, employees, agents and volunteers from and against any and
10 all claims, demands, actions, losses, demands, injuries and liability (including all attorney fees and
11 other litigation expenses) arising out of negligent or reckless acts, willful misconduct, or errors or
12 omissions by CONSULTANT in its performance of the terms of this Master Agreement. The
13 obligations arising out of this provision shall remain in effect following the expiration of this
14 Agreement.

15 **11. INSURANCE.** CONSULTANT shall, at its own expense, procure and maintain in
16 full force at all times during the term of this Master Agreement the following insurance:

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

21 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile
22 liability insurance covering all vehicles used in the performance of this Master Agreement providing
23 a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal
24 injury, and property damage.

25 **C. Professional Liability Coverage (Errors and Omissions).** If applicable,
26 CONSULTANT shall maintain professional liability insurance with coverage for all negligent errors,
27 acts or omissions committed by CONSULTANT, its agents and employees in the performance of this
28

1 Master Agreement. The amount of this insurance shall be not less than one million dollars
2 (\$1,000,000) on a claims made annual aggregate basis or a combined single limit per occurrence basis.

3 **D. Compliance with State Workers' Compensation Requirements.**

4 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation
5 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all
6 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being
7 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall
8 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and
9 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision
10 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

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

13 (1) **Additional Insured.** CITY, its officers, agents, employees, and
14 volunteers are to be covered as an additional insured as respects: Liability arising out of activities
15 performed by or on behalf of CONSULTANT and operations of CONSULTANT, premises owned,
16 occupied, or used by CONSULTANT. The coverage shall contain no special limitations on the scope
17 or protection afforded to CITY, its officers, officials, employees, or volunteers, and shall be in a form
18 that is approved by the City Attorney's Office.

19 Except for worker's compensation and professional liability insurance, the policies mentioned
20 in this subsection shall name CITY as an additional insured and provide for notice of cancellation to
21 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT
22 receives any notice of cancellation or nonrenewal from its insurer.

23 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be
24 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any
25 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,
26 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute
27 with it.

1 (3) **Reporting Provisions.** Any failure to comply with the reporting
2 provisions of the policy shall not affect the coverage provided to the CITY, its officers, officials,
3 employees, or volunteers.

4 (4) **Verification of Coverage.** CONSULTANT shall furnish CITY with
5 certificates of insurance and the original endorsements effecting coverage required by this Master
6 Agreement. The certificates and endorsements for each insurance policy are to be signed by a person
7 authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued
8 by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney
9 and shall be delivered to CITY at the time of the execution of this Master Agreement or before work
10 commences. Such policies and certificates shall be in a form approved by the City Attorney. CITY
11 reserves the right to require complete certified copies of all required insurance policies at any time
12 upon reasonable notice.

13 12. **TIME OF PERFORMANCE.** The time of performance of the services under this
14 Master Agreement is of the essence, and all time deadlines identified in this Master Agreement or
15 Scope of Services shall be strictly construed.

16 13. **SUSPENSION OF WORK.** CITY may, at any time, by ten (10) days' written notice,
17 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for
18 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services
19 performed and reimbursable expenses incurred prior to the suspension date. During the period of
20 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
21 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

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23 ten (10) days written notice to the other party. CITY may terminate the Master Agreement upon five
24 (5) days written notice if CONSULTANT breaches this Master Agreement. In the event of any
25 termination, CONSULTANT shall promptly deliver to the CITY any and all finished and unfinished
26 reports or other written, recorded, photographic, or visual materials, documents, data, and other
27 deliverables ("Work Materials") prepared for the CITY prior to the effective date of such termination,
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1 all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will pay
2 CONSULTANT for the services performed as of the effective date of the termination.

3 **15. COMPLIANCE WITH CIVIL RIGHTS.** During the performance of this contract,
4 CONSULTANT agrees as follows:

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

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

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

19 **16. CONFLICT OF INTEREST.**

20 **A.** CONSULTANT covenants and represents that neither it, nor any officer or
21 principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in
22 any manner with the interests of CITY or which would in any way hinder CONSULTANT'S
23 performance of services under this Master Agreement. CONSULTANT further covenants that in the
24 performance of the Master Agreement, no person having any such interest shall be employed by it as
25 an officer, employee, agent or subcontractor without the express written consent of the CITY.
26 CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of
27 interest, with the interests of the CITY in the performance of this Master Agreement.

1 B. CONSULTANT is not a designated employee within the meaning of the
2 Political Reform Act because CONSULTANT:

3 (1) Will conduct research and arrive at conclusions with respect to its rendition
4 of information, advice, recommendation or counsel independent of the control and direction of the
5 CITY or of any CITY official, other than normal contract monitoring; and

6 (2) Possesses no authority with respect to any CITY decision beyond the
7 rendition of information, advice, recommendation or counsel. [2 Cal. Code Regs. § 18700(a)(2)].

8 **17. COMPLIANCE WITH LAWS.** CONSULTANT shall comply with all applicable
9 Federal, State of California, and local laws, rules, and regulations and shall obtain all applicable
10 licenses, including a business license with the City of Concord, and permits for the conduct of its
11 business and the performance of the services.

12 **18. CHOICE OF LAW.** This Master Agreement shall be construed and interpreted in
13 accordance with the laws of the State of California, excluding any choice of law rules which may
14 direct the application of the laws of another jurisdiction. In the event that suit shall be brought by
15 either party hereunder, the parties agree that trial of such action shall be held exclusively in a state
16 court in the County of Contra Costa, California.

17 **19. NON-WAIVER.** The waiver by either party of any breach of any term, covenant, or
18 condition contained in the Master Agreement, or any default in their performance of any obligations
19 under the Master Agreement shall not be deemed to be a waiver of any other breach or default of the
20 same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of
21 breach of default constitute a continuing waiver of same.

22 **20. ENFORCEABILITY; INTERPRETATION.** In the event that any of the provisions
23 or portions of application of any of the provisions of the Master Agreement are held to be illegal or
24 invalid by a court of competent jurisdiction, CITY and CONSULTANT shall negotiate an equitable
25 adjustment in the provisions of the Master Agreement with a view toward affecting the purpose of the
26 Master Agreement. The illegality or invalidity of any of the provisions or portions of application of
27 any of the provisions of the Master Agreement shall not affect the legality or enforceability of the
28

1 remaining provisions or portions of application of any of the provisions of the Master Agreement.
2 This Master Agreement shall be interpreted as though it was a product of a joint drafting effort and no
3 provisions shall be interpreted against a party on the ground that said party was solely or primarily
4 responsible for drafting the language to be interpreted.

5 **21. INTEGRATION.** All exhibits identified in this Master Agreement are attached hereto
6 and incorporated herein by reference. The Master Agreement contains the entire agreement and
7 understanding between the parties as to the subject matter of this Master Agreement. It merges and
8 supersedes all prior or contemporaneous agreements, commitments, representation, writings, and
9 discussions between CONSULTANT and CITY, whether oral or written.

10 **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**
11 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,
12 assigns, and legal representatives to the terms and obligations of this Master Agreement.
13 CONSULTANT shall not assign or transfer any interest in the Master Agreement without the CITY's
14 prior written consent, which consent shall be in the CITY's sole discretion. Any attempted
15 assignment or transfer in breach of this provision shall be void. This Master Agreement is not
16 intended and shall not be construed to create any third party benefit. This Master Agreement is not
17 intended and shall not be construed to create a joint venture or partnership between the parties.
18 CONSULTANT, its officers, employees and agents shall not have any power to bind or commit the
19 CITY to any decision.

20 **23. FINANCIAL RECORDS.** Records of CONSULTANT's direct labor costs, payroll
21 costs, and reimbursable expenses pertaining to this project covered by this Master Agreement will be
22 kept on a generally recognized accounting basis and made available to CITY if and when required.

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

1
2 To CITY:

**Victoria Walker, CED Director
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578
Phone: (925) 671-3434
Fax: (925) 671-3381**

3
4
5
6 To CONSULTANT:

**Kathrin Tellez, Associate
Fehr & Peers
100 Pringle Avenue, Suite 600
Walnut Creek, CA 94596
Phone: (925) 930-7100
Fax: (925) 933-7090**

7
8
9
10 **25. NON-LIABILITY.** No member of the CITY and no other officer, employee or agent
11 of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or
12 breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in
13 interest, or for any obligations directly or indirectly incurred under the terms of this Master
14 Agreement.

15 **26. EXECUTION.** Each individual or entity executing this Master Agreement on behalf
16 of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and
17 deliver this Master Agreement on behalf of CONSULTANT and that such execution is binding upon
18 CONSULTANT.

19 This Master Agreement may be executed in several counterparts, each of which shall
20 constitute one and the same instrument and shall become binding upon the parties when at least one
21 copy hereof shall have been signed by both parties hereto. In approving this Master Agreement, it
22 shall not be necessary to produce or account for more than one such counterpart.

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

1 **CONSULTANT**

2 **CITY OF CONCORD, a Municipal Corporation**

3 By: _____
4 Name: Kathrin Tellez, Associate
5 Title: Fehr & Peers
6 Address: 100 Pringle Avenue, Suite 600
7 Walnut Creek, CA 94596
8 Telephone: (925) 930-7100

3 By: _____
4 Name: Valerie J. Barone
5 Title: City Manager
6 Address: 1950 Parkside Drive
7 Concord, CA 94519
8 Telephone: (925) 671-3150

9 APPROVED AS TO FORM:

9 ATTEST:

10 _____
11 City Attorney

10 _____
11 City Clerk

12 **FINANCE DIRECTOR'S CERTIFICATION:**

13 Concord, California

14 Date: April 22, 2014

15
16 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
17 DURING THE CURRENT FISCAL YEAR 2014/15 TO PAY THE ANTICIPATED
18 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, NOT TO EXCEED THE
19 SUM OF \$250,000.

20 _____
21 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Attachment 6

1 THIS MASTER AGREEMENT ("Master Agreement") is entered on April 22, 2014 between
2 the City of Concord ("CITY") and URS Corporation, a Nevada Corporation, dba URS Corporation
3 Americas, One Concord Center, 2300 Clayton Road, Suite # 1400, Concord, CA 94520
4 ("CONSULTANT").

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

7 The CITY desires to contract with CONSULTANT to provide the professional services
8 described in Section 2 of this Master Agreement, upon the terms and conditions hereinafter set forth.

9 On April 22, 2014, the City Council authorized the City Manager to execute this Master
10 Agreement with CONSULTANT.

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

13 1. **TERM.** This Master Agreement shall commence on July 1, 2014 and expire on June
14 30, 2017.

15 2. **SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by
16 the CITY's Authorized Representative, CONSULTANT shall perform the services described below.
17 CITY retains all rights of approval and discretion with respect to the projects and undertakings
18 contemplated by this Master Agreement. CONSULTANT has agreed to provide services that may
19 include, but not be limited to:

- 20 • Transportation planning and traffic operations studies;
- 21 • Traffic impact and parking studies;
- 22 • Traffic signal timing studies;
- 23 • Traffic design (including signals, signing & striping, temporary traffic control, etc.); and
- 24 • Traffic forecasting and freeway studies.

25 3. **PAYMENT.** CONSULTANT shall be compensated on a time and materials basis,
26 not to exceed \$250,000 per fiscal year for services rendered in Section 2, as described in the Purchase
27 Order and CONSULTANT's work proposal process described below, in accordance with the terms
28

1 and conditions included herein. Any Amendment to this Master Agreement that includes an increase
2 to this compensation amount shall be made in accordance with Section 5 below.

3 The CITY Representatives, as identified in Section 4 below, or their designees, are authorized
4 to develop and approve Purchase Orders for specific work projects by CONSULTANT in each fiscal
5 year for the total not-to-exceed amount of \$250,000 per fiscal year. For each project, said CITY
6 Representatives will select CONSULTANT based on its availability and the specific needs of the
7 project. CONSULTANT shall prepare a work proposal outlining the scope of work, cost and schedule
8 for CITY's Transportation Division review and approval. Said CITY Representatives are authorized
9 to direct CONSULTANT to proceed with the work on any individual project up to \$75,000 based on
10 the work proposal and a Purchase Order for CONSULTANT. Work proposals providing for more
11 than \$75,000 in compensation for one project shall be presented to the City Council for consideration
12 and approval.

13 CONSULTANT may submit monthly statements for services rendered; all statements shall
14 include adequate documentation demonstrating work performed during the billing period. It is
15 intended that CITY review such statement and pay CONSULTANT for services rendered within 30
16 days of receipt of a statement that meets all requirements of this Master Agreement. Payment by
17 CITY shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the
18 CITY at the time of payment.

19 **4. AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent
20 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered
21 by CONSULTANT under this Master Agreement except where approval for the CITY is specifically
22 required by the City Council. The CITY's authorized representatives are Victoria Walker, Director of
23 the Community and Economic Development Department, and Ray Kuzbari, Transportation Manager.

24 The CONSULTANT's authorized representative is Ramsey Hissen, Vice President.

25 **5. AMENDMENT TO MASTER AGREEMENT.** This Master Agreement may be
26 amended in writing, subject to approval by both parties. If additional services are requested by CITY
27 other than as described in the above Scope of Services or exceeding the compensation limit of
28

1 \$250,000 per fiscal year specified in Section 3, this Master Agreement may be amended, modified, or
2 changed by the parties subject to mutual consent and in accordance with the CITY's Municipal Code
3 by execution of an Amendment by authorized representatives of both parties setting forth the
4 additional scope of services to be performed, the performance time schedule, and the compensation
5 for such services.

6 **A. Amendment for Additional Compensation.** The City Manager is authorized
7 to execute amendments providing for additional compensation to CONSULTANT not to exceed
8 \$50,000 during the fiscal year, including the base contract amount, throughout the term of this Master
9 Agreement. Any additional compensation to CONSULTANT that is \$50,000 or more for the fiscal
10 year, including the base contract amount, must be approved by City Council.

11 Consultant's failure to secure CITY's written authorization for additional compensation or
12 changes to the Scope of Work shall constitute a waiver of any and all right to adjustment in the price
13 or time due, whether by way of compensation, restitution, quantum merit, or similar relief.

14 **6. INDEPENDENT CONTRACTOR.** Both parties understand and acknowledge that
15 CONSULTANT, its agents, employers and subcontractors are and shall at all times remain as to the
16 CITY wholly independent contractors. Neither the CITY nor any of its officers or employees shall
17 have any control over the manner by which the CONSULTANT performs this Master Agreement and
18 shall only dictate the results of the performance. CONSULTANT shall not represent that
19 CONSULTANT or its agents, employees or subcontractors are agents or employees of the CITY, and
20 CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY in any
21 capacity whatsoever as an agent, and shall have no authority, express or implied, to bind the CITY to
22 any obligation whatsoever, unless otherwise provided in this Master Agreement.

23 As an independent contractor, CONSULTANT shall not be eligible for any benefits, which the
24 City may provide to its employees; and, all persons, if any, hired by CONSULTANT shall be
25 employees or subcontractors of CONSULTANT and shall not be construed as employees or agents of
26 the CITY in any respect. CONSULTANT shall receive no premium or enhanced pay for work
27 normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work
28

1 performed during non-standard business hours, such as in the evenings or on weekends.
2 CONSULTANT shall not receive a premium or enhanced pay for work performed on a recognized
3 holiday. CONSULTANT shall not receive paid time off for days not worked, whether it is in the form
4 of sick leave, administrative leave, or for any other form of absence. CONSULTANT shall pay all
5 taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment
6 insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal
7 property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in
8 connection with the services to be performed by CONSULTANT.

9 **7. STANDARD OF PERFORMANCE.** CONSULTANT represents and warrants to
10 CITY that CONSULTANT is skilled and able to provide such services described in the Scope of
11 Work and that such services shall be performed in an expeditious manner, and with the degree of skill
12 and care that is required by current, good, and sound procedures and practices. CONSULTANT
13 further agrees that the services shall be in conformance with generally accepted professional standards
14 prevailing at the time work is performed.

15 **8. PERFORMANCE BY CONSULTANT.** CONSULTANT shall not employ other
16 consultants, subconsultants, experts, or contractors without the prior written approval of the CITY.
17 Notwithstanding the foregoing, CITY shall not be obligated or liable for payment hereunder to any
18 party other than the CONSULTANT. CONSULTANT hereby designates the CONSULTANT'S
19 representative as the person primarily responsible for the day-to-day performance of
20 CONSULTANT'S work under this Master Agreement. CONSULTANT shall not change the
21 CONSULTANT'S representative without the prior written consent of the CITY. Unless otherwise
22 expressly agreed by the CITY, CONSULTANT'S representative shall remain responsible for the
23 quality and timeliness of performance of the services, notwithstanding any permitted or approved
24 delegation hereunder.

25 **9. OWNERSHIP AND MAINTENANCE OF DOCUMENTS.** All documents
26 furnished by CONSULTANT pursuant to this Master Agreement are instruments of
27 CONSULTANT's services in respect to this project. They are not intended nor are represented to be
28

1 suitable for reuse by others except CITY on extensions of this project or on any other project. Any
2 reuse without specific written verification and adoption by CONSULTANT for the specific purposes
3 intended will be at user's sole risk and without liability or legal exposure and expenses to
4 CONSULTANT, including attorney's fees arising out of such unauthorized reuse.

5 CONSULTANT's records, documents, calculations, and all other instruments of service
6 pertaining to actual project shall be given to CITY at the completion of the project. The CITY
7 reserves the right to specify the file format that electronic document deliverables are presented to the
8 CITY.

9 **10. INDEMNIFICATION.** CONSULTANT agrees to defend, indemnify and hold
10 harmless the CITY, its officers, officials, employees, agents and volunteers from and against any and
11 all claims, demands, actions, losses, demands, injuries and liability (including all attorney fees and
12 other litigation expenses) arising out of negligent or reckless acts, willful misconduct, or errors or
13 omissions by CONSULTANT in its performance of the terms of this Master Agreement. The
14 obligations arising out of this provision shall remain in effect following the expiration of this
15 Agreement.

16 **11. INSURANCE.** CONSULTANT shall, at its own expense, procure and maintain in
17 full force at all times during the term of this Master Agreement the following insurance:

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

22 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile
23 liability insurance covering all vehicles used in the performance of this Master Agreement providing
24 a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal
25 injury, and property damage.

26 **C. Professional Liability Coverage (Errors and Omissions).** If applicable,
27 CONSULTANT shall maintain professional liability insurance with coverage for all negligent errors,
28

1 acts or omissions committed by CONSULTANT, its agents and employees in the performance of this
2 Master Agreement. The amount of this insurance shall be not less than one million dollars
3 (\$1,000,000) on a claims made annual aggregate basis or a combined single limit per occurrence basis.

4 **D. Compliance with State Workers' Compensation Requirements.**

5 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation
6 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all
7 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being
8 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall
9 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and
10 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision
11 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

12 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to

13 contain the following provisions:

14 (1) **Additional Insured.** CITY, its officers, agents, employees, and
15 volunteers are to be covered as an additional insured as respects: Liability arising out of activities
16 performed by or on behalf of CONSULTANT and operations of CONSULTANT, premises owned,
17 occupied, or used by CONSULTANT. The coverage shall contain no special limitations on the scope
18 or protection afforded to CITY, its officers, officials, employees, or volunteers, and shall be in a form
19 that is approved by the City Attorney's Office.

20 Except for worker's compensation and professional liability insurance, the policies mentioned
21 in this subsection shall name CITY as an additional insured and provide for notice of cancellation to
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT
23 receives any notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be
25 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any
26 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,
27 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute

1 with it.

2 (3) **Reporting Provisions.** Any failure to comply with the reporting
3 provisions of the policy shall not affect the coverage provided to the CITY, its officers, officials,
4 employees, or volunteers.

5 (4) **Verification of Coverage.** CONSULTANT shall furnish CITY with
6 certificates of insurance and the original endorsements effecting coverage required by this Master
7 Agreement. The certificates and endorsements for each insurance policy are to be signed by a person
8 authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued
9 by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney
10 and shall be delivered to CITY at the time of the execution of this Master Agreement or before work
11 commences. Such policies and certificates shall be in a form approved by the City Attorney. CITY
12 reserves the right to require complete certified copies of all required insurance policies at any time
13 upon reasonable notice.

14 **12. TIME OF PERFORMANCE.** The time of performance of the services under this
15 Master Agreement is of the essence, and all time deadlines identified in this Master Agreement or
16 Scope of Services shall be strictly construed.

17 **13. SUSPENSION OF WORK.** CITY may, at any time, by ten (10) days' written notice,
18 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for
19 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services
20 performed and reimbursable expenses incurred prior to the suspension date. During the period of
21 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
22 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

23 **14. TERMINATION.** CITY may terminate this Master Agreement for any reason upon
24 ten (10) days written notice to the other party. CITY may terminate the Master Agreement upon five
25 (5) days written notice if CONSULTANT breaches this Master Agreement. In the event of any
26 termination, CONSULTANT shall promptly deliver to the CITY any and all finished and unfinished
27 reports or other written, recorded, photographic, or visual materials, documents, data, and other
28

1 deliverables (“Work Materials”) prepared for the CITY prior to the effective date of such termination,
2 all of which shall become CITY’s sole property. After receipt of the Work Materials, CITY will pay
3 CONSULTANT for the services performed as of the effective date of the termination.

4 **15. COMPLIANCE WITH CIVIL RIGHTS.** During the performance of this contract,
5 CONSULTANT agrees as follows:

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

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

14 **C. Solicitations for Subcontractors including Procurement of Materials and**
15 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by
16 CONSULTANT for work to be performed under a subcontract including procurement of materials or
17 leases of equipment, each potential subcontractor, supplier or lessor shall be notified by
18 CONSULTANT of CONSULTANT’S obligation under this Master Agreement and the regulations
19 relative to nondiscrimination on the grounds of race, religion, color, sex, or national origin..

20 **16. CONFLICT OF INTEREST.**

21 **A.** CONSULTANT covenants and represents that neither it, nor any officer or
22 principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in
23 any manner with the interests of CITY or which would in any way hinder CONSULTANT’S
24 performance of services under this Master Agreement. CONSULTANT further covenants that in the
25 performance of the Master Agreement, no person having any such interest shall be employed by it as
26 an officer, employee, agent or subcontractor without the express written consent of the CITY.
27 CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of
28

1 interest, with the interests of the CITY in the performance of this Master Agreement.

2 B. CONSULTANT is not a designated employee within the meaning of the
3 Political Reform Act because CONSULTANT:

4 (1) Will conduct research and arrive at conclusions with respect to its rendition
5 of information, advice, recommendation or counsel independent of the control and direction of the
6 CITY or of any CITY official, other than normal contract monitoring; and

7 (2) Possesses no authority with respect to any CITY decision beyond the
8 rendition of information, advice, recommendation or counsel. [2 Cal. Code Regs. § 18700(a)(2)].

9 **17. COMPLIANCE WITH LAWS.** CONSULTANT shall comply with all applicable
10 Federal, State of California, and local laws, rules, and regulations and shall obtain all applicable
11 licenses, including a business license with the City of Concord, and permits for the conduct of its
12 business and the performance of the services.

13 **18. CHOICE OF LAW.** This Master Agreement shall be construed and interpreted in
14 accordance with the laws of the State of California, excluding any choice of law rules which may
15 direct the application of the laws of another jurisdiction. In the event that suit shall be brought by
16 either party hereunder, the parties agree that trial of such action shall be held exclusively in a state
17 court in the County of Contra Costa, California.

18 **19. NON-WAIVER.** The waiver by either party of any breach of any term, covenant, or
19 condition contained in the Master Agreement, or any default in their performance of any obligations
20 under the Master Agreement shall not be deemed to be a waiver of any other breach or default of the
21 same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of
22 breach of default constitute a continuing waiver of same.

23 **20. ENFORCEABILITY; INTERPRETATION.** In the event that any of the provisions
24 or portions of application of any of the provisions of the Master Agreement are held to be illegal or
25 invalid by a court of competent jurisdiction, CITY and CONSULTANT shall negotiate an equitable
26 adjustment in the provisions of the Master Agreement with a view toward affecting the purpose of the
27 Master Agreement. The illegality or invalidity of any of the provisions or portions of application of
28

1 any of the provisions of the Master Agreement shall not affect the legality or enforceability of the
2 remaining provisions or portions of application of any of the provisions of the Master Agreement.
3 This Master Agreement shall be interpreted as though it was a product of a joint drafting effort and no
4 provisions shall be interpreted against a party on the ground that said party was solely or primarily
5 responsible for drafting the language to be interpreted.

6 **21. INTEGRATION.** All exhibits identified in this Master Agreement are attached hereto
7 and incorporated herein by reference. The Master Agreement contains the entire agreement and
8 understanding between the parties as to the subject matter of this Master Agreement. It merges and
9 supersedes all prior or contemporaneous agreements, commitments, representation, writings, and
10 discussions between CONSULTANT and CITY, whether oral or written.

11 **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**
12 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,
13 assigns, and legal representatives to the terms and obligations of this Master Agreement.
14 CONSULTANT shall not assign or transfer any interest in the Master Agreement without the CITY's
15 prior written consent, which consent shall be in the CITY's sole discretion. Any attempted
16 assignment or transfer in breach of this provision shall be void. This Master Agreement is not
17 intended and shall not be construed to create any third party benefit. This Master Agreement is not
18 intended and shall not be construed to create a joint venture or partnership between the parties.
19 CONSULTANT, its officers, employees and agents shall not have any power to bind or commit the
20 CITY to any decision.

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

24 **24. NOTICES.** All notices required hereunder shall be in writing and mailed postage
25 prepaid by certified or registered mail, return receipt requested, or by personal delivery to the CITY's
26 address as shown below, or such other places as CITY or CONSULTANT may, from time to time,
27 respectively, designate in a written notice given to the other. Notice shall be deemed received three
28

1 (3) days after the date of the mailing thereof or upon personal delivery.

2
3 To CITY: **Victoria Walker, CED Director**
4 **City of Concord**
5 **1950 Parkside Drive**
6 **Concord, CA 94519-2578**
7 **Phone: (925) 671-3434**
8 **Fax: (925) 671-3381**

9
10 To CONSULTANT: **Ramsey Hissen, Vice President**
11 **URS Corporation Americas**
12 **One Concord Center**
13 **2300 Clayton Road, Suite # 1400**
14 **Concord, CA 94520**
15 **Phone: (925) 446-3800**
16 **Fax: (925) 825-1064**

17 **25. NON-LIABILITY.** No member of the CITY and no other officer, employee or agent
18 of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or
19 breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in
20 interest, or for any obligations directly or indirectly incurred under the terms of this Master
21 Agreement.

22 **26. EXECUTION.** Each individual or entity executing this Master Agreement on behalf
23 of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and
24 deliver this Master Agreement on behalf of CONSULTANT and that such execution is binding upon
25 CONSULTANT.

26 This Master Agreement may be executed in several counterparts, each of which shall
27 constitute one and the same instrument and shall become binding upon the parties when at least one
28 copy hereof shall have been signed by both parties hereto. In approving this Master Agreement, it
shall not be necessary to produce or account for more than one such counterpart.

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

CONSULTANT

CITY OF CONCORD, a Municipal Corporation

By: _____
Name: Ramsey Hissen, Vice President
Title: URS Corporation Americas
Address: 2300 Clayton Road, Suite #1400
Concord, CA 94520
Telephone: (925) 446-3800

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

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: April 22, 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, NOT TO EXCEED THE SUM OF \$250,000.

Finance Director's Signature